

(Notes in **red** are opinions of the lecturers,¹ of authors² on the subject, or of the reviewer.
Cited provisions are from the Rules of Court unless otherwise provided.)

CIVIL PROCEDURE

R22 S1 (computation of time)

1. Apply FELI (i.e. exclude first day, include last day [date of performance])
2. If last day falls on...
 - (a) The weekend, or
 - (b) A legal holiday in the place where the court sits...... LAST DAY = NEXT WORKING DAY! ☺

Case: **Reinier Pacific vs. Guevarra** – per A.M. 00-2-14-SC, when the last day falls on a weekend or a legal holiday & the original period is extended, the **extension should be counted from the expiration of the period** regardless of the fact that it is a weekend, etc.

Life of a civil action

1. Complaint
 - (a) Cause of action (R2)
 - (b) Jurisdiction (BP 129, RA 7691)
 - (c) Venue (R4)
 - (d) Parties (R3)
 - (e) Preparation of complaint (R6-9)
 - (f) Filing, payment of docket fees (R1+)
[*Provisional remedies (R57-61)*]
[*Modes of discovery (R23-29)*]
 - (g) Amendment (R10)
[*Dismissal by plaintiff (R17)*]
2. Summons (R14)
 - (a) Motion for bill of particulars (R12)
 - (b) Motion to dismiss (R16)
3. Answer (R6)
 - (a) No answer → Default (R9 S3)
 - (b) W/ answer:
 - No specific denial(s) → no issues → Judgment on the pleadings (R34)
 - W/ specific denials:
 - i. Counterclaim // Cross-claim (R6)
 - ii. 3rd party complaint (*Ibid.*)
 - iii. Intervention (R19)
 - iv. Reply (R6)
4. Pre-trial (R18)
5. Trial (R30)
[*Demurrer to evidence (R33)*]
6. Judgment
7. Post-judgment remedies

W/IN PERIOD TO APPEAL	AFTER PERIOD TO APPEAL
1. Motion for new trial (R37)	1. Petition for relief (R38)
2. Motion for reconsideration (<i>Ibid.</i>)	2. Annulment of judgment (R47)
3. Appeal (R40-43, 45; R46-56)	3. <i>Certiorari</i> (R65)

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	4. Collateral attack
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8. Execution (R39)

--- Let's stretch the above list out a bit, now – but some preliminaries first... ---

0. **Action (R1)** – may, among others, be...

(a) **Civil or criminal**

CIVIL	CRIMINAL
One by w/c a party sues another for: <ol style="list-style-type: none"> 1. Enforcement/protection of a right 2. Prevention/redress of a wrong Kinds: <ol style="list-style-type: none"> 1. Ordinary: governed by the rules on ordinary civil actions (R1-61) 2. Special (SCA): governed by the rules on ordinary civil actions, <i>subject to specific rules for SCAs (R62-71)</i> 	One by w/c the State prosecutes a person for an act/omission punishable by law

(b) **Real or personal**

<i>Real</i>	<ol style="list-style-type: none"> 1. Affects title to... 2. Recovering possession of... 3. Partition of... 4. Condemnation... 5. Foreclosure of mortgage on... 	REAL PROPERTY OR ANY INTEREST THEREIN
	* [also covers <i>accion publiciana, reivindicatoria</i> , & the like (of course)] Case: Heirs of Concha vs. Lumocso – actions for <u>reconveyance</u> of, or <u>cancellation/quieting</u> of title over realty = real actions GR: Per R.A. 7691, consider <u>assessed value</u> for real actions XPN: EXPROPRIATION → RTC (<i>see subsequent pages</i>)	
<i>Personal</i>	<ol style="list-style-type: none"> 1. Recovery of – <ol style="list-style-type: none"> (a) PERSONAL PROPERTY (b) DAMAGES 2. ENFORCEMENT/RESCISSION of contract 	

(c) **In rem, in personam, or quasi in rem**

IN REM	IN PERSONAM	QUASI IN REM
Against: <ol style="list-style-type: none"> 1. The <u>thing</u> itself 2. All who might be minded to make an objection of any sort vs. the right sought to be established (i.e. “against the world”) Case: Lucas vs. Lucas – petitions directed against the <i>res</i> w/c concerns the <u>status</u> of a person (e.g. adoption, annulment of marriage, correction of entries in birth certificate)	Against <u>a particular person</u> on the basis of his/her <u>personal liability</u> ; judgment so rendered will bind him/her personally ∟ Jurisdiction over the person of defendant = MANDATORY!	Against an individual although the purpose of the suit is to <u>subject his/her interest in a particular property to the obligation burdening the property</u> ; judgment will be conclusive between the parties only

are *in rem*!

Case: **Banco Español Filipino case** – actions *in rem/quasi in rem* may not always remain that way throughout the case; when the defendant appears in the action, the action becomes *in personam* as well!

∴ Thus, all interested parties are notified in the manner prescribed for *in personam* actions (to comply w/ due process reqs.) (see “Summons”)

--- What is the basis of my action? ---

1. **Cause of action (R2)** – act/omission by w/c a party violates the right of another
[Every ordinary civil action must be based on a cause of action! (R2 S1)]

★ Sources of cause of action: sources of OBLIGATION (cf. Art. 1157, CC)

★ Right of action: right of plaintiff to bring action & to prosecute same to final judgment

∴ Requisites:

(a) **Cause of action**

- Legal right of plaintiff
- Correlative obligation of defendant
- Act/omission of defendant in violation of said right

(b) Compliance w/ all the conditions precedent for bringing the action

(c) Right to bring & maintain the action in the person instituting it

[i.e. for there to be right of action, there must be a cause of action!]

★ Lack of cause of action as ground for dismissal?

Case: **PNB vs. Sps. Rivera** – lack of cause of action is not a ground for a motion to dismiss (cf. R16); what is mentioned in R16 is failure to state a cause of action, w/c is a different thing; lack of cause of action can only be gleaned after the plaintiff has presented his/her evidence (akin to insufficiency of evidence that may warrant demurrer)

★ Re: splitting & joinder: one cause of action = one suit

∴ NO SPLITTING, BUT THERE CAN BE JOINDER!

JOINDER (R2 S5)

Rules on joinder of causes of action:

1. Compliance w/ rules on joinder of parties (see “Parties” for requisites)

GR: Compliance is REQUIRED!

XPN: No need to join parties if there is only 1 P & only 1 D!

Dean Riano’s example:

- 1 P, 1 D
- 3 debts
- 3 causes of action

Here, a maximum of 3 cases can be filed, but P can go with one case only, w/ the 3 causes of action JOINED in said case, as there is only 1 defendant!

2. Exclude [SCAs] or [actions governed by special rules] from joinder!

Dean Riano’s example: where there are 3 debts, 2 of w/c are ordinary civil actions, & the remaining one being covered by the Rules on Summary Procedure, all 3 CAN BE JOINED (the 3rd debt loses its being summary upon joinder) (cf. Sec. 1, last par., RSP)

3. Same parties, different venues/jurisdictions = joinable in the RTC, *provided*:

- (a) One of the causes of action lies w/in the RTC’s jurisdiction; &
- (b) Venue lies therein

4. All are principally money claims = aggregate amount is basis of jurisdiction

∴ Also referred to as: TOTALITY RULE!

SPLITTING
Splitting can warrant DISMISSAL of actions thus split, on the ff. grounds: <ol style="list-style-type: none"> 1. If both are pending – <i>litis pendentia</i> 2. If one has been resolved – <i>res judicata</i>

Re: divisible obligations: each default = one separate cause of action
 ↘ BUT, if, for example, there are 5 defaults so far & a case has only been filed @ the 6th default, said case should include previous defaults

✦ Effect of cause of action on jurisdiction: a cause of action may have main & incidental parts; the main part determines w/c court has jurisdiction

- Cases: (a) **CGR Corp. vs. Dreyes**
 (b) **Heirs of Bautista vs. Lindo**

--- So, I have a right of action. To which court should I go? ---

2. Jurisdiction

✦ Expanded definition of jurisdiction

Case: **Echegaray vs. Sec. of Justice** – not only the power to hear, try, & decide a case, but also the power to execute the judgment until the final disposition thereof, or full & complete service of sentence by the accused

✦ Aspects of jurisdiction

	<u>Civil?</u>	<u>Criminal?</u>
(a) Subject matter: * power to deal w/ the general subject involved in the action (<i>CrimPro</i> : over the <u>offense</u>)	☑	☑
(b) Parties: power over parties in a case, & to determine their rights/liabilities (<i>CrimPro</i> : over the <u>accused</u> only)	☑	☑
(c) Issues: power to try & decide issues –		
- Raised in the <u>pleadings</u> (Reyes vs. Diaz)		
- Agreed upon in a <u>pre-trial order</u>		
- Tried by the parties' <u>implied consent</u> (R18 S2)	☑	☑
- “Waived into existence,” i.e. conferred by <u>failure to object</u> to the presentation of evid. on a matter not raised in the pleadings (R10 S5)		
(d) Res: over property in litigation; acquired by –		
- Actual or <u>constructive seizure</u> by the court, thereby placing it <i>in custodia legis</i> ; or	☑	☒
- Provision of <u>law</u> w/c recognizes the power to deal w/ property w/in its territorial jurisdiction		
(e) Territory: <i>in CrimPro</i> – that a criminal case should be filed in the place where the crime is committed (XPN: Art. 2, RPC)	☒	☑

* Jurisdiction over the subject matter is SUBSTANTIVE in origin!

- Implications:*
1. Conferred by law
 2. Not subject to agreement/waiver
 3. Material allegations of the complaint determine jurisdiction
 - ↘ i.e. primary purpose of the complaint re: relief being sought
- Cases: (a) **Marazona vs. RTC of Baguio, Russel vs. Vestil, Heirs of Sebe vs. Heirs of Sevilla** – the facts in the complaint are controlling, not its title!
 (b) **Penta Pacific Realty vs. Ley Construction** – in real actions, the assessed value must be assessed in the complaint (PH courts cannot take judicial notice of assessed values of realty!)

- (c) **Gomez vs. Montalban** – [re: DIALeC claims (see subsequent pages)] include interest for purposes of determining jurisdiction if [1] primary & inseparable component of a cause of action, and [2] already determinable @ time of filing the complaint (in this case, respondent expressly agreed to pay a specified interest)

- ⊛ [B.P. 129, as amended by R.A. 7691] Civil jurisdiction of the courts
 ↳ (for a discussion on criminal jurisdiction, see portion on “CrimPro”)

[A] SUPREME COURT

ORIGINAL	
<p>1. <u>Exclusive</u>: petitions for writs of <i>certiorari</i>, prohibition, & <i>mandamus</i> vs. –</p> <p>(a) CA (b) CTA (c) COMELEC <i>en banc</i> (d) COA (e) Sandiganbayan</p> <p>2. <u>Concurrent</u>:</p> <p>(a) W/ CA:</p> <ul style="list-style-type: none"> - Petitions for writs of <i>certiorari</i>, prohibition, & <i>mandamus</i> vs. – <ul style="list-style-type: none"> i. NLRC, under the Labor Code Case: St. Martin Funeral Home vs. CA – must follow doctrine of hierarchy of courts; <u>must file w/ CA first</u>, otw. SC shall dismiss! ii. Civil Service Commission (CSC) iii. Quasi-judicial agencies iv. RTCs & other lower courts (must also file w/ CA first) - Petitions for issuance of writ of <i>kalikasan</i> (A.M. No. 09-6-8-SC) <p>(b) W/ CA & RTC: petitions for –</p> <ul style="list-style-type: none"> - <i>Habeas corpus</i> & <i>quo warranto</i> - <i>Certiorari</i>, prohibition, & <i>mandamus</i> vs. lower courts/other bodies <p>(c) W/ CA, Sandiganbayan, & RTC: petitions for –</p> <ul style="list-style-type: none"> - <i>Amparo</i> - <i>Habeas data</i>, where the action involves public data or gov't office <p>(d) W/ RTC: actions affecting ambassadors/other public ministers & consuls</p>	
APPELLATE	
<p>1. Petitions for review on <i>certiorari</i> vs. –</p> <p>(a) CA (b) CTA <i>en banc</i> (c) Sandiganbayan (d) RTC in cases –</p> <ul style="list-style-type: none"> - Where no question of fact is involved & the case is one involving the: <ul style="list-style-type: none"> i. Constitutionality/validity of a treaty, int'l/executive agreement, law, PD, proclamation, order, instruction, ordinance, or regulation ii. Legality of taxes/imposts/assessments/tolls; penalties rel. thereto iii. Jurisdiction of the lower court (i.e. being put at issue) - Where only errors or questions of law are involved <p>2. Special civil action of <i>certiorari</i> filed w/in 30 days vs. COMELEC/COA</p>	

