Last minute lecture in COMMERCIAL LAW

For the 2022 Bar examinations

I. INSURANCE

(P.D. No. 162, as amended by R.A. No. 10607)

To whom will the proceeds of the life insurance policy be payable?

a. In case a beneficiary is unlawfully designated, the proceeds shall payable to the estate of the insured (not only to the lawful spouse of the insured although she has a share in the estate of the insured). It is because the policy remains valid. Only the designation is void. **2012 Bar.**

b. In case of joint designation of beneficiaries, the share of the unlawfully designated beneficiary shall form additional part of the share of the lawfully designated beneficiary. Thus, the share of the common law spouse shall be forfeited in favor of the designated illegitimate children. Maramag v. **Maramag, *supra.***

c. In case a beneficiary is lawfully designated and the insured dies ahead of the beneficiary, the proceeds are payable to the beneficiary unless he is the principal, accessory or accomplice in willfully bringing about the death of the insured.

In Property

Give examples of inchoate interest founded on existing interest.

The judgment creditor, after levy of the judgment debtor's property, may insure it because the debtor may not exercise his right of redemption. He has inchoate interest because he may acquire ownership of the levied property in case of failure of the debtor to redeem. The judgment creditor and the judgment debtor both have insurable interest on the property which can be separately covered by fire insurance. In case of loss before expiration of the redemption period, the owner and the judgment creditor may recover on their separate insurance. If the loss occurs after expiration of the redemption period, only the judgment creditor may claim on the insurance.

Armando Geagonia, as the owner of Norman's Mart, obtained insurance from Country Bankers Insurance Corporation. The insurance policy contained the condition that the insured shall give notice to Country Bankers of any insurance or insurances already effected, or which may subsequently be effected, covering any of the property or properties insured, and unless such notice be given and the particulars of such insurance or insurances be stated therein or endorsed in this policy before the occurrence of any loss or damage, all benefits under this policy shall be deemed forfeited.

The building subject of fire insurance was razed by fire. Country Bankers refused to pay alleging that Geagonia did not inform it of a previous insurance obtained by its creditor Cebu Tesing Textiles over the same property and in violation of Condition 3.

Is the policy avoided by the failure of Geagonia to inform Country Bankers of other insurance policies over the property?

No. Condition 3 or the Other Insurance Clause of the policy is a condition which is not proscribed by law. Such a condition is a provision which invariably appears in fire insurance policies and is intended to prevent an increase in the moral hazard. However, in order to constitute a violation, the other insurance must be upon the same subject matter, the same interest therein, and the same risk.

A double insurance exists where the same person is insured by several insurers separately in respect of the same subject and interest. The insurable interest on the mortgaged property of a mortgagor which covers the full value of the property and the interests of a mortgagee which extends only to value of debt are distinct and separate. Since the two policies of the PFIC do not cover the same interest as that covered by the policy of the private respondent, no double insurance exists. The non-disclosure then of the former policies was not fatal to the Geagonia's right to recover on the Country Banker's policy. **Armando Geagonia v. Court of Appeals and Country Bankers Insurance Corporation, G.R. No. 114437, February 6, 1995.**

On September 27, 1996, Development Insurance and Surety Corporation (insurance company) issued a comprehensive commercial vehicle policy to Jaime Gaisano. His company, Noah's Ark, immediately processed the payments and issued a check, representing the payment of premium and other charges, dated September 27, 1996 payable to the insurance company's agent, Trans-Pacific, on the same day. However, nobody from Trans-Pacific picked up the check that day. Trans-Pacific informed Noah's Ark that its messenger would get the check the next day, September 28.

In the evening of September 27, 1996, while under the official custody of Noah's Ark, the vehicle was stolen. Oblivious of the incident, Trans-Pacific picked up the check on September 28 and issued an official receipt dated September 28, 1996.

Is there a binding insurance contract?

No, there is no dispute that the check was delivered to and was accepted by insurance company's agent, Trans-Pacific, only on September 28, 1996. No payment of premium had thus been made at the time of the loss of the vehicle on September 27, 1996. While Jaime Gaisano claims that Trans-Pacific was informed that the check was ready for pick-up on September 27, 1996, the notice of the availability of the check, by itself, does not produce the effect of payment of the premium. At the time of loss, there was no payment of premium yet to make the insurance policy effective. Jaime Gaisano also failed to establish the fact of a grant by respondent of a credit term in his favor, or that the grant has been consistent. **Jaime T. Gaisano v. Development Insurance and Surety Corporation, G.R. No. 190702, February 27, 2017.**

Does payment by installment of premiums invalidate the insurance contract?

Premium may be paid on installments, if allowed by the insurance policy. It was ruled that where there is an agreement allowing the insured to pay the premium in installments and partial payment has been made at the time of the loss, the transaction is exempted from the cash and carry rule. In that case, the insurer accepted all installment payments for three years. Such acceptance of payments speaks loudly of the insurer's intention to honor the policies it issued to the insured. Certainly, basic principles of equity and fairness would not allow the insurer to continue collecting and accepting the premiums, although paid on installments, and later deny liability on the lame excuse that the premiums were not prepaid in full. **Makati Tuscany Condominium Corporation v. Court of Appeals, G.R. No. 95546, November 6, 1992; BAR 2015.**

Thus, if the premium is payable on four installments, the insured may recover the full amount if the loss occurred after the first installment payment even pending full payment of the balance without prejudice to the insured's obligation to pay the remaining amount of the premium.

However, if the policy indicates that failure to pay in full any of the scheduled installments on or before the due date shall render the insurance policy void and ineffective as of such date, then the failure to make premium payment on the first due date resulted in a void and ineffective policy. Hence, there is no credit extension to consider as the provision itself expressly cuts off the inception of the insurance policy in case of default. **Philam Insurance Inc. Now Chartis Philippines Insurance Inc. v. Parc Chateau Condominium Unit Owners Association and/or Eduardo Colet, G.R. No. 201116, March 4, 2019.**

It was also held that the insurer is not liable for the payment of the insurance proceeds if the policy provides for payment of premium in full. Accordingly, where the premium has only been partially paid and the balance paid only after the peril insured against has occurred, the insurance contract did not take effect and the insured cannot collect at all on the policy. **Sps. Antonio and Violeta Tibay, *et al.* v. Court of Appeals and Fortune Life and General Insurance Inc., Co., G.R. No. 119655, May 24, 1996; Section 77, Insurance Code.**

Similarly, if the insured paid the premium, the insurer's liability attaches correspondingly. There is a valid and binding policy or contract of insurance and the insured may demand indemnification in case of loss. There is no credit on the premium to speak of and, therefore, none which the insurer can demand because he has already been paid. Second, if the insured did not pay the premium and the parties did not agree that the insurer's liability has attached, then there is no valid or binding contract of insurance. The insured cannot demand indemnification if loss occurs and neither can the insurer demand payment of the premium. Third, if the insured did not actually pay the premium but the parties have agreed that the insurer's liability has attached, then the insured is considered to have extended credit on the premium. When the insured accepts the terms of the credit, there is a valid and binding contract of insurance. The insured must pay the premium before the end of the credit term; otherwise, he cannot demand indemnification in case of loss. The insurer may demand the premium, whether or not loss occurred. **Chartis Philippines Insurance, Inc. v. Cyber City Teleservices, Ltd, G.R. No. 234299, March 03, 2021**

Rescission of Insurance Contracts

Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

The facts concealed need not be the proximate cause of the loss in order to constitute concealment. Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries. The test is whether the matters concealed would have definitely affected the insurer's action on the application of the insured, either by approving it with the corresponding adjustment for a higher premium or rejecting the same. **Sunlife Assurance Company of Canada v. Court of Appeals, G.R. No. 105135, June 22, 1995.**

Incontestability Clause

The incontestability clause in life insurance policy is based on Section 48 of the Insurance Code:

“Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right must be exercised previous to the commencement of an action on the contract.

After a policy of life insurance made payable on the death of the insured shall have been in force during the lifetime of the insured for a period of two years from the date of its issue or of its last reinstatement, the insurer cannot prove that the policy is void ab initio or is rescindable by reason of the fraudulent concealment or misrepresentation of the insured or his agent.”

It means that after two years from date of issuance of the policy or its last reinstatement, the insurer must make good on the policy, even though the policy was obtained by fraud, concealment, or misrepresentation. It basically precludes the insurer from rescinding the policy on account of concealment or misrepresentation. **Sunlife of Canada (Philippines), Inc. v. Sibya, et al., G.R. No. 211212, June 8, 2016; BAR 2012.**

What are the requisites of the incontestability clause?

The requisites are:

a. The insurance is a life insurance payable on the death of the insured.

The clause is therefore not applicable to annuity because the annuitant pays lump sum to the insurer and gets a certain amount from the insurer every year until the annuitant/insured dies.

b. The policy is in force for at least 2 years from its date of issue as appearing in the policy or of its last reinstatement.

The two-year period is not reckoned from date of receipt but from issuance of the policy or last reinstatement.

In January 2016, Mr. H was issued a life insurance policy by XYZ Insurance Co., wherein his wife, Mrs. W, was designated as the sole beneficiary. Unbeknownst to XYZ Insurance Co., however, Mr. H had been previously diagnosed with colon cancer, the fact of which Mr. H had concealed during the entire time his insurance policy was being processed. In January 2019, Mr. H unfortunately committed suicide. Due to her husband's death, Mrs. W, as beneficiary, filed a claim with XYZ Insurance Co. to recover the proceeds of the late Mr. H's life insurance policy. However, XYZ Insurance Co. resisted the claim, contending that: (1) The policy is void ab initio because Mr. H fraudulently concealed or misrepresented his medical condition, i.e., his colon cancer; and (2) As an insurer in a life insurance policy, it cannot be held liable in case of suicide. Rule each of XYZ Insurance Co.'s contentions.

Rule each of XYZ Insurance Co.'s contentions.

The first contention is not tenable. Under the incontestability clause, after a policy of life insurance made payable upon the death of the insured shall have been in force during the lifetime of the insured for a period of two (2) years from the issuance of the policy or last reinstatement, the insurer must make good on the policy even though the policy was obtained through fraud, concealment, or misrepresentation. Even if Mr. H had concealed or misrepresented that he was previously diagnosed with colon cancer, XYZ can no longer rescind the policy since it had been in force already for three (3) years. **Section 48 Insurance Code; Manila Bankers v. Aban, G.R. No. 175666, July 29, 2013; Sun Life of Canada v. Sibya, G.R. No. 211212, June 8, 2016.**

On the second contention, XYZ Insurance is liable despite the suicide of Mr. H. Under the Insurance Code, the insurer is liable when suicide is committed after the policy has been in force for a period of two (2) years from the date of issue or its last reinstatement. In this case, Mr. H committed suicide three (3) years after issuance of the policy. Thus, XYZ should be liable to the beneficiary of Mr. H. **BAR 2019; 2013.**

Can the incontestability clause be invoked after the death of the insured if the death occurred before two (2) years from issuance of the policy or last reinstatement?

In Tan v. Court of Appeals, the Supreme Court ruled that the so-called "incontestability clause" precludes the insurer from raising the defenses of false representations or concealment of material facts insofar as health and previous diseases are concerned if the insurance has been in force for at least two (2) years during the insured's lifetime. The phrase "during the lifetime" found in Section 48 of the Insurance Law simply means that the policy is no longer considered in force after the insured has died. The key phrase in the second paragraph of Section 48 is "for a period of two years". The policy was issued on November 6, 1973 and the insured died on April 26, 1975. The policy was thus in force for a period of only one year and five months. Considering that the insured died before the two-year period has lapsed, Philippine American Life Insurance Company is not, therefore, barred from proving that the policy is void ab initio by reason of the insured's fraudulent concealment or misrepresentation. **Emilio Tan, Juanito Tan, Alberto Tan, and Arturo Tan v. Court of Appeals and Philippine American Life Insurance Company, G.R. No. 48049, June 29, 1989.**

In other words, the clause can be invoked even after the death of the insured and not just during his lifetime. The rescission need not be always done during the lifetime of the insured. The incontestability clause will only set in after two (2) years from issuance of the policy or last reinstatement.