[B] COURT OF APPEALS

ORIGINAL	
<p>1. <u>Exclusive</u>: actions for annulment of judgment of RTC based on –</p>	

- (a) Extrinsic fraud
- (b) Lack of jurisdiction
- 2. Concurrent:
 - (a) W/ SC:
 - Petitions for writs of *certiorari*, prohibition, & *mandamus vs.* –
 - i. NLRC
 - ii. CSC
 - iii. Quasi-judicial agencies
 - iv. RTCs & other lower courts
 - Petitions for issuance of writ of *kalikasan*
 - (b) W/ SC & RTC: petitions for –
 - *Habeas corpus* & *quo warranto*
 - *Certiorari*, prohibition, & *mandamus vs.* lower courts/other bodies
 - (c) W/ SC, Sandiganbayan, & RTC: petitions for –
 - *Amparo*
- 3. *Habeas data*, where the action involves public data or gov't office

APPELLATE

- 1. Final judgments, decisions, resolutions, orders, awards of –
 - (a) RTC –
 - In the exercise of both original & appellate jurisdictions
 - As Family Court
 - On questions of constitutionality/validity of tax, jurisdiction involving questions of fact w/c should be appealed first w/ the CA
 - Appeals from RTC in cases appealed from MTC not as matter of right
 - (b) MTC in the exercise of its delegated jurisdiction
- 2. Appeals from:
 - (a) CSC
 - (b) Quasi-judicial agencies
 - (c) National Commission on Indigenous Peoples (NCIP)
 - (d) Ombudsman (in admin. discip. cases) (**Mendoza-Arce vs. Ombudsman**)

[C] SANDIGANBAYAN

ORIGINAL

- 1. Exclusive: cases involving violations of Eos 1, 2, 14, & 14-A (s. 1986)
- 2. Concurrent:
 - (a) W/ SC:
 - Petitions for *certiorari*, prohibition, *mandamus*, *habeas corpus*, injunction, & other ancillary writs in aid of its appellate jurisdiction (including *quo warranto*) arising in cases falling under Eos 1, 2, 14, & 14-A
 - (b) W/ SC, CA, & RTC: petitions for –
 - *Amparo*
 - *Habeas data*, where the action involves public data or gov't office

[D] COURT OF TAX APPEALS (see notes on Taxation)

[E] REGIONAL TRIAL COURTS

ORIGINAL

- 1. Exclusive:
 - (a) Subject of litigation = incapable of pecuniary estimation
 - **[expropriation]** Case: **Brgy. San Roque vs. Pastor** – incapable of pecuniary estimation (regardless of the value of the subject property); w/in the jurisdiction of the RTC

<ul style="list-style-type: none"> - [reformation of instrument; consolidation of ownership] both incapable of pecuniary estimation! (<i>purpose of latter = registration</i>) (b) <i>Sum-of-money cases</i>: > P300K (P400K in MMLA) <ul style="list-style-type: none"> - Cases where the demand (exclusive of [DIALeC] damages, interest, attorney's fees, litigation expenses, & costs of suit), or the value of the property in controversy exceeds... - Actions in admiralty & maritime juris. → damage/claim exceeds... - Matters of probate → gross value of estate exceeds... (c) <i>Real actions</i>: assessed value > P20K (P50K in MMLA) XPN: forcible entry & unlawful detainer = MTC (<i>see next page</i>) (d) Cases not w/in the exclusive jurisdiction of any court, tribunal, person, or body exercising judicial or quasi-judicial functions (RTCs are courts of general jurisdiction!) (e) Civil actions/special proceedings falling w/in the exc. orig. jurisdiction of: <ul style="list-style-type: none"> - Juvenile & Domestic Relations Court - Court of Agrarian Reforms (f) Intra-corporate controversies (Sec. 5.2, SRC)
<p>2. Concurrent:</p> <ul style="list-style-type: none"> (a) W/ SC, Sandiganbayan, & CA: writs of <i>amparo</i> & <i>habeas corpus</i> (b) W/ SC: actions affecting ambassadors/other public ministers & consuls (c) W/ SC & CA: petitions for – <ul style="list-style-type: none"> - <i>Habeas corpus</i> & <i>quo warranto</i> - <i>Certiorari</i>, prohibition, & <i>mandamus</i> vs. lower courts/other bodies (d) W/ MTC – cases involving violations of envi. & other related laws, etc.
<p>APPELLATE</p>
<p>GR: All cases decided by lower courts in their resp. territorial jurisdictions XPN: Decisions of lower courts re: <u>delegated</u> jurisdiction (<i>see below</i>) ↘ As if they have been decided by the RTC itself!</p>
<p>SPECIAL (Sec. 23, B.P. 129)</p>
<p>SC may designate certain RTC branches to try exclusively criminal, agrarian, juvenile & domestic relations, & urban land reform cases not falling w/in the jurisdiction of any quasi-judicial body, & other special cases in the interest of justice</p>
<p>FAMILY COURTS</p>
<p><u>Exclusive/Original:</u></p> <ol style="list-style-type: none"> 1. Petitions for guardianship, custody of children, <i>habeas corpus</i> re: minor(s) 2. Petitions for adoption of children & revocation thereof 3. Complaints for annulment & declaration of nullity of marriage & those referring to marital status & property relations of spouses or those living together under different status/agreements, & petitions for dissolution of CPG 4. Petitions for support and/or acknowledgment 5. Summary judicial proceedings under FC 6. Petitions for declaration of status of children as abandoned, dependent, or neglected, petitions for voluntary/involuntary commitment of children; suspension, termination, or restoration of parental authority, & other cases cognizable under P.D. 603 (<i>Child & Youth Welfare Code</i>), EO 56, s. 1986 (<i>re: protective custody of sexually exploited children c/o DSWD</i>), & rel. laws 7. Petitions for constitution of family home
<p>[F] METROPOLITAN/MUNICIPAL [CIRCUIT] TRIAL COURTS</p>
<p>EXCLUSIVE ORIGINAL</p>

1. <i>Sum-of-money (DIALeC, admiralty, probate): ≤ P300K (P400K in MMLA)</i>
2. <i>Real actions: <u>assessed value</u> ≤ P20K (P50K in MMLA)</i>
3. Summary procedure: (a) Forcible entry/unlawful detainer (irrespective of damages/unpaid rentals) ↳ DON'T LOOK AT THE ASSESSED VALUE! (b) Other cases where total amt. of the claim ≤ P100K (P200K in MMLA)
4. Inclusion/exclusion of voters
DELEGATED
Cadastral & land registration cases, <i>provided</i> – 1. No controversy/opposition; & 2. Contested lots valued > P100K
SPECIAL
Petitions for <i>habeas corpus</i> (in the absence of <u>all</u> RTC judges)

- ✦ *Jurisdiction re: ProvRem:* ALL COURTS have jurisdiction over provisional remedies in principal actions w/in their jurisdiction (being **ancillary actions!**)
- ✦ *First opportunity to question lack of jurisdiction:* MOTION TO DISMISS
 ↳ BUT court can motu proprio dismiss for lack of jurisdiction (among others!)
 (see also discussion under “MTD,” residual prerogative under R9 S1)

--- Let's say I'll have to file my case w/ the RTC. Which one, though? ---

3. **Venue (R4)** – place/geographical area where an action is to be filed & tried

✦ *Jurisdiction vs. venue*

JURISDICTION	VENUE
Conferred by law	For parties' convenience
Substantial, thus: 1. Cannot be waived 2. Cannot be subject of agreement	Procedural, thus: 1. Waivable 2. Can be subject of agreement <i>Court takes cognizance if:</i> (a) In writing; & (b) Before institution of action
Court can <i>motu proprio</i> dismiss a case on the ground of lack of jurisdiction	There can be <u>no motu proprio</u> dismissal re: improper venue → court cannot take the cudgels for the parties; wait for MTD ↳ <i>Contra:</i> SumProc – court can <i>motu proprio</i> dismiss under <u>any</u> of the grounds for MTD (w/c, of course, includes improper venue)

- ✦ *Re: personal & real actions*
 (a) Real – where property (or any part thereof) is located
 (b) Personal – residence of plaintiff/defendant, or where a non-resident defendant may be found, at the option of the plaintiff [same rule in *culpa aquiliana* cases]
 Case: **Samson case** – re: reconveyance of real property = look @ primary purpose (cf. material allegations) to determine if personal or real
 - ✦ *Re: stipulations on venue*
 - RESTRICTIVE/EXCLUSIVE
 ↳ “Shall” alone ≠ restrictive; other words of exclusivity needed (e.g. “only”)
 - PERMISSIVE – venue stipulated, considered in addition to the venues in the RoC
- Cases: (a) **Briones vs. CA** – attacking a contract's validity renders the person attacking same unbound by its stipulation(s) on venue

- (b) **Sweet Lines case** – stipulations on venue in contracts of adhesion may not be honored by the court if inconvenient/oppressive

★ Venue in civil & criminal cases

VENUE IN CIVIL CASES	VENUE IN CRIMINAL CASES
Case: Heirs of Lopez vs. de Castro – venue is <u>not</u> a matter of jurisdiction (i.e. venue & jurisdiction are <u>different things</u>)	R117 S3 (venue is jurisdictional, i.e. venue & jurisdiction are <u>one</u>) – an information filed in a place other than where the offense was committed may be <u>quashed</u> for lack of jurisdiction over the offense charged

--- Now, who should I implead? ---

4. **Parties (R3)**

★ Who may be parties to a civil action?

- Natural persons
- Juridical persons
- Entities authorized by law (**note corporations by estoppel; can only be sued**)

[+] **Representative parties** (e.g. executors, guardians, administrators, agents, etc.)

Cases: (a) **Resident Marine Mammals of Tañon Strait case** – the petition contained the phrase “*represented by and joined in*” – i.e. natural persons were included among the animal “plaintiffs”

(b) **Oposa vs. Factoran** – representing “generations yet unborn”

[* see also: citizen’s suit (re: rules in envi. cases)]

★ Real party-in-interest: [RPI] one who –

- (a) Stands to be benefited/injured by the judgment; or
- (b) Is entitled to the avails thereof

Kinds: 1. **INDISPENSABLE PARTY:** for whom joinder is compulsory, i.e. should be impleaded for there to be final determination of the suit

↳ Case: **Divinagracia vs. Padilla** – in a case for partition of real property, co-owners = indispensable (**distinguish from ejection; only 1 party need file/is enough!**)

2. **NECESSARY PARTY:** not indispensable; case can go on w/o him/her (e.g. joint debtors) → BUT if a necessary party is not impleaded, an explanation must be given to the court

* If person impleaded/pleading is not RPI, action can be dismissed

↳ **Ground: FAILURE TO STATE A CAUSE OF ACTION**

★ Joinder of parties (S6)

- (a) Same transaction/event/series of transactions
- (b) Common question of law/fact

★ Class suit (S12): there is common/general interest in the subject matter of the action

↳ No class suit if the claims/interests are individualized

Dean Riano’s “actual physical facts/bodies” test: e.g. in a plane crash scenario, the bereaved cannot file a class suit. Why? Kanya-kanyang patay.

Cases: (a) **Mathay case** – lot-owners’ interest, only up to the extent of their lots

(b) **Juana Complex I Homeowners Association vs. PhilEstate Land** – common inconvenience (e.g. road closure lengthening travel time to SLEX) can be a ground to sustain a class suit

★ Death of a party (S16 [see also S17?])

Q: What is the court supposed to do when it learns/is notified of a party’s death?

A: The court will have to look into the nature of the case –

- (a) *Personal between the parties*: court must DISMISS!
- (b) *Action to recover property (whether personal or real)*: the case SURVIVES!
(cf. R3 S20, R87 S1)
 - *Re: recovery of sum of money arising from debt* – implead the estate (not the executor/administrator!) via R86 (claims against the estate)
 - *Re: recovery of property/ interest therein (or enforcement of lien on said prop., or damages)* – executor/administrator may be impleaded (**but let us not get too ahead of ourselves; this is SpecPro already**)

--- Time to make a pleading! ---

5. Pleadings, etc. (R6-13)

Q: Should pleadings be under oath?

A: GR: NO, no need

XPN: When otherwise required by law/RoC

Dean Riano's "rule of thumb" – lahat ng Latin!

[+prohibition, SumProc (+FE/UD) kalikasan, other envi. actions, etc.]

Effect of absence of verification: mere FORMAL defect; could be remedied

✦ *Re: prayer/relief*: SPECIFIC & GENERAL (i.e. "all such other relief just & equitable")

(i.e. **general relief = pansalo sa specific relief na nakalimutang isama**)

✦ *Certification against forum shopping* (S5)

(a) Required only for INITIATORY PLEADINGS (permissive counterclaim = initiatory)

(b) Failure to include/comply, not curable by amendment

↳ Merely a cause for dismissal (i.e. motion required)

CONTRA: actual forum-shopping [if *willful & deliberate* (S5, par. 2):
ground for summary dismissal + constitutes direct contempt]

In other words: failure to comply w/ the certification req't is different from & independent of the act of forum-shopping itself!

What about false certification? (i.e. no other case filed, but there is one)

- Ground for dismissal?
- Administrative liability?
- Criminal liability? **PERJURY!**
- Contempt? Indirect contempt! [*i.e. either show cause order or actual petition for contempt*]

Q: Who should certify?

A: 1. Plaintiff(s)

If there are multiple plaintiffs:

GR: ALL MUST SIGN

XPN: One can certify if plaintiffs are bound by a common cause of action

2. Re: corporations –

Who sues for the corporation: BoD (Sec. 23, CorpCode)

Who certifies: person authorized by the BoD (via **board resolution**) to sue for the corporation (e.g. corporate officer, a lawyer)

Case: **Cagayan Valley Drug Corp. vs. CIR [Velasco!]** – if anyone below...

- President
- Chairman of BoD
- General manager (*or acting general manager*)
- Labor specialist (*in labor cases*)
- HRD

... signs a certification w/o previous BoD authorization, the reso. requirement MAY BE DISPENSED W/ (because they know if the corp. has filed the same

suit in some other court/tribunal) [i.e. **liberal interpretation**]

 ↳ BUT ideally, per CorpCode, there should be a board resolution!

★ **What can be alleged?**

(a) **ULTIMATE FACTS** – only these can be alleged (as a rule)

(b) **EVIDENTIARY FACTS** – to be omitted; evidence is for trial, not for pleadings

 ↳ **XPN:** 1. Small claims
 2. Environmental cases } req'd to make statements re: evid.

* [CONCLUSIONS (e.g. “herein defendant *maliciously* committed...” → “*maliciously*” is a conclusion) cannot be alleged] *Why?* Because the court – not any of the parties – is the one authorized to make conclusions!

 ↳ *Remedy:* motion to strike out conclusion(s) (**rarely used for some reason**)

* Re: averments of: 1. **FRAUD/MISTAKE** – must be stated w/ particularity
 ↳ [**Interplay w/ ObliCon & Nego** – *different kinds of fraud* (causante/incidente) = *different remedies*]
 2. **CONDITION(S) OF THE MIND** (e.g. malice, intent, knowledge) – may be averred generally

★ **Effect if pleading is unsigned:** produces NO LEGAL EFFECT (R7 S3)

 ↳ *How cured:* party can ASK THE COURT to allow him/her to sign the pleading (on the ground[s] of mere inadvertence & lack of intent to delay)

★ **Filing vs. service** (R13)

	FILING	SERVICE
<i>Definition</i> (S2)	Act of presenting the pleading or other papers to the clerk of court	Act of providing a party w/ a copy of the pleading/paper concerned
<i>Modes</i>	1. <i>Personal</i> (S3): presenting original copy of pleading w/ the clerk of court 2. <i>By registered mail</i> (<i>Ibid.</i>)	1. <i>Personal</i> (S6) 2. <i>By mail</i> (S7) GR: REGISTERED MAIL! XPN: ORDINARY MAIL, <i>if no registry service is available</i> in the locality of either the senders or the addressee 3. <i>Substituted service</i> (S8)
<i>Proof</i> (S12-13)	GR: By its EXISTENCE IN THE RECORD OF THE CASE! XPN: If NOT in the record, & – 1. <i>If filed personally:</i> written or stamped <u>acknowledgment of its filing</u> by clerk of court 2. <i>If filed by registered mail:</i> <u>registry receipt & affidavit of the person who did the mailing</u> , w/ full statement of – (a) Date & place of depositing in the post office in a sealed envelope addressed to the court	1. <i>Personal:</i> (a) <u>Written admission</u> of the party served, or (b) <u>Official return of server</u> , or (c) <u>Affidavit of party serving</u> , (containing date, place, & manner of service) 2. <i>By mail:</i> (a) Affidavit of mailer showing compliance w/ provisions of S7 (<i>see above!</i>) (b) Registry receipt issued by mailing officer [<i>Registry return card</i> – to be filed immediately upon its receipt by the sender, or <i>in lieu thereof</i> , the unclaimed letter + certified/sworn copy of the notice given by the

	(b) Postage fully paid (c) Instructions to the postmaster to have the mail returned to sender after 10 days if undelivered	postmaster to the addressee]
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Service, when deemed complete: (S8; S10)

(a) *Personal:* upon ACTUAL DELIVERY

(b) *By ordinary mail:* upon expiration of **10 DAYS** after mailing
 ↘ **XPN:** When the court otherwise provides

(c) *By registered mail:* upon ACTUAL RECEIPT by the addressee, or **5 DAYS** from the date he/she received the 1st notice of the postmaster, whichever is earlier

(d) *Substituted service:* at the TIME OF SUCH DELIVERY

⊛ **Re: jurisdiction over the parties**

PLAINTIFF	DEFENDANT***
Filing* of complaint/petition/other initiatory pleading + payment of docket fees**	(a) Voluntary appearance in court & submission to its authority; or (b) Service of summons (or some other coercive process) upon him/her (see " <i>Summons</i> " in later pages)

[* material element = filing in/for his/her behalf, not actual presence of plaintiff]

[** Cases: **GSIS vs. Heirs of Caballero & Korea Tech vs. Lerma** – for the trial court to acquire jurisdiction over counterclaims (permissive or compulsory) & cross-claims, payment of docket fees is also req'd]

[*** non-essential in *in rem/quasi in rem* actions as long as juris. over *res* is had]

⊛ **Amendment of [any] pleading** (R10)

↘ **Case: Swagman Hotels & Travel, Inc. vs. CA** – a premature complaint (i.e. no cause of action) cannot be cured by amendment!

Kinds of amendment

(a) AS A MATTER OF RIGHT – before a responsive pleading is served

Reminder: MTD ≠ pleading, let alone a responsive pleading!

- If what is to be amended is a REPLY: w/in 10 days after it is served
- For whatever reason you want (***kasi nga as a matter of right***)
- Ministerial on the part of the court to admit, i.e. compellable by *mandamus*
- Can even be done to correct error[s] of jurisdiction

Case: **Bautista & Rosel vs. Maya-Maya Cottages** –

Q: The RTC dismissed a sum-of-money case *motu proprio* for lack of jurisdiction. Upon receipt of the order of dismissal, plaintiff – right then & there! – amended the complaint so that the sum claimed reaches the threshold amount. Can amendment of the complaint still be made here?

A: YES. The dismissal is not yet final. An order of dismissal DOES NOT DISMISS THE CASE; it has to become final. Plaintiff has 15 days to react.

Dean Riano's bonus: if you are the defendant in the above case, and you know that the court has no jurisdiction, do not file MTD; instead –

1. File an ANSWER (lack of jurisdiction = AFFIRMATIVE DEFENSE)

- **Why? To cut off plaintiff's right to amend as a matter of right!**
- **Answer having been filed, should plaintiff ask for leave of court to amend & be granted such, the court will then be acting on a complaint over w/c it has NO JURISDICTION (leaving it no recourse but to dismiss)**

2. Ask for PRELIMINARY HEARING on your affirmative defense
 ↳ **The court will know if there is no jurisdiction, & DISMISS!**

(b) AS A MATTER OF DISCRETION (i.e. requires leave of court) – after a responsive pleading is served (or the 10-day period re: reply expires), for substantial amendments (Case: **Buenaventura vs. Buenaventura** – e.g. changing one's cause of action or adding a new one)

↳ Sole ground for denial: motion was made to DELAY the action (Case: **Citystate Savings Bank vs. Aguinaldo** – that a proposed amendment is substantial is not a bar to amend provided it is not meant for delay!)

(c) BY IMPLICATION (i.e. *by consent; to conform to evidence*) (R10 S5) – brought about by failure to object to ISSUES NOT MENTIONED IN THE PLEADINGS

If the other party timely objects, the court will sustain; if the party who brought up the issue not mentioned in the pleadings moves to amend, such would be subject to the court's discretion

CONTRA: **CrimPro!** (R110 S8-9, re: qualif., aggrav. circumstances) – when not alleged, even if not objected to, will not amount to an amendment of the complaint/information (i.e. will not be considered)

↳ Basis: Art. III, Sec. 14(2), 1987 CONST. (accused's right to be informed)

Effect of amended pleadings (S8):

1. Supersedes amended pleading (**of course**)
2. Admissions in superseded pleadings may be received in evidence against the pleader (!)
3. Claims/defenses in the superseded pleading not included in the new one are waived

✦ Supplemental pleading (S6) – sets forth transactions/occurrences/events w/c have happened since the date of the pleading sought to be supplemented

↳ As distinguished from amendments –

AMENDED PLEADING	SUPPLEMENTAL PLEADING
Refers to facts existing <u>at the time of</u> the commencement of the action	Refers to facts arising <u>after</u> the filing of the original pleading
Takes the place of the orig. pleading	Taken <u>together</u> w/ orig. pleading
No need for leave of court if made before responsive pleading is served	<u>Always</u> w/ leave of court
Filing an amended pleading = filing the entire pleading all over again (this time w/ amendment[s]) (ang labo ng sentence construction, but yeah)	Does not require the filing of a new copy of the entire pleading

--- What if I want to dismiss my own complaint? Can I do that? ---

6. **Dismissal of complaint by plaintiff** (R17)

✦ BY NOTICE (“notice of dismissal”) (S1) – a matter of right before service of responsive pleading (or motion for summary judgment) → court shall (ONLY!) confirm dismissal by issuing an order of dismissal

* Dismissal in this manner is W/O PREJUDICE! (**“sin perjuicio;” i.e. should plaintiff decide later on to refile the case, he/she could do so, & he/she could dismiss the case again should he/she want to; by then, that's the end of it**)

↳ **Two-dismissal rule**: where a plaintiff previously dismissed a case, & *having filed a case on the same cause of action/claim as the previous one, had the action dismissed again* – both being by way of NOTICE OF DISMISSAL –

the 2nd dismissal constitutes an *adjudication on the merits*, & the complaint CANNOT BE REFILED ANYMORE!

- ✧ **BY MOTION** (MTD, to secure leave of court) (S2) – after service of resp. pleading
 - ↳ No prejudice to defendant's right to prosecute counterclaim (permissive or compulsory); defendant can still pursue whether in the same action or a different one

Dean Riano's pro-tip re: dismissals/counterclaims – dismissal of the complaint is ALWAYS w/o prejudice to the counterclaim, mapa-R17 (incl. S3 [↓]) o R16!

- ✧ **DUE TO FAULT OF PLAINTIFF** (S3) [upon motion, or *motu proprio*]
 - Grounds: (a) Failure to appear on date of presentation of evidence in chief
 - (b) Failure to prosecute for unreasonable length of time (*non prosequitur*)
 - (c) Failure to comply w/ RoC or any order of the court

Case: **Shimizu Phils. vs. Magsalin** – dismissals of actions under S3 not expressly stating whether they are w/ or w/o prejudice are held to be W/ PREJUDICE!

--- How will the person I filed a case against know that I filed a case against him/her? ---

7. Summons (R14)

- ↳ *Who issues?* Clerk of court (S1)
 - Who serves?* (a) Sheriff
 - (b) Deputy sheriff
 - (c) Other proper court officer
 - (d) Any suitable person auth. by the court (*justifiable reasons*) (S3)
- ✧ **Purposes:** (a) Compliance w/ procedural due process reqs.
 - (b) To obtain jurisdiction over:
 - Person of defendant (in *in personam* actions)
 - Res (in *in rem/quasi in rem* actions)(see discussion re: in rem/quasi in rem/in personam in prev. pages)
- ✧ **Modes of service of summons**
 - (a) VOLUNTARY APPEARANCE (VA)* – equivalent to service of summons (S20)
 - [* amounts to a voluntary submission to the jurisdiction of the court]
 - GR:** Case: **Carballo vs. Encarnacion** – appearance of defendant in whatever form w/o expressly objecting to the jurisdiction of the court = VA
 - XPN:** 1. Case: **French Oil Machinery Co. vs. CA** – filing of an answer to object to the jurisdiction of the court over his person ≠ VA
 - 2. MTD grounded upon lack of jurisdiction over person of defendant (*on its own, or together w/ other grounds*) ≠ VA (S20, 2nd sentence)
 - (b) Valid service of summons –
 - SERVICE IN PERSON (S6)
 - i. Find the person specified, & give it to him/her anywhere; or
 - ii. Tender it to him/her if there is refusal to accept/sign - GR:** STRICT INTERPRETATION of provisions on summons
 - ↳ **XPN to liberal interpretation doctrine!**
 - XPN:** When defendant him/herself prevented normal service in person upon him/her, SUBSTANTIAL COMPLIANCE can be considered
 - Case: **Marcos-Manotoc vs. CA** – there must be compliance w/ the ff.:
 - (a) exertion of honest-to-goodness efforts to serve defendant in person w/in a reasonable time (**go back to his/her house again & again if you have to!**), & (b) specifying same in the return, in order to make use of the 2nd mode of service of summons...
 - SUBSTITUTED SERVICE (S7)

WHERE?	TO WHOM?
Defendant's <u>residence</u> —————>	One who (a) resides therein, and (b) is of sufficient age & discretion
Defendant's <u>place of business</u> —————>	One who is (a) competent, and (b) [apparently] is in charge

* *Special instances of personal service*

- i. PRISONERS (S9) – effected by officer having management of the jail/institution (*deemed deputized as special sheriff for the purpose*)
- ii. MINORS*/INSANE/INCOMPETENTS (S10) – served upon...
 1. Legal guardian, *if any*
 2. *If none*, guardian *ad litem*
 - ↳ (Applied for by plaintiff!)