However, in the case of Manila Bankers Life Insurance Corporation v. Aban, it was held that after the two-year period lapsed, or when the insured dies within the period, the insurer must make good on the policy, even though the policy was obtained by fraud, concealment, or misrepresentation.

In Aban, more than two years had lapsed from the issuance of the policy, thus, the incontestability clause had lapsed. However, the Supreme Court also said that if the insured died within the two-year period from the issuance of the policy (not after two [2] years), the insurer can no longer rescind the policy on account of misrepresentation and/or concealment. It may be said that this part of the decision is only an obiter dictum because two (2) years had lapsed anyway, and the incontestability clause already applied.

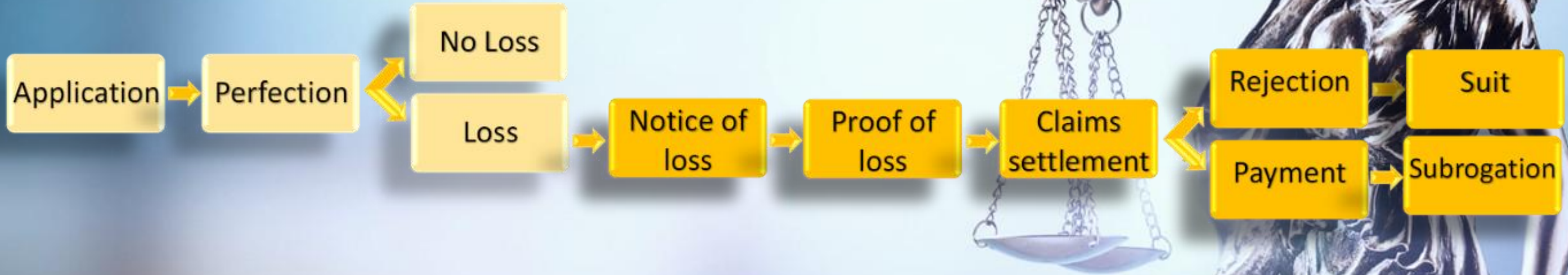
However, that principle was reiterated in Sun Life of Canada v. Sibya. In this case, the insured applied for life insurance. He disclosed in his application that he sought advice for kidney problem but failed to disclose that he was confined for renal failure. Three months from issuance of the policy, he died of gunshot wounds. The Supreme Court held that there was no concealment given the information that he disclosed and that he further authorized the insurer to conduct investigation on his medical background. And even assuming that there was concealment, the insurer must make good on the policy because the insured died within the two-year period, citing Manila Bankers v. Aban.

Based on Aban and Sibya cases, there are now two (2) incontestability clauses.

1. Two (2) years had lapsed from issuance of the policy or last reinstatement.
2. The insured died within two (2) years from issuance of the policy.

The second application, however, goes against the rationale of the incontestability clause. It precludes the insurer from conducting investigation if the insured committed concealment and/or misrepresentation, particularly if the insured died shortly after the issuance of the policy. It is submitted that this ruling should be re-assessed.

Rights and obligations of parties



It was held that insurable interest in property is not limited to property ownership in the subject matter of the insurance. Where the interest of the insured in, or his relation to, the property is such that he will be benefitted by its continued existence, or will suffer a direct pecuniary loss by its destruction, his contract of insurance will be upheld, although he has no legal or equitable title. When Milestone removed its parts and machines, Milestone still had an actual and real interest in the preservation of the corrugating machines while the Toll Manufacturing Agreement (TMA) is not effectively terminated. Non-preservation will render Milestone liable for breach of contract as no corrugated carton boxes would be manufactured in favor of Asgard under the TMA.

Since the damage or loss caused by Milestone (one of the co-insured) to Asgard's corrugating machines was willful or intentional, UCPB Insurance is not liable under the Policy. To permit Asgard to recover from the Policy for a loss caused by the willful act of the insured is contrary to public policy, i.e., denying liability for willful wrongs. **UCPB General, Insurance Co., Inc. v. Asgard Corrugated Box Manufacturing Corporation, G.R. No. 244407, January 26, 2021,**

When does the cause of action of the insured accrue?

The cause of action accrues from the rejection of the insurance claim.

In one case, the Supreme Court ruled that the condition contained in an insurance policy that claims must be presented within one year after rejection is not merely a procedural requirement but an important matter essential to a prompt settlement of claims against insurance companies as it demands that insurance suits be brought by the insured while the evidence as to the origin and cause of destruction have not yet disappeared.

Case law teaches that the prescriptive period for the insured's action for indemnity should be reckoned from the "final rejection" of the claim. The "final rejection" simply means denial by the insurer of the claims of the insured and not the rejection or denial by the insurer of the insured's motion or request for reconsideration. The rejection referred to should be construed as the rejection in the first instance.

The contention of the insured that its action has not yet prescribed and that the suit is deemed to have been commenced on the date that the original complaint was filed is untenable. An amended complaint supersedes an original one. As a consequence, the original complaint is deemed withdrawn and no longer considered part of the record.

Is the consent of the wrongdoer necessary to enable the insurer to acquire the right of subrogation?

Subrogation does not require the consent of the wrongdoer. It is an equitable assignment of right that accrues to the insurer after valid payment is made to the insured as a result of the happening of the risks insured against. Payment by the insurer to the assured operates as an equitable assignment to the former of all remedies which the latter may have against the third party whose negligence or wrongful act caused the loss. **Bar 2014**

Is the consent of the insured necessary for the right of subrogation to exist?

No, after payment to the insured, the insurer is entitled to go after the person that violated its contractual commitment to answer for the loss insured against. As previously stated, when the insurance company pays for the loss, such payment operates as an equitable assignment to the insurer of the property and all remedies which the insured may have for the recovery thereof. That right is not dependent upon, nor does it grow out of, any privity of contract, or upon written assignment of claim, and payment to the insured makes the insurer an assignee in equity. **Fireman's Fund Insurance Company v. Jamila & Company, Inc., G.R. No. L-27427, April 7, 1976.**

When the insured releases the wrongdoer, the insurer is released from liability. If the release was done after the insured received the payment from the insurer, insurer can recover from insured.

Within what period should the right of subrogation be exercised?

In **Vector Shipping Corporation v. American Home Assurance Company,** the Supreme Court ruled that after payment by the insurer to the insured, it is subrogated to the rights of the latter. Its right of subrogation under Article 2207 of the Civil Code in relation to Article 1144 gives rise to a cause of action created by law. The prescriptive period for cause of action based on law (such as subrogation) is 10 years. Thus, the insurer has 10 years from the date it indemnified the insured to file the action against the wrongdoer.

However, the Supreme Court abandoned the Vector ruling in **Vicente Henson, Jr. v. UCPB General Insurance**, an en banc decision, where it was held the insurer only steps into the shoes of the insured. No new obligation was created between the insurer and the wrongdoer. The rights of a subrogee cannot be superior to the rights possessed by a subrogor. Therefore, for purposes of prescription, the insurer inherits only the remaining period within which the insured may file an action against the wrongdoer. The Supreme Court said, however, that the Henson doctrine is prospective in application.

Is the insurer in a life insurance liable in case of suicide by the insured?

The insurer in a life insurance contract shall be liable in case of suicide only when it is committed after the policy has been in force for a period of two (2) years from the date of its issue or of its last reinstatement, unless the policy provides a shorter period: Provided, however, that suicide committed in the state of insanity shall be compensable regardless of the date of commission.

The insurer, however, is not liable if suicide in an excepted risk.

What do you understand by the “no fault indemnity” provision in the Insurance Code? What are the rules on claims under said provision?

The “no fault indemnity” in the Insurance Code provides that any claim for death or injury to a passenger or to a third party should be paid without the necessity of proving fault or negligence of any kind, subject to the following rules:

a. The total indemnity in respect of any person shall not be less than P15,000;
b. The following proofs of loss, when submitted under oath, shall be sufficient evidence to substantiate the claim:
   i. Police report of accident; and
   ii. Death certificate and evidence sufficient to establish the proper payee; or
   iii. Medical report and evidence of medical or hospital disbursement in respect of which refund is claimed.
c. Claim may be made against one motor vehicle only. In the case of an occupant of a vehicle, claim, shall lie against the insurer of the vehicle in which the occupant is riding, mounting or dismounting from. In any other case, claim shall lie against the insurer of the directly offending vehicle. In all cases, the right of the party paying the claim to recover against the owner of the vehicle responsible for the accident shall be maintained.

II. TRANSPORTATION LAW

Common Carriers

Are the following persons common carriers?

a. **Freight forwarder** – A freight forwarder is not a common carrier. It merely chooses or selects the common carrier. A freight forwarder's liability is limited to damages arising from its own negligence in choosing the carrier; however, where the forwarder contracts to deliver goods to their destination instead of merely arranging for their transportation, it becomes liable as a common carrier for loss or damage to goods. A freight forwarder assumes the responsibility of a carrier, which actually executes the transport, even though the forwarder does not carry the merchandise itself. **Unsworth Transport International (Phils.), Inc. v. Court of Appeals and Pioneer Insurance and Surety Corporation, G.R. No. 166250, July 26, 2010.**

b. **Arrastre operator –** An arrastre operator is not a common carrier. The functions of an arrastre operator involve the handling of cargo deposited on the wharf or between the establishment of the consignee or shipper and the ship's tackle. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession. The obligation of the arrastre operator is akin to a warehouseman. **Westwind Shipping Corporation v. UCPB General Insurance Co., G.R. No. 2002289, November 25, 2013; Asian Terminals v. Daehan Fire and Marine Insurance, G.R. No. 171194, February 4, 2010.**

c. **Customs Broker –** Although its principal function is to prepare the correct customs declaration and proper shipping documents as required by law, the transportation of goods is, nevertheless, an integral part of a customs broker, thus, the customs broker is also a common carrier. For to declare otherwise would be to deprive those with whom it contracts the protection which the law affords them notwithstanding the fact that the obligation to carry goods for its customers, is part and parcel of its business. **Westwind Shipping Corporation v. UCPB General Insurance Co., G.R. No. 2002289, November 25, 2013; A.F Sanchez Brokerage v. Court of Appeals, G.R. No. 147079, December 21, 2004**

Is a travel agency a common carrier?

A travel agency is not a common carrier. It only arranges for the transportation of its clients for air carriage. As such, it is not bound to exercise extraordinary diligence in the performance of its obligations. **Crisostomo v. Court of Appeals**

Obligations and Liabilities

Who is liable in case of breach of contract of carriage? The operator or the driver or both?

If the cause of action is based on a breach of a contract of carriage, the liability of the owner/operator is direct as the contract is between him and the passenger. The driver cannot be made liable as he is not a party to the contract of carriage. The obligation to carry the passenger safely to his destination was with the operator and the elements of a contract of carriage exist between the operator and the passenger. Thus, a complaint for breach of a contract of carriage is dismissible as against the employee who was driving the bus because the parties to the contract of carriage are only the passenger, the bus owner, and the operator. **Jose Sanico and Vicente Castro v. Werherlina P. Colipano, G.R. No. 209969, September 27, 2017.**

The driver, however, may be sued based on quasi-delict and/or criminally if his negligence can be established.

Hijacking of goods is likewise not considered a force majeure. Nevertheless, a common carrier may absolve itself of liability for a resulting loss caused by robbery or hijacking if it is proven that the robbery or hijacking was attended by grave or irresistible threat, violence or force. **Keihin-Everett Forwarding Co. v. Marine Malayan Insurance Corporation, et al., G.R. No. 212107, January 28, 2019.**

A shipment of electronic goods arrived at the Port of Manila for Sony Philippines, Inc. (Sony). Previous to the arrival, Sony had engaged the services of TMBI to facilitate, process, withdraw, and deliver the shipment from the port to its warehouse in Biñan. TMBI – who did not own any delivery trucks – subcontracted the services of BMT Trucking Services (BMT), to transport the shipment from the port to the Biñan warehouse. Four (4) BMT trucks picked up the shipment from the port. However, only three (3) trucks arrived at Sony's Biñan warehouse. The fourth truck driven by Rufo Reynaldo Lapesura was found abandoned.