[* service may also be made on either of minor's parents]

* *Service upon juridical entities (not in the syllabus but what the hell)*

- i. *Private*:
 1. DOMESTIC (S11) – service may be made upon the ff.:
 - (a) President
 - (b) Managing partner
 - (c) General manager
 - (d) Corporate secretary
 - (e) Treasurer
 - (f) In-house counsel
 2. FOREIGN (w/c has transacted business in PH) (S12) –
 - (a) Resident agent (designated in accordance w/ law for purposes of receiving summons)
 - (b) *If none*, gov't official designated to that effect
 - (c) Any of the entity's officers/agents w/in PH
- ii. *Public* (S13) – depends on the defendant...
 - (a) REPUBLIC OF THE PHILIPPINES: SolGen
 - (b) PROVINCE/CITY/MUNICIPALITY/ETC.: executive head *or* such other officer(s) as the law or the court may direct

- Re: EXTRATERRITORIAL SERVICE; SUMMONS BY PUBLICATION*

[* *in a newspaper of gen. circ., & in such place & for such time as ordered*]

- i. *In rem/quasi in rem* – both modes are ALLOWED!
- ii. *In personam* –

GR: NO summons by publication!

- XPN:**
1. Defendant's identity/whereabouts are unknown (S14)
 2. Defendant originally resides in PH; temporarily out (S16)
 - (a) Copy sent via reg. mail in last known address
 - (b) Leave of court req'd!

More on extraterritorial service (S15)

- i. *Modes*:
 1. Personal service outside PH, w/ leave of court
 2. By publication (*see item 2 @ XPN above*)
 3. Any other means the judge may consider sufficient
- ii. NO extraterritorial service in *in personam* actions vs. non-residents not found in PH at the time of service of summons
 - ↳ *Remedy*: convert the action into one *quasi in rem* by attaching the property of the defendant (i.e. preliminary attachment); doing so allows recourse to extraterritorial service

★ *Proof of service of summons:*

- GR:** RETURN OF SERVICE OF SUMMONS (S18) –
 - (a) Made in writing by the server

- (b) Sets forth the manner/place/date of service
- (c) Specifies any papers w/c have been served along w/ the summons
- (d) *If made by a person other than the sheriff/deputy* – sworn to!

XPN: SUMMONS BY PUBLICATION: *may* be proved by 2 AFFIDAVITS (S19) –

- (a) ... of [1] the PRINTER (or his/her foreman/principal clerk), or [2] the EDITOR (or business/advertising mgr.) (w/ a copy of the publication), &
- (b) ... showing DEPOSIT in the POST OFFICE of:
 - Copy of the summons
 - Order for publication

--- *The other party just moved for a “bill of particulars.” The hell is that?* ---

8. **Motion for bill of particulars [BoP] (R12)** – more definite statement of any matter not averred w/ sufficient definiteness/particularity → *Purpose:* to help defendant (or plaintiff **as well, actually**) prepare an intelligent responsive pleading (i.e. **“para sa kalinawan”**)

- ⊛ Period for filing motion: **10 DAYS** from service of pleading in question
- ⊛ Options of court re: motion:
 - (a) Deny outright
 - (b) Grant outright
 - (c) Set for hearing (i.e. hearing not mandatory!)
- ⊛ Period for compliance w/ court’s order for BoP: **10 DAYS** from notice of order
- ⊛ Effect of insufficient/non-compliance:
 - (a) STRIKING OUT OF THE PLEADING (or portion thereof to w/c order is directed)
 - (b) Such order as the court may deem just

--- *What if the other party wants to have the case dismissed? How’d they do it?* ---

9. **Motion to dismiss [MTD] (R16)**

- ⊛ Omnibus motion rule (R15 S8) [& XPNs]
 - GR:** A motion attacking a pleading/order/judgment/proceeding SHALL INCLUDE ALL AVAILABLE OBJECTIONS; those not included are DEEMED WAIVED
 - XPN:** RESIDUAL PREROGATIVE: * non-waivable defenses in civil actions (R9 S1)
 - (a) Lack of jurisdiction (**Compare these w/ residual jurisdiction!**)
 - (b) *Litis pendentia*
 - (c) *Res judicata*
 - (d) Prescription
- * **“Residual” = pwede i-dismiss even if these are not raised on motion!**
(for their counterparts in criminal cases, see “CrimPro”)

⊛ Hypothetical admission rule (Case: **Municipality of Hagonoy vs. Dumdum**) – when MTD is filed, material allegations of the complaint & inferences that may be fairly deduced from them are DEEMED HYPOTHETICALLY ADMITTED

⊛ MTD vs. demurrer to evidence

MOTION TO DISMISS (R16)	DEMURRER TO EVIDENCE (R33)
Grounded on preliminary objections	Based on insufficiency of evidence
May be filed by any defending party against whom a claim is asserted to	May be filed only by the defendant against the complaint of the plaintiff
Should be filed w/in the time for – <i>but prior to!</i> – the filing of the answer of the defending party to the pleading asserting the claim	May be filed only after the plaintiff has completed the presentation of his/her evidence
1. <i>If denied</i> , defendant answers [↓] 2. <i>If granted</i> , plaintiff may appeal, or, if	1. <i>If denied</i> , defendant may present his/her evidence

a subsequent case is not barred, he/she may refile the case	2. <i>If granted, but on appeal, the order of dismissal is reversed</i> , defendant loses the right to present evidence
-------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------

★ Grounds for MTD (S1)

- (a) Lack of jurisdiction over –
 - Person of the defendant
 - Subject matter of the claim
- (b) Improper venue
- (c) Plaintiff has no legal capacity to sue
- (d) *Litis pendentia*
- (e) *Res judicata*
- (f) Prescription
- (g) Failure to state a cause of action
- (h) Extinguishment of claim/demand (i.e. payment, waiver, abandonment, etc.)
- (i) Unenforceability under the Statute of Frauds
- (j) Non-compliance w/ condition precedent for filing the claim

★ Re: refiling of a dismissed case

Q: Can the case be refiled?

A: If dismissal is *w/o prejudice* –

GR: Plaintiff may refile!

XPN: Where the ground for dismissal is: **[PERU]**

- (a) Prescription
 - (b) Extinguishment of claim/demand
 - (c) Res judicata
 - (d) Unenforceability under the Statute of Frauds
- ... in w/c case, no more refiling (i.e. dismissed w/ *prejudice*)

↑ **Dismissal on these grounds = adjudication on the merits!**

★ Recourse if MTD not granted

- (a) RIGHTLY: just file an ANSWER
- (b) WRONGLY: MR → R65 (*certiorari*)

★ Order granting MTD (i.e. “dismissal order”) = final in character

↳ *Remedy*: APPEAL! (S5; R41 S1; Case: **Gamboa vs. Teodoro**)

[cf. R65 S1 – *certiorari* will not lie precisely because appeal is a remedy here]

--- How would the other party ans... oh. ---

10. **Answer (R6 S4-5, R8, R11)** – pleading in w/c defending party sets forth defenses

↳ Responsive pleading to a complaint/cross/counter/3rd party, etc.

Case: **NAPOCOR vs. Lim** – an answer is (now) a mandatory resp. pleading to a complaint-in-intervention, failure to file w/c may give rise to a declaration of default

★ Kinds of defenses

(a) **NEGATIVE (S5[a])**: where there is a SPECIFIC DENIAL of material averments

GR: A specific denial is normally enough to create an issue

↳ No specific denial = no issue; allegations are admitted; plaintiff can move for **JUDGMENT ON THE PLEADINGS (R34)** (*see next page*)

XPN: Specific denial *alone* is insufficient when RoC requires AN OATH, viz.:

1. Re: **ACTIONABLE DOCUMENT* [AD]** (R8 S7-8)

[* document w/c is the basis of a cause of action/defense]

If w/o oath: constitutes adm. of genuineness & due execution of AD!

↳ **XPN:** Specific denial alone is enough if only a provision of the AD (*not the doc. as a whole*) is contested!

2. Allegations of USURY (re: recovery of usurious interest**) (R8 S11)
[** if not in such comp., specific denial is enough even if w/o oath]
- (b) AFFIRMATIVE (S5[b]): allegation of a new matter w/c, while HYPOTHETICALLY ADMITTING the material allegations in the pleading of the claimant, would nevertheless prevent/bar recovery by him/her
- ⊛ Reglementary period[s] for filing an answer: [10/15/30/60] (R11)
- (a) **10 DAYS** re: –
- Counterclaim, cross-claim, from service (S4)
 - Supplemental pleading, from notice of order admitting* (S7)
- (b) **[GR] 15 DAYS** from –
- Service of summons* (re: complaint, 3rd party) (S1, S5)
 - Service of amended complaint [+3rd party/counter/cross/in-intervention] (S3)
 - ⊃ **XPN:** If not as matter of right, **10 DAYS** from notice of order admitting [if no new answer is filed, the earlier answer stands!]
- (c) **30 DAYS** from service (defendant = foreign private juridical entity) (S2)
- (d) **60 DAYS** from extraterritorial service (R14 S15)
- [*XPN: when the court fixes a different period]
- ⊃ If court accepted late filing = deemed impliedly extended EXTENSION → upon motion & on such terms as may be just (S11)
- ⊛ No answer w/in reg. period → move to declare defendant in DEFAULT (R9 S3)
- (a) Effects of default –
- Defendant **LOSES HIS STANDING IN COURT!** (S3[a])
 - ⊗ Participation in the trial AS A PARTY
 - ⊃ BUT defendant can still participate as witness of another party!
 - ⊗ Receipt of notice of subsequent proceedings
 - JUDGMENT BY DEFAULT w/o receiving plaintiff's evidence *ex parte*
 - ⊃ BUT court can receive plaintiff's evid. *ex parte* at its discretion
- (b) Is motion required?
- GR:** MOTION to declare defendant in default is **REQUIRED*** [otherwise, case becomes *stagnant*; stagnation for unreasonable length of time = *non prosequitur* (R17 S3) → **DISMISSIBLE DUE TO FAULT OF PLAINTIFF!**]
[* defending party is entitled to receive a copy of the motion]
- XPN:**
1. **R2 S15, Rules of Procedure in Envi. Cases: *motu proprio!***
 2. **SumProc:** motion to declare def. in default = prohibited pleading
 - ⊃ In case of default, court shall **RENDER JUDGMENT!**
- (c) Remedy of party in default – motion under oath to SET ASIDE order of default
- ⊃ Grounds:
 1. **FAME** (fraud, accident, mistake, excusable negligence)
 2. Meritorious defense
- (d) Re: possibility of default setting in post-filing of the answer
- **Theoretical (Dean Riano's, Atty. Villasis): plaintiff files motion for BoP → court issues order → non-compliance w/ order → plaintiff moves for answer to be stricken out, w/c was granted → plaintiff can now move for defendant to be DECLARED IN DEFAULT (as there is no answer!)**
 - **Re: refusal to comply w/ modes of discovery** ("special kind of default")
 - ⊃ **R25, R26 – MANDATORY!**
 - [the others are merely discretionary] (see later pages)
- (e) No default in:
- | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----------------------------------|
| <ol style="list-style-type: none">1. Annulment2. Declaration of nullity3. Legal separation4. Amparo5. Habeas corpus | } | No judg. on the pleadings, too!* |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----------------------------------|

- 6. *Habeas data*
- 7. SumProc [motion to declare defendant in default = PROHIBITED PLEADING! → *Remedy*: render JUDGMENT (*motu proprio* or upon motion) (S6, RSS)]
- 8. Environmental cases (*motu proprio*)

* Here, the court shall order the PROSECUTING ATTORNEY to:

- (a) Investigate WON there is collusion
- (b) *If there is no collusion*, intervene for the State to see to it that the evidence submitted is not fabricated

★ What happens when an answer is filed?

- *No specific denial(s)* → NO ISSUES → JUDGMENT ON THE PLEADINGS (R34)
Case: **Asia Construction Dev't case** – issue re: cert. of non-forum shopping, not an issue re: complaint that would necessitate a judgment on the pleadings
- (a) *Judgment on the pleadings vs. summary judgment vs. judgment on default*

JUDGMENT ON THE PLEADINGS	SUMMARY JUDGMENT (R35)	JUDGMENT ON DEFAULT (R9)
There is an answer, but it is one that fails to tender an issue or admits the material allegations of adverse party's pleadings, i.e. <u>NO ISSUE AT ALL!</u>	<u>NO GENUINE ISSUE*</u> as to any material fact (<i>except amt. of dmgs.</i>), i.e. only a collateral matter is at issue * " <i>Genuine issue</i> " = an issue of fact requiring presentation of evid.; not fictitious, contrived, false, or a sham (Smart Comm. vs. Aldecoa)	<u>NO ANSWER</u> w/in the reglementary period
On MOTION by...		
Plaintiff, counterclaimant	Claimant, defendant	Plaintiff
Based on pleadings <u>alone</u>	Based on pleadings, affidavits, depo., adm. (adverse party may serve oppo. pleadings, affidavits, etc. <i>at least 3 days before hearing</i>)	Based on the complaint and/or evidence w/c the court may require from plaintiff
There is HEARING...		
<u>3-DAY NOTICE RULE</u>	<u>10-DAY NOTICE RULE</u>	x
On the merits	Can be <u>either</u> on the merits or interlocutory (i.e. there <u>can</u> be partial summary judgment)	On the merits

- *W/ specific denial(s)*:
 1. COUNTER/CROSS-CLAIM (R6)
 2. 3rd PARTY COMPLAINT (*Ibid.*)

When you file an answer, it could be coupled w/ a counterclaim, a cross-claim, a 3rd party complaint, or a combination of any two or all three of these
 ↘ WHY? To prevent multiplicity of suits!

3. INTERVENTION (R19)
4. REPLY (R6)

1. **Counterclaim (R6)**

<i>Kinds:</i>	COMPULSORY (S7)	PERMISSIVE
	<u>Arising out of or necessarily connected w/</u> the transaction or occurrence that is the subject matter of opposing party's claim	One <u>not</u> so arising/connected
	Does not require for its adjudication the presence of 3 rd parties of whom the court cannot acquire jurisdiction	May require the presence of such 3 rd persons
	Barred if not invoked (R9 S2)	Not so barred if not invoked
	Does not bring risk of default if not answered	Must be answered lest the party be held in default
	Not an initiatory pleading	Initiatory pleading
	Need <u>not</u> be accompanied by a cert. vs. forum-shopping, etc.	Must be accompanied by a cert. vs. forum-shopping [<i>+cert. to file action by Lupon, if req'd</i>]

Add'l rules re: monetary counterclaims:

- (a) *Re: MTC* – if the amount of the counterclaim is beyond the P400K (or P300K) threshold, even if the counterclaim is related to the subject matter of the complaint – deemed PERMISSIVE
- (b) *Re: RTC* – even if the amount of counterclaim does not exceed the above-stated threshold, the counterclaim is COMPULSORY as long as it is related to the subject matter of the complaint
Dean Riano's basis: coverage over the larger amount carries w/ it coverage over the smaller one (of course, this does not apply re: MTC as provided above)
- (c) *When cognizable not by the regular courts but by other courts/bodies (e.g. NLRC)* – deemed PERMISSIVE!

Re: docket fees – (a) PERMISSIVE (*always!*)
 (b) COMPULSORY (docket fee req't = suspended)

2. **Cross-claim** – claim vs. a co-party

3. **3rd party complaint**

4. **Intervention (R19)** – a procedure by w/c 3rd persons, not originally parties to the suit but claiming an interest in the subject matter, come into the case to protect their right or interpose their claim

Reqs.:

- > Movant has a legal interest in the matter in litigation
- > Intervention must not unduly prejudice adjud. of parties' rights
- > Claim = incapable of being properly decided in sepa. proceeding

Cases: (a) **Heirs of Restrivera vs. De Guzman** – allowance/disallowance of a motion to intervene is discretionary upon the court

(b) **Ombudsman vs. Sison** – a motion for intervention can be filed any time before rendition of judgment by the trial court (**XPN:** where interventions have been allowed even beyond the period, [& in at least one time even when the order has already become final] @ the discretion of the court, *e.g. when demanded by the higher interests of justice, to afford indispensable parties the right to be heard, etc. [cf. Case: Rodriguez vs. CA]*)

(c) **Ombudsman vs. Quimbo** – even if the Ombudsman was not impleaded as a party in the proceedings, part of its broad powers

include defending its decisions before the CA; Ombudsman may intervene pursuant to R19 S1 (**Quimbo is a 2015 case; in 2010, the SC, in *Ombudsman vs. Sison* [a J. Velasco ponencia!], ruled that the Ombudsman has no right to intervene in the appeal of its own decision... I think I'll go w/ Quimbo)**)

5. Reply (R6 S10)

GR: DISPENSABLE! (**Dean Riano's take: useless pleading, as even when a reply is not filed, all new matters/allegations in the answer are deemed controverted anyway**)

XPN: *When a reply is advisable*: when the answer has/is based on an ACTIONABLE DOCUMENT & you want to deny its genuineness & due execution, you file a reply UNDER OATH!

Period of filing (R11 S10): **10 DAYS** from service of answer

↳ Pleading stage ends w/ PLAINTIFF moving to set case for pre-trial –

(a) Where answer has been filed & served; or

(b) W/in **5 DAYS** from date of filing of reply

[If plaintiff doesn't seasonably move, the branch clerk of court shall issue a notice of pre-trial (R18 S1; A.M. 03-1-09)]

--- Once the motion to set the case for pre-trial is granted, there's but one way to go... ---

11. Pre-trial (R18, cf. A.M. 03-1-09)

↳ MANDATORY (in both civil [R18 S2] & criminal [R118 S1] cases)

★ Matters considered in pre-trial (S2)

(a) Possibility of amicable settlement (**compromise!**) or submission to ADR

(b) Simplification of issues

(c) Necessity/desirability of amendments to the pleadings

(d) Possibility of obtaining stipu./adm. of facts/docs. to avoid unnecessary proof

(e) Limitations of no. of witnesses

(f) Advisability of a particular reference of issues to a commissioner

(g) Propriety of rendering judgment on the pleadings, or summary judgment, or dismissing the action (should a valid ground therefor be found to exist)

(h) Advisability/necessity of suspending the proceedings

(i) Such other matters as may aid in the prompt disposition of the action

★ Who are req'd to appear @ the pre-trial? (S4) – the parties & their counsel

↳ NOTICE OF PRE-TRIAL (S3) – served on:

- Counsel (*notice to counsel = notice to client*); or

- The party him/herself, if he/she has no counsel

★ Pre-trial brief (PTB) (S6) filed w/ court, served on adv. party **≥3 DAYS** before pre-trial

↳ Non-submission of PTB = deemed FAILURE TO APPEAR (*see below*)

★ Effect of failure to appear (S5)

PLAINTIFF	DEFENDANT
<p>GR: Dismissal W/ PREJUDICE! XPN: When otw. allowed by the court</p>	<p>Plaintiff can present evid. <i>ex parte</i>; court can render judgment on basis thereof Case: Aguilar vs. Lightbringers – “<i>non-suit</i>” → similar to default (previous to the 1997 amendment to the RoC, the term used was “as in default”) but not default!</p>
<p>EXCUSED, <i>if</i> – (S4) (a) For VALID CAUSE shown; or (b) There is a REPRESENTATIVE (w/ SPA to enter into amicable settlement,</p>	

submit to ADR, enter into stipulations/admissions of facts/documents)

- ✪ **Mediation** (cf. A.M. No. 03-1-09-SC)
 - (a) In mediatable cases, the judge refers the parties to the PMC³ for mediation
 - (b) The ff. are cases w/in the **mandatory coverage** of CAM⁴ & JDR:⁵
 - All civil cases (& the liability of criminal cases) covered by RSP, incl. civil liab. for violation of BP 22 (**XPN**: those w/c by law may not be compromised)
 - Special proceedings for settlement of estates
 - All civil & criminal cases filed w/ a certificate to file action issued by the *Punong* Barangay/Pangkat *ng* *Tagapagkasundo* under the Revised KPL
 - Civil aspects of quasi-offenses (Title XIV, RPC)
 - Civil aspects of less grave felonies punishable by correctional penalties not exceeding 6 yrs., where offended party = private person
 - Civil aspects of estafa, theft, & libel
 - All civil cases & probate proceedings brought on appeal from the exclusive & original jurisdiction of the 1st level courts (cf. Sec. 33, par. 1, BP 129)
 - All FE/UD cases brought on appeal from the exclusive & original jurisdiction of the 1st level courts (cf. Sec. 33, par. 2, BP 129)
 - All civil cases involving title to/possession of real property/an interest therein brought on appeal from the exclusive & original jurisdiction of the 1st level courts (cf. Sec. 33, par. 3, BP 129)
 - All *habeas corpus* cases decided by the 1st level courts in the absence of the RTC judge brought up on appeal from the special jurisdiction granted to the 1st level courts under Sec. 33 of BP 129 (A.M. No. 11-1-6-SC-PHILJA)
- ✪ **Pre-trial (or its "counterparts") on appeal**
 - (a) CA – PRELIMINARY CONFERENCE (R48) → not mandatory!
Basis: Sec. 9, BP 129 – the CA is the only appellate court that has the power to conduct hearings/trial, receive evidence re: resolution of factual issues, **JUST LIKE A TRIAL COURT!**
 - ↳ *Compare*: RTC's appellate juris. → **NO TRIAL ON APPEAL!**
[i.e. RTC decides on the basis of record on appeal (R40)]
 - (b) SC – can also conduct preliminary conference (R56, cf. R45)
 - ↳ **BUT still not a trier of fact; the SC is a trier of law!**
XPN: 1. Where SC knows findings of fact of RTC & CA are different
 - 2. *Amparo*
 - 3. *Habeas data*
 - 4. *Kalikasan* (via R45)
 - 5. R7 S16, Rules of Procedure in Environmental Cases
 - 6. Other jurisprudential circumstances

12. Modes of discovery

- ↳ **R23**: Depositions pending action
- R24**: Depositions before action/pending appeal
- R25**: Interrogatories to parties
- R26**: Admission by adverse party
- R27**: Production/inspection of documents/things
- R28**: Physical & mental examination of persons

³ Philippine Mediation Center

⁴ Court-assisted mediation

⁵ Judicial dispute resolution

- ★ Discovery, defined: device employed by a party to obtain information about relevant matters on the case from the adverse party in preparation for the trial
 - ↳ Case: **Hyatt Industrial vs. Ley Construction** – trial courts are directed to issue orders requiring parties to avail of discovery procedures!

★ Purpose of discovery

- (a) To serve as add'l device, aside from pre-trial
- (b) To narrow & clarify the basic issues between the parties
- (c) To ascertain the facts relative to the issues
- (d) To enable parties to obtain the fullest possible knowledge of the issues & facts
- (e) To ensure all issues necessary to the disposition of the case are properly raised

★ Effect(s) of failure to comply w/ modes (R29)

- (a) Pleading of disobedient party may be ordered stricken out
- (b) Dismissal of action (if disobedient party = *plaintiff*)
- (c) Judgment by default (if disobedient party = *defendant*)
- (d) Contempt (re: refusal to be sworn or to answer at/during taking of deposition)
- (e) Arrest of the disobedient party (**XPN**: order disobeyed = phys./ment. exam.) (S3)

★ Depositions (R23-24)

- (a) Deposition, defined: taking of the testimony of any person, whether he/she be a party or not, done out of court, at the instance of a party to the action, may be by:
 - ORAL EXAMINATION (*see below*)
 - WRITTEN INTERROGATORIES

- > **Direct interrogatories?** Served upon any other party [the ff. are optional]
- > *Cross-interrogatories*: served upon the party proposing to take the (**direct**) deposition w/in **10 DAYS** from service of written interrogatories
- > *Re-direct interrogatories*: served w/in **5 DAYS** from service of cross
- > *Re-cross interrogatories*: served w/in **3 DAYS** from service of re-cross
- To whom delivered*: officer before whom depo. is taken (*see below*)

- (b) *When depositions may be sought for*:

- *BENE ESSE*, i.e. during a pending action (R23)
- *IN PERPETUAM REI MEMORIAM*, i.e. before action/pending appeal (R24)

Cases: (a) **San Luis vs. Rojas** – there is no distinction/restriction as to who can avail of depo. (e.g. even if respondent is a non-resident foreign corp.!)