Mitsui, the insurer, paid the claims and ran after TMBI. TMBI, however, denied being a common carrier because it does not own a single truck to transport its shipment and it does not offer transport services to the public for compensation and hence, it is not bound to observe extraordinary diligence. Furthermore, TMBI insists that the hijacking of the truck was a fortuitous event which should exonerate its liability.

a. Is TMBI is a common carrier?

Yes, TMBI is a common carrier. The delivery of the goods is an integral, albeit ancillary, part of its brokerage services. TMBI admitted that it was contracted to facilitate, process, and clear the shipments from the customs authorities, withdraw them from the pier, then transport and deliver them to Sony's warehouse in Laguna. That TMBI does not own trucks and has to subcontract the delivery of its clients' goods, is immaterial. As long as an entity holds itself to the public for the transport of goods as a business, it is considered a common carrier regardless of whether it owns the vehicle used or has to actually hire one. Lastly, TMBI's customs brokerage services – including the transport/delivery of the cargo – are available to anyone willing to pay its fees.

b. Should TMBI be held liable for the hijacking of the truck?

TMBI is liable for the hijacking of the truck. Theft or the robbery of the goods is not considered a fortuitous event or a force majeure. Nevertheless, a common carrier may absolve itself of liability for a resulting loss: (1) if it proves that it exercised extraordinary diligence in transporting and safekeeping the goods; or (2) if it stipulated with the shipper/owner of the goods to limit its liability for the loss, destruction, or deterioration of the goods to a degree less than extraordinary diligence.

Instead of showing that it had acted with extraordinary diligence, TMBI simply argued that it was not a common carrier bound to observe extraordinary diligence. Its failure to successfully establish this premise carries with it the presumption of fault or negligence, thus rendering it liable to Sony/Mitsui for breach of contract.

c. Is BMT liable solidarily with TMBI to Mitsui?

No, BMT and TMBI are not solidarily liable to Mitsui. While the responsibility of two or more persons who are liable for quasi-delict is solidary under Article 2194 of the Civil Code, TMBI's liability to Mitsui does not stem from a quasi-delict but from its breach of contract. The tie that binds TMBI with Mitsui is contractual, albeit one that passed on to Mitsui as a result of TMBI's contract of carriage with Sony to which Mitsui had been subrogated as an insurer who had paid Sony's insurance claim.

BMT is not directly liable to Sony/Mitsui for the loss of the cargo. While it is undisputed that the cargo was lost under the actual custody of BMT (whose employee is the primary suspect in the hijacking or robbery of the shipment), no direct contractual relationship existed between Sony/Mitsui and BMT. If at all, Sony/Mitsui's cause of action against BMT could only arise from quasi-delict, as a third party suffering damage from the action of another due to the latter's fault or negligence.

However, TMBI must not absorb the loss. By subcontracting the cargo delivery to BMT, TMBI entered into its own contract of carriage with a fellow common carrier. Since BMT failed to prove that it observed extraordinary diligence in the performance of its obligation to TMBI, it is liable to TMBI for breach of their contract of carriage. **Torres-Madrid Brokerage, Inc. v. Feb Mitsui Marine Insurance Co., Inc. and Benjamin P. Manalastas, doing business under the Name of BMT Trucking Services, G.R. No. 194121, July 11, 2016.**

In sum, TMBI is liable to Sony (subrogated by Mitsui) for breaching the contract of carriage. In turn, TMBI is entitled to reimbursement from BMT due to the latter's own breach of its contract of carriage with TMBI. The proverbial buck stops with BMT who may either: (a) absorb the loss, or (b) proceed after its missing driver, the suspected culprit.

South east Asia Container Line(SEACOL), a foreign company, received shipment of musical instruments from Australia for transportation to the port of Manila. The aforesaid shipment was insured with Insurance Company of North America(ICNA) against all risk in favor of the consignee, San Miguel Foundation (San Miguel).

Upon arriving in Manila, the container van was discharged from the vessel, and was received by Unitrans International Forwarders,Inc (Unitrans) which delivered the same to the consignee where it was found that two(2) units of musical instruments were damaged and could no longer be used. As cargo-insurer of the subject shipment, ICNA paid consignee and by reason thereof was subrogated to consignee's rights of recovery against SEACOL and Unitrans.

ICNA filed a complaint for collection of sum of money arising from marine insurance coverage on the two(2) musical instruments, against SEACOL and the unknown owner/charterer of the vessel M/S Buxcrown, both doing business in the Philippines through its local ship agent Unitrans.

Unitrans, denied being a ship agent of SEACOL, alleging that BTI Logistics PTY LTD. (BTI Logistics), a foreign freight forwarder, engaged its services as receiving agent in connection to the subject shipment. As such agent, Unitrans' obligations were limited to receiving and handling the bill of lading sent to it by BTI Logistics, prepare an inward cargo manifest, notify the party indicated of the arrival of the subject shipment, and release the bill of lading upon order of the consignee so that the subject shipment could be withdrawn from the pier/customs. It further alleged that San Miguel engaged its services as customs broker for the subject shipment. As such, Unitrans' obligation was limited to paying on behalf of San Miguel the necessary duties and kindred fees, file with the Bureau of Customs (BOC) the Import Entry Internal Revenue Declaration together with other pertinent documents, as well as to pick up the shipment and then transport and deliver the said shipment to the consignee's premises in good condition.

Is Unitrans liable for the damaged shipment?

YES. Unitrans, as a common carrier, cannot escape liability

Unitrans had expressly admitted that San Miguel also engaged its services as customs broker for the subject shipment; one of its obligations was to pick up the shipment and then transport and deliver the same to the consignee's premises in good condition.