- (b) **Pajarillaga vs. CA** – nothing objectionable *per se* w/ petitioner (*defendant*) availing of depo. after private respondent (*plaintiff*) has rested his case & prior to petitioner's presentation of evidence; *depositions may be taken @ any time after the institution of any action, whenever necessary or convenient!*

Re: DEPOSITIONS PENDING ACTION (R23)

Leave of court –

Q: Is leave of court required?

- A:**
1. **NO**, if after the answer has been served
 2. **YES**, if before the answer is served, *but* after jurisdiction over the person of the defendant/property subject of the action is acquired

Before whom taken –

W/in PH	<ol style="list-style-type: none"> 1. Judge (S10) 2. Notary public (<i>Ibid.</i>) 3. Any person authorized to administer oaths, <i>provided</i> the parties so stipulate in writing (S10, cf. S14)
Outside PH	<ol style="list-style-type: none"> 1. Secretary of an embassy/legation, consul-general, consul, vice-consul, or consular agent of PH

	<p>2. Such person/officer as may be appointed by <u>commission</u> (authorizes the person who receives it to conduct a deposition & take oaths in a certain foreign state) or <u>letters rogatory</u> (a request from a PH court addressed to the deponent's state court asking the latter to issue a subpoena)</p> <p>3. Same as #3 above! (S17, cf. S14)</p>
No depositions to be taken before...	<p>1. Person who is a relative w/in the 6th civil degree</p> <p>2. Employees } of any of the parties; or</p> <p>3. Counsel } who is a rel. w/in the same (6th!) degree</p> <p style="padding-left: 40px;">⊃ OR an EE of such counsel!</p> <p>4. Person financially interested in the action (S13)</p>

Use of depositions pending action (S4) –

Against whom	<p>1. Any party who was present/represented @ the taking thereof</p> <p>2. One who had due notice of the deposition</p>
Purposes	<p>1. Contradicting/impeaching testimony of deponent as witness</p> <p>2. Any purpose –</p> <p>(a) <u>By the adverse party</u> where deponent = party</p> <p>(b) <u>By any party</u> where deponent = witness, if the court finds:</p> <ul style="list-style-type: none"> - The witness is dead - The witness resides more than 100km from the place of trial/hearing, or is out of PH (XPN: where it appears that his/her absence was procured by the party offering the deposition) - The witness is unable to attend/testify because of age, sickness, infirmity, or imprisonment - The party offering the deposition has been unable to procure the attendance of witnesses by subpoena - Exceptional circumstances

Re: DEPOSITIONS BEFORE ACTION/PENDING APPEAL (R24)

How made – via verified petition // court issues order for taking of deposition if it is satisfied that the perpetuation may prevent a failure/delay of justice!

⊃ *Re: depositions pending appeal:* these may be availed of under the same rules as those followed re: depositions pending action!

By whom – any person desiring to perpetuate one's own or another's testimony

About what – any matter that may be cognizable in any court in PH via

When admissible – in any action subsequently brought re: same subject matter

★ Interrogatories to parties (R25)

(a) *Purpose* – to elicit material & relevant facts from any adverse party

(b) *Availed by whom?* – a party to the action

(c) *Procedure* –

- Party availing files & serves upon adverse party to be answered (if party = jur. entity, answered by any of its officers competent to testify in its behalf)
- One set of interrogatories max. for each party (XPN: when w/ leave of court)
- Adverse party has 2 options:
 - i. Answer fully in writing + signed & sworn by the person making them
 - ⊃ Party who answered files & serves a copy on the party availing w/in **15 DAYS** from service thereof (extendible upon motion)
 - ii. Make objections thereto (presented to the court w/in **10 DAYS** after service thereof) // defers the filing & service of the answer (*see above*)

- (d) *Effect of failure to serve* – party not served may not be compelled by the adverse party to give testimony in open court or give deposition pending appeal (**XPN**: when allowed by the court for good cause shown & to prevent a failure of justice)
- (e) *Distinguished from*:

- **Bill of particulars**

INTERROGATORIES TO PARTIES	BILL OF PARTICULARS
Not directed to a particular pleading; instead seeks to disclose all material & relevant facts from a party	Designed to clarify ambiguities, or state w/ sufficient definiteness the allegations in a pleading

- **Written interrogatories in a deposition**

INTERROGATORIES TO PARTIES	WRITTEN INTERROGATORIES
Served directly upon adverse party	Not served upon adverse party directly; delivered to officer before whom the deposition is to be taken

⊛ Admission by adverse party (R26)

↳ ... where, before trial, a party may request the other to admit the:

Genuineness Truth	of any material & relevant*	doc. described in & exhibited w/ matter of fact set forth in	the request**
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[*w/c are, or ought to be, w/in the personal knowledge of the other/adverse party]

[** party who fails to file & serve such request = not permitted to present evidence on such facts! (**XPN**: when allowed by the court for good cause shown & to prevent a failure of justice)]

- (a) *Purpose* – to allow one party to request the adverse party in writing to admit certain material & relevant matters w/c most likely will not be disputed during trial; to avoid unnecessary inconvenience to parties in going through rigors of proof!
- (b) *Filing & service of a sworn statement of admission/denial* (S2-3) –

- To be filed & served upon the party requesting the admission [1] w/in the **PERIOD DESIGNATED** in the request (**≥15 DAYS!**), or [2] w/in **SUCH FURTHER TIME** as the court may allow (upon motion)
- Either [1] specifically denying the matters of w/c admission is requested, or [2] if he/she does not deny the same, setting forth in detail the reason why he/she cannot truthfully admit/deny those matters
 - ↳ Case: **Concrete Aggregates vs. CA** – when a party to whom a request for admission is served had already controverted the matters subject thereof in an earlier pleading, he/she cannot be compelled to admit/deny them anew!

- Failure to file & serve seasonably = **implied admission**, i.e. each of the matters of w/c an admission is requested shall be deemed admitted (BUT for the purpose of the pending action only)

↳ **Deferment of compliance**: to avoid implied admission, the party may defer compliance by filing objections to the request for admission; compliance is deferred until such objections are resolved by the court

- (c) *Withdrawal of admission* (S4) – allowed upon such terms as may be just

⊛ Production/inspection of documents/things (R27) – any party may avail of this, by way of motion showing good cause therefor [+notice to adverse party]

Case: **Air Phils. vs. Pennswell** – subject to the req. that the docs/things ≠ privileged

⊛ Physical & mental examination of persons (R28) – may be ordered by the court in an action where the physical/mental condition of a party is in controversy (S1)

--- We go to trial! ---

13. Trial (R30)

↳ **NOT INDISPENSABLE FOR JUDGMENT!**

Instances where there is judgment w/o trial:

- (a) Judgment on the pleadings (R34)
- (b) Summary judgment (R35)
- (c) Judgment by compromise (*see subsequent pages*)
- (d) Grant of MTD amounting to an adjudication on the merits; e.g.:
 - PERU
 - Non-suit (R17 S3)
- (e) Judgment upon confession (*cognovit actionem*) (Case: **Natividad vs. Natividad**) – rendered where a party expressly agrees to the other party's claim or acknowledges the validity of the claim against him
- (f) Cases governed by RSP (*see discussion on SumProc*)

★ Purpose of trial: to resolve ISSUES OF FACT!

↳ *Cross-over w/ Evid* (*see also section on "Evidence"*) – no issues of fact as defendant made no specific denial, i.e. admitted everything → judicial admission (if admitted during the course of judicial proceedings) → no more *factum probandum* (i.e. nothing more to be proved) → no more trial, apply R34

★ Order of trial (S5)

- GR:** NORMAL –
1. Plaintiff
 2. Defendant
 3. 3rd party defendant, 4th party, etc.
 4. Parties against whom counter/cross has been pleaded
- XPN:** MODIFIED ("reverse trial" [**"reverse" is actually inaccurate**]) (cf. R31 S2) –
1. Where there are SEVERAL CLAIMS (e.g. the claim itself, counter/cross, 3rd party, etc.) & the court grants SEPARATE TRIALS for them
 2. When, for SPECIAL REASONS, the court otherwise directs
- * The court may allow the defendant to present evidence on his/her defense, counterclaim, etc., first! (**applying R119 by analogy, says Dean Riano**)

★ What happens during trial?

1. Presentation of witnesses
2. Formal offer of exhibits [+objections, if any]
- ↳ 3. Resting one's case

After plaintiff rests his/her case, defendant may file **MTD by way of DEMURRER TO EVIDENCE (R33)** → *Ground:* that upon the facts & the law, plaintiff has shown no right to relief (i.e. lack of cause of action, insufficiency of evidence! [cf. R119 S29])

(a) MTD = GRANTED – case is DISMISSED (deemed adjudication on the merits)

↳ *Plaintiff's remedy:* APPEAL! → if appellate court grants the appeal:

- Defendant loses his/her right to present evidence
- Case: **Radiowealth Finance Corp. vs. Del Rosario** – court should not remand the case to the trial court & instead RENDER JUDGMENT based on the evidence submitted by plaintiff

(b) MTD = DENIED – defendant can present his/her evidence!

↳ Order denying MTD = interlocutory, i.e. unappealable!

Case: **Katigbak vs. Sandiganbayan** – order denying demurrer can be subject to *certiorari* (R65) in case of grave abuse of discretion or oppressive exercise of judicial authority

Demurrer to evidence in criminal & civil cases, distinguished

	IN CRIMINAL CASES	IN CIVIL CASES
<i>Ground</i>	Insufficiency of evidence	
<i>Who initiates?</i>	Defendant, by motion	1. Accused, by motion; or

		2. The court, <i>motu proprio</i> , after giving the prosecution the opportunity to be heard
<i>Is leave of court required?</i>	No	No (can be filed w/ or w/o leave) – BUT if <u>w/ leave</u> & the court <u>denied</u> the motion, accused <u>CAN STILL PRESENT EVIDENCE</u> ↘ i.e. if <u>w/o leave</u> & the court <u>denies</u> , accused's right to present evidence is <u>WAIVED</u>
<i>Remedy of plaintiff if granted</i>	Appeal <u>Case: Arroyo case</u> – per RoC, <u>denial</u> of motion for demurrer in criminal cases are <u>not</u> reviewable by appeal or <i>certiorari</i> ; however, here, there has been a <u>suspension of the RoC</u> w/c allowed review in a manner otherwise prohibited	<i>Certiorari</i> (R65)

--- Litigation must end at some point, right? ---

14. **Judgment (R36)** – final consideration & determination by a court of competent jurisdiction upon matters submitted to it in an action/proceeding

- ★ Req's of valid judgment:
 - (a) Authority of the court to hear & determine the case
 - (b) Jurisdiction over the parties & the subject matter
 - (c) Opportunity given to the parties to adduce evidence
 - (d) Evidence must have been considered by the court
 - (e) In writing, personally & directly prepared by the judge
 - (f) States clearly the facts & the law upon w/c it is based
 - (g) Signed by the judge & filed w/ the clerk of court

★ Final & interlocutory orders, distinguished: Case: **Pahila-Garrido vs. Tortogo** –

FINAL ORDER	INTERLOCUTORY ORDER
Disposes of the subject matter in its entirety or terminates a particular proceeding or action, <u>leaving nothing more to be done except to enforce by execution</u> what the court has determined	Made <u>during the pendency of the action</u> , w/c does not completely dispose of the case but <u>leaves something else to be decided upon</u> in order to settle & determine the entire controversy
Appealable	<u>Not</u> appealable

Atty. Agranamendez points out one more distinction:

Enforceable by execution!	GR: <u>Not enforceable by execution</u> XPN: <u>Order for support pendente lite</u>
----------------------------------	------------------------------------------------------------------------------------------------------

★ Immutability of judgment; exceptions

[a.k.a. *conclusiveness of judgment; preclusion of issues; collateral estoppel*]

GR: A final & executory judgment can no longer be disturbed/altered/modified

↘ **Q:** When does a judgment become final?

A: Upon the lapse of the period for filing an appeal/MR/NT

└ *Re: entry of judgment* – date of finality = date of entry!

[no need to look @ the date of physical entry]

- XPN:** (a) Re: correction of clerical errors
 (b) Nunc pro tunc judgment (Case: **Briones-Vasquez vs. CA**) – one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was
 (c) Void judgment
 (d) Special & exceptional cases – where facts & circumstances transpire after finality of the decision w/c render execution impossible/unjust

“Final” for purposes of appeal/execution, distinguished

“FINAL” FOR PURPOSES OF APPEAL	“FINAL” FOR PURPOSES OF EXECUTION
Disposes of a case in a manner that leaves <u>nothing more to be done</u> by the court in respect thereto	<u>No longer appealable; final & executory!</u> (see discussion on “Execution”)

- ⊛ Several judgment (S4) – one rendered against 1+ defendants, but NOT ALL of them, leaving the action to proceed against the remainder
- ⊛ Separate judgment (S5) – one rendered disposing one claim out of many presented in an action, w/c terminates the action w/ respect to the claim so disposed of, leaving the action to proceed as to those remaining
 - ↳ The court may (a) stay enforcement until rendition of subsequent judgment(s), *and/or* (b) prescribe such conditions as may be necessary to secure the benefit thereof to the party in whose favor it is rendered
- ⊛ Judgment upon compromise
 - (a) COMPROMISE AGREEMENT (Art. 2028, CC) – whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced Species of compromise (Case: **Salazar vs. Jarabe** [J. Feria’s dissent])

JUDICIAL	EXTRAJUDICIAL
One made in & submitted to the court for approval in order to terminate a case already filed in court	Contract to avoid provocation of a suit

Art. 2037, CC (*res judicata* re: compromise) –

- A compromise has upon the parties the effect and authority of *res judicata*
- No execution needed re: compromise (**XPN:** re: judicial compromise)

Case: **Gadrinab vs. Salamanca** – a judicial compromise has the effect of *res judicata* & is immediately executory & not appealable (unless set aside by mistake, fraud, violence, intimidation, undue influence, or falsity of documents that vitiated the compromise agreement)

15. Post-judgment remedies (R37+)

W/IN PERIOD TO APPEAL	AFTER PERIOD TO APPEAL
1. Motion for new trial (R37 [R52]) 2. Motion for reconsideration (<i>Ibid.</i> [R53]) 3. Appeal (R40-43, 45; R46-56)	1. Petition for relief (R38) 2. Annulment of judgment (R47) 3. <i>Certiorari</i> (R65) 4. Collateral attack
NOTES: (a) CA counterparts in brackets (b) SC = MR <u>only</u> ; trier of law, not fact (c) NT/MR/app. = <u>independent</u> remedies, BUT if NT/MR is denied, <u>one can still appeal</u> (the judgment/FO itself, not the	

denial of the NT/MR)	
REMEDIES BEFORE JUDGMENT BECOMES FINAL & EXECUTORY	
★ <i>Motion for new trial</i> (R37; R53) + <i>motion for reconsideration</i> (R37; R52)	
NEW TRIAL	RECONSIDERATION
1. FAME 2. Newly-discovered evidence	1. Excessive damage award 2. Insufficiency of evidence 3. Decision/FO = contrary to law
Grounds for NT are those w/c occurred OUTSIDE THE COURT ; had nothing to do w/ it; <u>never</u> errors of judgment & thus never grounds for appeal (e.g. "extrinsic fraud" – fraud <u>outside</u> the court!)	Grounds for MR = <u>errors in judgment</u> ; can be grounds for appeal!
Should be filed w/in the period for filing an appeal	
x	No motion for extension of time allowed
Can move <u>twice</u> (<i>provided</i> that the newly discovered evidence raised as ground for a 2 nd motion for NT <u>has yet to be discovered the 1st time</u>)	<i>Single motion rule</i> – no 2 nd MR allowed [This holds true even in appellate courts!]
	<i>Re: MRs filed w/ the SC –</i> GR: Single motion rule applies! XPN: When allowed by the SC <i>en banc</i> in the HIGHER INTEREST OF JUSTICE upon a vote of AT LEAST 2/3 OF ITS ACTUAL MEMBERSHIP (R15 S3, Internal Rules of the Supreme Court)
Partial NT/R = ALLOWED (where the grounds appear to the court to affect the issues [<i>w/c should be severable!</i>] as to <u>only a part</u> , or <u>less than all of the matter(s) in controversy</u>) → <i>w/o interfering w/ the judgment/FO upon the rest</i> (S7)	
↳ The court may either (a) enter a judg./FO as to the rest, or (b) stay enforcement until after the NT (S8)	x

Fresh period rule (Cases: **Neypes vs. CA**, **Yu vs. Samson-Tatad**) – fresh period of **15 DAYS** (from rcpt. of the order dismissing MR/NT) w/in w/c to file notice of appeal

Purposes: - To standardize the appeal periods provided in the RoC
 - To afford litigants fair opportunity to appeal their cases

Applies in: - Civil cases (R40, 41, 42, 43, 45)
 - Criminal cases (notwithstanding R122 S6)
 - R65 (Case: **Docena vs. Lapesura**) – **predates Neypes by 4 years!**

 ↳ Here, a fresh period of **60 DAYS** is given

 [* **NO** fresh period in R64 petitions (Case: **Pates vs. COMELEC**)]

★ *Appeal* (R40-43; 45; 46-56) – only from an order finally disposing of a case

 ↳ STATUTORY – not constitutional – right! (Case: **Stolt-Nielsen vs. NLRC**)

Appeal timely perfected stays execution of judgment! (see **XPNs** in "Execution")

Re: issues raised on appeal – Case: **Del Rosario vs. Bonga** –

GR: No question may be raised for the first time on appeal

XPN: 1. Lack of jurisdiction over the subject matter

 ↳ Case: **Boston Equity vs. CA** – subject to estoppel or *laches!*

2. Plain error

3. Jurisprudential developments

 "Theory of the case" – Case: **Bote vs. Sps. Veloso [Velasco!]** –

 ↳ Comprehensive & orderly mental arrangement of principle &

facts, conceived and constructed for the purpose of securing a judgment/decree of a court in favor of a litigant (*cf. Black's*)
GR: A party cannot change its theory of the case on appeal (*cf. R44 S15 – only questions of law/fact that have been raised in the court below & w/in the issues can be raised on appeal*)
XPN: If no need to present add'l evid. to support the new theory

4. Public policy

Case: **Villanueva vs. Sps. Salvador** – unappealable cases:

- (a) Order denying petition for relief
- (b) Interlocutory order
- (c) Order disallowing/dismissing an appeal
- (d) Order denying a motion to set aside judgment by consent, confession, or compromise (on the ground of fraud, mistake, or duress, or any other ground vitiating consent)
- (e) Order of execution
- (f) Judgment/FO for/against 1+ of several parties (*several judgment*) or in separate claims (or counter/cross/3rd party, etc.) (*separate judgment*) while the main case is pending (**XPN:** Where the court allows appeal therefrom)
- (g) Order dismissing an action w/o prejudice

Remedy = R65! (*certiorari/prohibition/mandamus* – **depende sa gusto mong mangyari**) → Why? Because the RoC provides that, for R65 to lie, there should be no appeal or other plain, speedy, & adequate remedy, etc.)

Modes of appeal (R41 S2+)

- (a) ORDINARY APPEAL (R41 [+R40]*) – file notice of appeal w/ court of origin
 - ↳ + record on appeal in:
 - SpecPro (R40 S3)
 - Other cases of multi./separate appeals (*Ibid.*)
 - *Ex.: 1. EXPROPRIATION (R67 S4&8)
 - > Order of expropriation
 - > Judgment fixing just comp.
 - 2. FORECLOSURE (REM) (R68 S2-3)
 - > Judgment of foreclosure
 - > Order confirming sale
 - 3. PARTITION (R69 S2&11)
 - > Order of partition
 - > Judgment of partition
 - Several judgments (R36 S4)
 - Order of expropriation (R67 S4)
 - Judgment for recovery of property or partition + accounting (Case: **Roman Catholic Archbishop of Manila vs. CA**)
 - Foreclosure of mortgage (*Ibid.*)

i. MTC → RTC (R40)

- ↳ RTC may: (a) AFFIRM – **GR:** Declaration on merits of dismissal
XPN: If dismissal was for lack of juris. over the subject matter:** affirm dismissal + try case on the merits as if originally filed w/ the RTC!

(b) REVERSE – remand to MTC!

[** regardless of whether by MTD or after trial on the merits! (S8)]

ii. RTC (original juris.) → CA (R41)

Questions of: (a) Fact

(b) Mixed (fact + law)

[+MTC (delegated juris.) → CA (**it's just as if an RTC rendered judgment**)]

Prescriptive period:

GR: 15 DAYS from notice of decision

XPN: *Where a record of appeal is req'd:* 30 DAYS

(b) PETITION FOR REVIEW (R42 [**+R43**]*)

i. RTC (appellate juris.) → CA (R42)

Questions of: (a) Fact

(b) Law

(c) Mixed (fact + law)

ii. QUASI-JUDICIAL BODIES → CA (R43)

GR: Does not stay execution of award/judgment/etc. of QJBs

XPN: Where CA directs otherwise upon such terms it may deem just (S12)

NOTES:

1. Re: CSC, ERB, NTC, OP, LRA, CIAC, & voluntary arbitrators authorized by law (among many others!) – apply R43; re: COA & COMELEC, apply R64; re: NLRC, apply R65, filed w/ CA per doctrine of *hierarchy of courts* (Case: **St. Martin's Funeral Home vs. NLRC**)

2. Re: Ombudsman – (Case: **Francisco, Jr. vs. Desierto**)

> *Administrative disciplinary cases:* R43

> *Criminal/non-admin. cases:* R65 (see also portion on “CrimPro”)

Prescriptive period: 15 DAYS from notice of decision/denial of MR

↳ EXTENDIBLE: **+15 DAYS**, upon motion (& payment of docket fees)

Further extension? **GR:** NO

XPN: Most compelling reasons; **+15 DAYS MAX**

(**So... one can potentially get an extension of 30 days max?**)

(c) PETITION FOR REVIEW ON *CERTIORARI* (R45)

i. RTC → SC (*for pure questions of law*)

ii. SB → SC (*same*)

iii. CTA *en banc* → SC (*same*) (R.A. 9282, Sec. 11)

iv. CA → SC (*same* [**XPN:** *amparo, habeas data, kalikasan*])

GR: Only questions of law (**as gleaned above**)

↳ [SC = not a trier of fact] + [findings of trial court as affirmed by CA are final & conclusive, & may not be reviewed on appeal]

XPN: (**Other than *amparo, habeas data, & kalikasan, anyway...***)

Case: **Safeguard Security vs. Tangco** –

1. CA's conclusion, grounded entirely on speculation/conjecture

2. Inference made, manifestly mistaken/absurd/impossible

3. Grave abuse of discretion

4. Judgment was based on misapprehension of facts

5. Findings of fact are conflicting

6. CA's findings go beyond the issues; contrary to parties' admissions

7. CA's findings = contrary to those of the trial court

8. No citation of specific evidence on w/c findings are based

9. Facts set forth in petition, etc., not disputed by respondents

10. CA's findings = premised on supposed lack of evidence, but are actually contradicted by evidence on record

(**Shortcut: [MENG-C(alle)-S(erye)] (a) misapprehension of facts; (b) not based on/contrary to evidence; (c) facts not disputed; (d) GAoD; (e) conflicting findings; (f) speculation/impossibility**)

Prescriptive period: 15 DAYS from notice of decision/denial of MR

⊃ EXTENDIBLE: **+30 DAYS**, upon motion (& payment of docket fees)
R45 & R65, distinguished

R45	R65
Petition for review <u>on certiorari</u>	Petition <u>for certiorari</u>
Findings of fact by CA = conclusive	Not so in R65 actions
Involves questions of <u>law</u>	Involves questions of <u>jurisdiction</u>
Review of judgments/FOs/resolutions of CA/CTA/SB/RTC/other courts	Either (a) vs. interlocutory orders; or (b) when there is no appeal or any other plain/speedy/adequate remedy
15-day period	60-day period (XP : R64 – 30 days)
The appellant & the appellee remain <i>the original parties to the action</i>	Judge, court, etc. shall be public respondents impleaded in the action
MR/NT = <u>not</u> condition <i>sine qua non</i>	MR/NT = condition <i>sine qua non</i> (see XP s <i>in portion on "SCAPR"</i>)
SC exercises <u>appellate</u> jurisdiction	SC/RTC/SB/COMELEC/etc. exercises <u>original</u> jurisdiction

* **Bakit 'di kasama sa codal provision on modes of appeal (ang R40 at R43)? Kasi R41 S2 talks about appeals from the RTC, thus excluding R40 (from the MTC) & R43 (from quasi-judicial bodies) *kahit swak sa designation under RoC***
Question of law vs. question of fact (Case: Marcos-Araneta vs. CA)

QUESTION OF LAW	QUESTION OF FACT
Doubt concerns correct application of law/jurisprudence re: given set of facts	Doubt arises re: truth/falsehood of facts

RESIDUAL JURISDICTION (cf. R40-42): where appeal has been filed (i.e. *trial court has lost jurisdiction over the subject matter*) BUT prior to transmittal of original record/record on appeal, the court below may – **[WAPXC!]**