Emphasis must be placed on the fact that Unitrans itself admitted that in handling the subject shipment and making sure that it was delivered to the consignee's premises in good condition as the delivery/forwarding agent, Unitrans was acting as a freight forwarding entity and an accredited non-vessel operating common carrier.

Jurisprudence holds that a common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary vigilance over the goods it transported. When the goods shipped are either lost or arrived in damaged condition, a presumption arises against the carrier of its failure to observe that diligence, and there need not be an express finding of negligence to hold it liable. To overcome the presumption of negligence, the common carrier must establish by adequate proof that it exercised extraordinary diligence over the goods. It must do more than merely show that some other party could be responsible for the damage.

In the instant case, considering that it is undisputed that the subject goods were severely damaged, the presumption of negligence on the part of the common carrier, i.e., Unitrans, arose. Hence, it had to discharge the burden, by way of adequate proof, that it exercised extraordinary diligence over the goods; it is not enough to show that some other party might have been responsible for the damage. Unitrans failed to discharge this burden. Hence, it cannot escape liability. **Unitrans International Forwarders, Inc. v. Insurance Company of North America, G.R. No. 203865, March 13, 2019. J. Caguioa.**

A bus of GL Transit on its way to Davao stopped to enable a passenger to alight. At that moment, Santiago, who had been waiting for a ride, boarded the bus. However, the bus driver failed to notice Santiago who was still standing on the bus platform, and stepped on the accelerator. Because of the sudden motion, Santiago slipped and fell down, suffering serious injuries.

May Santiago hold GL Transit liable for breach of contract of carriage? Explain.

Santiago may hold GL liable for breach of contract of carriage. It was the duty of the driver, when he stopped the bus, to do no act that would have the effect of increasing the peril to a passenger such as Santiago while he was attempting to board the same. When a bus is not in motion there is no necessity for a person who wants to ride the same to signal his intention to board. A public utility bus, once it stops, is in effect making a continuous offer to bus riders. It is the duty of common carriers of passengers to stop their conveyances for a reasonable length of time in order to afford passengers an opportunity to board and enter, and they are liable for injuries suffered by boarding passengers resulting from the sudden starting up or jerking of their conveyances while they are doing so. Santiago, by stepping and standing on the platform of the bus, was already considered a passenger and was entitled to all the rights and protection pertaining to a contract of carriage. **Bar 1996**

An hour after the passengers and Viana had disembarked the vessel, the crane operator began its unloading operation. While the crane was being operated, Viana who had already disembarked the vessel remembered that some of his cargoes were still loaded there. He went back and while he was pointing to the crew where his cargoes were, the crane hit him resulting in his death. A complaint for damages was filed against Aboitiz Shipping Lines (Aboitiz) for breach of contract of carriage. Aboitiz contends that Viana ceased to be a passenger when he disembarked the vessel and that consequently his presence there was no longer reasonable. Is Aboitiz still liable as a common carrier?

Yes. The rule is that the relation of carrier and passenger continues until the passenger has been landed at the port of destination and has left the vessel owner's dock or premises. Once created, the relationship will not ordinarily terminate until the passenger has, after reaching his destination, safely alighted from the carrier's conveyance or had a reasonable opportunity to leave the carrier's premises. All persons who remain on the premises within a reasonable time after leaving the conveyance are to be deemed passengers, and what is a reasonable time or a reasonable delay within this rule is to be determined from all the circumstances, and includes a reasonable time to see after his baggage and prepare for his departure. It is of common knowledge that, by the very nature of the business of a shipper, the passengers of vessels are allotted a longer period of time to disembark from the ship than the passengers of other common carriers considering the bulk of cargoes and the number of passengers it can load. Consequently, such passenger will need at least an hour to disembark from the vessel and claim his baggage. In the case at bar, when the accident occurred, the victim was in the act of unloading his cargoes which he had every right to do. As such, even if he had already disembarked an hour earlier, his presence in the carrier's premises was not without cause.

While the victim was admittedly contributorily negligent, still Aboitiz's aforesaid failure to exercise extraordinary diligence was the proximate and direct cause of, because it could definitely have prevented, the former's death. **Aboitiz Shipping Corporation v. Court of Appeals, G.R. No. 84458, November 6, 1989.**

City Railways, Inc. (CRI) provides train services, for a fee, to commuters from Manila to Calamba, Laguna. Commuters are required to purchase tickets and then proceed to designated loading and unloading facilities to board the train. Ricardo Santos purchased a ticket for Calamba and entered the station. While waiting, he had an altercation with the security guard of CRI leading to a fistfight. Ricardo Santos fell on the railway just as the train was entering the station. Ricardo Santos was run over by the train. He died. In the action for damages filed by the heirs of Ricardo Santos, CRI interposed lack of cause of action, contending that the mishap occurred before Ricardo Santos boarded the train and that it was not guilty of negligence. Decide.

CRI is liable. A contract of carriage was created from the moment Ricardo paid the fare at the train station and entered the premises of the latter, entitling Ricardo to all the rights and protection under a contractual relation. CRI is liable for the death of Ricardo in failing to exercise extraordinary diligence imposed upon a common carrier. The law requires common carriers to carry passengers safely using the utmost diligence of very cautious persons with due regard for all circumstances. Such duty of a common carrier to provide safety to its passengers obligates it not only during the course of the trip but for so long as the passengers are within its premises and where they ought to be in pursuance to the contract of carriage. Furthermore, a common carrier is liable for the death of or injuries to passengers through the negligence or willful act of its employees or agents that it contracted with. **Light Rail Transit Authority and Rodolfo Roman v. Marjorie Navidad, supra. BAR 2008.**

X is a passenger of RJT Bus Company who suffered injuries due to the collision of the bus he was riding with a jeepney. X sued RJT Bus Company for damages. RJT Bus Company invokes as a defense that it was the jeepney that had the last clear chance to avoid the injury. Hence, the bus company cannot be held liable. Is the principle of last clear chance applicable?

No. The principle of last clear chance applies only in a suit between owners and drivers of two colliding vehicles. It does not arise where a passenger demands responsibility from the carrier to enforce its contractual obligations, for it would be inequitable to exempt the negligent driver and its owner on the ground that the other driver was likewise guilty of negligence. **William Tiu v. Pedro Arriesgado, G.R. No. 138060, September 1, 2004.**

Both the tortfeasor and the common carrier are jointly and severally liable for damages of the injuries caused to X.

Extent of liability for damages

- *Recoverable damages*

What is the extent of damages awarded in case of death or injury among the passengers?

Article 1764 in relation to Article 2206 of the Civil Code, holds the common carrier in breach of its contract of carriage for the death of a passenger, and it is liable to pay the following: (1) indemnity for death, (2) indemnity for loss of earning capacity, and (3) moral damages. **Victory Liner, Inc. v. Rosalito Gammad, G.R. No. 159636, November 25, 2004.**

In determining the reasonableness of the damages awarded under Article 1764 in conjunction with Article 2206 of the Civil Code, the factors to be considered are: (1) life expectancy (considering the health of the victim and the mortality table which is deemed conclusive) and loss of earning capacity; (b) pecuniary loss, loss of support and service; and (c) moral and mental sufferings. The loss of earning capacity is based mainly on the number of years remaining in the person's expected life span. In turn, this number is the basis of the damages that shall be computed and the rate at which the loss sustained by the heirs shall be fixed.

The formula for the computation of loss of earning capacity is as follows:

Net earning capacity = Life expectancy × [Gross Annual Income – Living Expenses (50% of gross annual income)], where life expectancy = 2/3 (80 – the age of the deceased).

Thus, if prior to his death at the age of 60 years old, he was earning P10 million gross income, his loss of earning capacity is computed as follows:

Life expectancy = 2/3 × 80 – 60 = 13.33 × (P10 million – P5 million or P5 million)
= P66,666,666.70 million. **Smith Bell Dodwell Shipping Agency Corp. v. Borja, G.R. No. 143008, June 10, 2002.**

Although as a general rule, documentary evidence is required to prove loss of earning capacity, there are two exceptions to this general rule and the injured passenger's testimonial evidence falls under the second exception, viz.:

By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.

Loss of earning capacity should be computed not at the time the injured passenger testified about his injury but at the time he sustained it. **Jose Sanico v. Werhelina Colipano, G.R. No. 209969, September 27, 2017**

Martin Nove shipped an expensive video equipment to a friend in Cebu. Martin had bought the equipment from Hong Kong for U.S. $5,000.00. The equipment was shipped through M/S Lapu-Lapu under a bill of lading which contained the following provision in big bold letters:

"The limit of the carrier's liability for any loss or damage to cargo shall be P200 regardless of the actual value of such cargo, whether declared by shipper or otherwise."

The cargo was totally damaged before reaching Cebu. Martin Nove claimed for the value of his cargo ($5,000.00 or about P100,000.00) instead of just P200.00 as per the limitation on the bill of lading.

Is there any legal basis for Nove's claim?

There is legal basis for the claim of Martin Nove. The stipulation limiting the carrier's liability up to a certain amount "regardless of the actual value of such cargo, whether declared by its shipper or otherwise," is violative of the requirement of the Civil Code that such limiting stipulations should be fairly and freely agreed upon. A stipulation that denies to the shipper the right to declare the actual value of his cargoes and to recover, in case of loss or damage, on that basis would be invalid. **BAR 1987.**

Sylvex Purchasing Corporation delivered to Unsworth Transport International (UTI) a shipment of 27 drums of various raw materials for pharmaceutical manufacturing. UTI issued a Bill of Lading covering the aforesaid shipment. The shipment arrived at the port of Manila wherein it was later found to be damaged.

The rejected UTI's claim that its liability should be limited to $500.00 per package pursuant to the Carriage of Goods by Sea Act (COGSA) considering that the value of the shipment was declared pursuant to the letter of credit and the pro forma invoice.

Is UTI liable for the value of the goods not stated in the bill of lading?

No, UTI is liable only for $500.00 per package. Sylvex did not declare a higher valuation of the goods to be shipped. The insertion of an invoice number in the bill of lading does not in itself sufficiently and convincingly show that the common carrier had knowledge of the value of the cargo. **Unsworth Transport International v. Court of Appeals, G.R. No. 166250, July 26, 2010.**

In a similar case, it was held that the insertion of the words "L/C No. 90/02447," cannot be the basis for the carriers' liability. First, a notation in the Bill of Lading which indicated the amount of the Letter of Credit obtained by the shipper for the importation of steel sheets did not effect a declaration of the value of the goods as required by the bill. **Philam Insurance Company v. Heung Ah Shipping Corporation and Wallem Shipping Inc., G.R. No. 18771 and G.R. No. 187812, July 23, 2014**

However, in another case, it was ruled that the declaration requirement does not require that all the details must be written down on the very bill of lading itself. Compliance can be attained by incorporating the invoice, by way of reference, to the bill of lading provided that the former containing the description of the nature, value and/or payment of freight charges is duly admitted as evidence. **Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp., & Mitsui Sumitomo Insurance Co., Ltd., G.R. No. 182864, January 12, 2015.**

To summarize, the insertion of an invoice number or reference to a letter of credit does not in itself sufficiently and convincingly show that the common carrier had knowledge of the value of the cargo. As such, it does not amount to a higher declaration of the value of the goods. However, the same interpretation does not apply if the bill of lading incorporates the invoice value of the goods with appropriate description thereof and payment of corresponding freight charges. **Bar 1998**

III. CORPORATION LAW

Nationality of corporations

Application of the control test and grandfather rule.

RULE 1:

ABC

PUBLIC UTILITY
100,000
Outstanding Capital Stock

XYZ

Foreigners

60%
Filipino

40%
Foreigners

RULE 2:

ABC — PUBLIC UTILITY

- ABC
  - 90,000 — XYZ
    - 50% — Filipino
    - 50% — Foreigners
  - 10,000 — Foreigners

RULE 3:

			ABC			

- ABC → XYZ: 60,000
- ABC → FC: 40,000
- XYZ → Filipino-owned corporation: 60%
- XYZ → FC: 40%
- Filipino-owned corporation → FC: FA

RULE 4:

ABC | PUBLIC UTILITY

60,000 → XYZ

40,000 → Foreigner

XYZ → CORP 1 → CORP 2 → CORP 3

CORP 3:

50% → Filipino

50% → Foreigner

In an en banc decision, the Supreme Court clarified that the term “capital” in Section 11, Article XII of the 1987 Constitution refers to shares with voting rights, as well as with full beneficial ownership. This is precisely because the right to vote in the election of directors, coupled with full beneficial ownership of stocks, translates to effective control of a corporation.

Thus, for purposes of determining compliance with the constitutional or statutory ownership, the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote." What the Constitution requires is the full and legal beneficial ownership of 60% of the outstanding capital stock, coupled with 60% of the voting rights which must rest in the hands of Filipino nationals.

By way of example, ABC is a public utility corporation with 300,000,000 outstanding capital stock divided into 100,000 common shares, 100,000 voting preferred shares, and 100,000 non-voting preferred shares all with par value of P100 per share. In terms of Filipino and foreign share ownership, the outstanding shares are broken down as follows:

> 100,000 common shares

- 100% – Filipino-owned

> 100,000 voting preferred shares

- 60,000 – Filipino-owned
- 40,000 – Foreign-owned

> 100,000 non-voting preferred shares

- 80,000 – Foreign-owned
- 20,000 – Filipino-owned

If we follow the pronouncement in Gamboa v. Teves, the share ownership structure will not be compliant with the Constitution because the 60-40 Filipino-foreign ownership is not reflected in each class or kind of shares but based on Roy v. Herbosa, this will be compliant because Filipinos own at least 60% of the voting shares (100,000 common shares and 60,000 voting preferred shares or 160,000/200,000 shares) and at least 60% of the outstanding capital stock (100,000 common shares + 60,000 voting preferred shares + 20,000 non-voting preferred shares or 180,000/300,000 shares).

To require Filipino shareholders to acquire preferred shares that are substantially debts, in order to meet the " restrictive " Filipino ownership requirement may not bode well for the Philippine corporation and its Filipino shareholders. That stock corporations are allowed to create shares of different classes with varying features is a flexibility that is granted, among others, for the corporation to attract and generate capital (funds) from both local and foreign capital markets. This access to capital-which a stock corporation may need for expansion, debt relief/repayment, working capital requirement, and other corporate pursuits-will be greatly eroded with unwarranted limitations that are not articulated in the Constitution.

Doctrine of separate juridical personality

The subsidiary is not liable to absorb the employees of its parent company when the latter closed its business, particularly, if the subsidiary was set up long before the termination of employment such that it could not be said that the subsidiary was set up to evade the parent company's liabilities. This is true even if the parent company transferred its assets to the subsidiary because settled is the rule that generally, where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor. **Rommel M. Zambrano, et. al v. Philippine Carpet Manufacturing Corporation, et. al, G.R. No. 224099, June 21, 2017.**

Legal consequences of the doctrine of separate legal entity.

a. Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its stockholders. Stockholders are not entitled to possession of any definite portion of its property or assets. The stockholder is not a co-owner or tenant in common of the corporate property. Thus-

   i. The probate court hearing the settlement of estate of the deceased stockholder cannot order the lessees of the corporation to remit rentals to the estate's administrator. The decedent was not the owner of the rented property but only of the shares of the corporation that owns the property. **Manuela Azucena Mayor, Petitioner, - Versus - Edwin Tiu; G.R. No. 203770, Second Division, November 23, 2016**

b. As a general rule, directors, officers, or agents of a corporation cannot be held personally liable for the obligations incurred by the corporation, unless it can be shown that such director/officer/agent is guilty of gross negligence or bad faith or committed an unlawful act, and that the same was clearly and convincingly proven. Thus-

The President should not be held solidarily liable with the Corporation for the unpaid commissions due to a marketing agent because no commission of unlawful act, gross negligence or bad faith was alleged in the complaint, much less proven in the course of trial. **Mactan Rock Industries vs Germo, GR No. 228799, January 10, 2018.**

An officer may not be held liable for the corporation's labor obligations unless he acted with evident malice and/or bad faith in dismissing an employee. In this case, certain workers (employed as security guards) filed a claim for monetary benefits before the labor arbiter; were thereafter asked by the manager of the company to withdraw their complaint, otherwise, they would not be given duty assignment; and were eventually terminated after they refused to do so. It was held that the Chairman and President is not liable with the corporation for the payment of monetary awards in favor of the terminated employees since there is no showing that he acted in bad faith or with gross negligence in conducting the affairs of the corporation, or knowingly voted for or assented to the unlawful acts of the company. To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.

Although the pieces of evidence show that respondent signed the Trust Receipt Agreements, they do not show that he signed them in his personal capacity. Without any evidence that respondent personally bound himself to the debts of the company he represented, he cannot be held civilly liable under the Trust Receipt Agreements. **BDO Unibank, Inc. V. Antonio Choa G.R. No. 237553, 10 July 2019, THIRD DIVISION.**

c. The cause of action available to the corporation cannot be generally enforced by its director, officer or stockholder and vice-versa. Thus-

   i. The stockholders are not themselves the real parties in interest to claim and recover compensation for the damages arising from the wrongful attachment of corporate assets. Only the corporation is the real party in interest for that purpose. **Stronghold Insurance Company, Inc. vs. Tomas Cuenca, et. al., G.R. No. 173297, March 6, 2013.**

Doctrine of piercing the corporate veil

Doctrine of piercing the corporate veil applies to a nonstock non-profit corporation and natural persons.

The equitable character of the remedy permits a court to look to the substance of the organization and its decision is not controlled by the statutory framework under which the corporation was formed and operated. While it may appear to be impossible for a person to exercise ownership control over a nonstock non-profit corporation, a person can be held personally liable under the alter ego theory if the evidence shows