- Allow withdrawal of the appeal
- Permit appeals of indigent litigants
- Issue orders for the protection & preservation of the rights of the parties w/c do not involve any matter litigated by the appeal (e.g. appointment of receiver, preliminary attachment/injunction)
- Order execution pending appeal (cf. R39 S2)
- Approve compromises

REMEDIES AFTER JUDGMENT BECOMES FINAL & EXECUTORY

- ★ Petition for relief from judgment (R38) → not mode of appeal; filed w/ SAME COURT
 Case: **Purcon, Jr. vs. MRM Philippines** – not an available remedy in CA or SC!
 - *Ground*: FAME
 - *Prescriptive period*: **60 DAYS** from notice of judgment/FO/proceeding...
 ⊃ BUT ≤ **6 MONTHS** after same was entered/taken!
- ★ Annulment of judgment [of RTC by CA] (R47) → if appeal/NT/petition for relief/other approp. rel. (**save R65**) = UNAVAILABLE THROUGH NO FAULT OF PETITIONER!
 - *Grounds & prescriptive periods*
 (a) Extrinsic fraud → **4 YEARS** from discovery
 (b) Lack of juris. over subj. matter/def. → before **LACHES/ESTOPPEL** sets in
 (c) Case: **Gochan vs. Mancao** – denial of due process → **4 years din?**
 - *Effect(s)*: sets aside judgment/FO/etc., renders it VOID (w/o prejudice)
 ⊃ *If ground is extrinsic fraud*: CA may, on motion, order RTC to TRY THE CASE as if a timely motion for NT had been granted!
- ★ Certiorari (R65) (see *portion on "SCAPR"*)
- ★ Collateral attack

Distinguished from direct attack –

DIRECT ATTACK	COLLATERAL ATTACK
Made through an action/proceeding the main object of w/c is to <u>annul/set aside/enjoin the enforcement of such judgment if not yet carried into effect</u> ; or if the property has been disposed of, the aggrieved party may sue for <u>recovery</u>	Made when, <u>in another action to obtain a different relief</u> , an attack on the judgment is made as an <u>incident</u> in said action; proper <u>only when the judgment, on its face, is null & void</u> (e.g. the court had no jurisdiction)
<i>Examples:</i> 1. R65 2. Petition for annulment of judgment	Motion to dismiss a collection suit filed by a corporation on the ground of lack of legal capacity = <i>collateral atk. on corp.!</i>

16. Execution (R39)

⊛ When execution shall issue

(a) AS A MATTER OF RIGHT (S1) – where: **[FLOW]**

- Judgment has become final & executory;
- Period to appeal has lapsed (w/o appeal having been filed);
- Appeal filed has been resolved [+ records, returned to court of origin]; or
- Judgment debtor waived/renounced his/her right to appeal!

Q: Which court issues the writ of execution?

A: The **TRIAL COURT!**

- ↳ The **APPELLATE COURT** can direct the court *a quo* to issue a writ of execution (S1, par. 3) **Justice Regalado notes: the appellate court can do so where the trial court unduly delays/unjustifiably refuses to act on the motion for execution/issue the writ!**

Re: appeal staying execution; exceptions (S4) –

GR: Appeal timely perfected stays execution of judgment!

XPN: The ff. are immediately executory, & not stayed by appeal: **[IRAS-FEUD²]**

1. Judgment for injunction
2. Judgment for receivership
3. Judgment for accounting
4. Judgment for support

XPN to XPN: When the trial court orders otherwise!

[+on appeal, the appellate court may suspend/modify/restore/grant]

5. FE/UD (R70)

- ↳ **XPN to XPN:** Case: **Acbang vs. Judge Luczon, Jr.** – to stay immediate execution in an ejectment case, defendant must:
 - Perfect an appeal
 - File a supersedeas bond
 - Periodically deposit rentals becoming due pending appeal*Otherwise, writ of execution issues upon motion (see below)*

Case: **Lou vs. Siapno** – ALL these judgments require motion (& hearing)

6. Discretionary execution (**‘cause that’s the whole point behind it – execution pending appeal nga e, ‘di ba**) (see below)

(b) AS A MATTER OF DISCRETION – EXECUTION PENDING APPEAL (S2-3, 5)

Case: **Intramuros Club vs. CA** – per its nature, discretionary execution does not require a final & executory judgment, simply a final one for purposes of appeal!

- Where to file:*
- i. TRIAL COURT, cf. residual jurisdiction (see prev. pages)
 - ii. APPELLATE COURT (i.e. after trial court loses jurisdiction)

Ground: GOOD REASONS

- ↳ Cases: (a) **Florendo vs. Paramount Insurance** – “good reasons” = compelling circumstances that justify immediate execution lest the judgment become illusory; outweighing injury/damages that might result should the losing party secure a reversal of the judgment (*i.e. subject to the court's sound discretion!*)
- (b) **Intramuros Tennis Club vs. CA** – mere allegation that the appeal is dilatory/frivolous is not a good reason re: discretionary execution; *neither is the fact that the prevailing party is in financial distress!*
 - ↳ *Compare: Lao vs. Mencias* – the judgment debtor's proven insolvency = good reason!
- (c) **International School vs. CA** – *certiorari* (R65) will lie vs. an order granting disc. exec. not founded upon good reasons

How stayed: SUPERSEDEAS BOND

- Filed by party against whom execution is directed
- Conditioned upon performance (wholly/partly) shld. judgment be sustained
- May be proceeded against on motion!

Remedy if judgment subject to discretionary execution is reversed (S5): motion for issuance of order of restitution/reparation of damages (filed w/ trial court)

- ↳ Case: **Salas vs. Quinga** –

GR: No need for appellate court's judgment to specify that there should be restitution/reparation (*since already provided in RoC*)

XPN: Judgment of appellate court contains disposition to the contrary

⊛ How enforced (S9-10)

(a) MOTION – w/in **5 DAYS** from date of entry

- ↳ Case: **Lt. Col. Boac vs. Cadapan** – no motion for execution needed in *amparo* & HC; decision is immediately executory!

(b) ACTION – **AFTER 5 YEARS** from date of entry, & **BEFORE PRESCRIPTION!**

Effect: judgment is REVIVED; likewise enforceable by motion/action (**cyclical!**)

(c) Re: JUDGMENTS FOR MONEY

i. IMMEDIATE PAYMENT ON DEMAND

Pay to... **GR:** Judgment creditor [**JC**] (or authorized representative)

XPN: Executing sheriff

ii. LEVY → if judgment debtor [**JD**] cannot pay all/part of his/her obli. in cash!

Case: **Fiestan vs. CA** – “levy” = act whereby the sheriff sets apart or appropriates a part of the whole of the properties of the judgment debtor [**JD**] to satisfy the command of the writ

- SATISFACTION BY LEVY

GR: JD may choose w/c of his/her prop. are to be levied

XPN: *If JD does not choose*, SHERIFF levies in the ff. order –

1. Personal property (if any)
2. Real property (if personalty = insufficient)

Effect of levy on 3rd persons (S12) – levy creates a lien in favor of JC over the right/title/interest of JD in the property @ time of levy, subject to liens/encumbrances then existing (*see also discussion on “terceria”*)

RE: REDEMPTION OF REAL PROPERTY

1. *Who may redeem:* > JD

> Successor-in-interest

> Redemptioner, i.e. a creditor having a lien on

the property sold (by virtue of attachment, judgment, or mortgage) subsequent to the lien under w/c the property is sold

2. *Prescriptive period:*

GR: W/in **1 YEAR** from the date of registration of the cert. of sale

XPN: *If there are other creditors having a lien on the property, prop. so redeemed MAY AGAIN BE REDEEMED w/in **60 DAYS FROM THE LAST REDEMPTION!** (and so on and so forth, i.e. can be done by other redemptioners)*

NOTE: Pending redemption, all rent/income/etc. from prop. = JD's!

3. *Effect if no redemption is made w/in the prescriptive period(s): purchaser/last redemptioner is entitled to conveyance & possession of the property [+substitution to & acquisition of all rights to the property as of the time of the levy!]*

- GARNISHMENT OF DEBTS/CREDITS (**that is, those due the JD**)

1. Serve notice to 3P (**garnishee**) in possession/control of debts, etc.

2. Garnishee → make written report to the court w/in **5 DAYS** from service, re: WON JD has sufficient funds to satisfy judgment

↳

<i>Sufficient!</i>	DELIVER AMOUNT (in cash or certified check) to JD, w/in 10 DAYS from service of notice to garnishee [see 1.]
<i>Insufficient!</i>	MAKE A REPORT (or, perhaps more properly, include in the above-mentioned report? [see 2.]) re: amount held for JD

*Property exempt from execution (S13) – **this enumeration is exclusive!***

- JD's family home
- Tools/implements used in trade/employment
- 3 beasts of burden (horses/carabaos/cows, etc.) used in JD's occupation
- Necessaries (**XPN:** jewelry)
- Housekeeping articles
- 1 fishing boat [+accessories] owned/used by fisherman } ≤ P100K
- Provisions for individual/family use sufficient for 4 months
- Professional libraries/equipment ≤ P300K
- Salaries/wages/earnings of JD for personal services w/in **4 MONTHS** preceding the levy, as are necessary for the support of his/her family
- Lettered gravestones
- Money/benefits/etc. accruing or in any manner growing out of any life insu.
- Right to receive legal support; money received as such; gov't pension
- Properties specially exempted by law

(d) Re: SPECIFIC ACTS; SPECIAL JUDGMENTS

SPECIFIC ACTS	SPECIAL JUDGMENTS
SPECIFIC PERFORMANCE	
... or that it be done by another @ the adverse party's cost!	[+contempt re: failure to comply]

★ *Execution in case of death of a party (S7)*

(a) JC dies – execution may issue upon application of:

- Executor
- Administrator
- Successor-in-interest

(b) JD dies – *If re: recovery of personal/real property – execution issues vs.:*

- Executor
- Administrator

If JD dies after execution is levied upon any of his/her property – same may be SOLD for the satisfaction of the judgment!

 ↳ In event of surplus: officer making the sale shall account such surplus to the executor/administrator

⊛ Proceedings where property is claimed by 3rd persons (S16)

TERCERIA (i.e. 3rd PARTY AFFIDAVIT) – affidavit of title/right of possession over property levied upon, executed by a 3rd person claiming such property

(a) Served upon officer making levy & JC

(b) JC may, upon demand of officer, file a bond approved by the court

 ↳ Amount: not less than the value of prop. levied upon

(c) Case: **Ching vs. CA** – *terceria*, cumulative w/ the ff. remedies:

 i. Motion contesting the attachment (in the *same* case)

 ii. Action to nullify levy w/ damages (in a *separate* case)

[+re: *terceria* in attachment & replevin (see “SCAPR”)]

⊛ Re: variance in the terms of the judgment & the writ of execution

Case: **KKK Foundation vs. Calderon-Bargas** – if the writ of execution varied the terms of the judgment & exceeded them, it has no validity (i.e. vulnerable to quashal)

⊛ Remedy when judgment is unsatisfied – EXAMINATION OF JD, etc. (S36- 37)

(a) Court w/c rendered judgment orders the examination

(b) *Examination as to what?* → JD’s property & income

(c) *Before whom?* → the court (or a commissioner appointed by the court)

(d) Persons/entities that may be examined: > JD him/herself

> Person/jur. entity indebted to JD

(e) *Limitation:* JD, etc. can only be required to appear & be examined @ a time & place W/IN THE PROVINCE/CITY WHERE JD, ETC. IS FOUND!

⊛ Enforcement & effect of **foreign** judgments/FOs (S48)

(a) Upon a specific thing: conclusive upon the title to that thing

(b) Against a person: presumptive evidence of a right as between –

- The parties, &

- Their successors-in-interest by a subsequent title

Foreign judgments/FOs may be repelled by evidence of:

(a) Want of jurisdiction

(b) Want of notice to the party

(c) Collusion

(d) Fraud

(e) Clear mistake of law/fact

Recognition of foreign judgment

> No judicial notice of foreign laws/judgments (see “Evid”)

> Must be alleged & proven (as fact; see also “Evid”)

Cases: (a) **Fujiki vs. Marinay** –

- “*Recognition of foreign judgment*” – action for PH courts to recognize the effectivity of a foreign judgment, w/c presupposes a case w/c was already tried & decided under foreign law

- The recognition of a foreign judgment only requires proof of fact of the judgment (e.g. foreign divorce decree obtained abroad by alien spouse may be recognized via *correction/cancellation of entries in the civil registry* [cf. R103 (see “SpecPro”)] – *petition for correction/cancellation of entry in the civil registry w/ prayer for recognition of foreign judgment*)

- (b) **EDI-Staffbuilders Int'l, Inc. vs. NLRC [Velasco!]** – *processual presumption* (i.e. *presumed identity approach*) = where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours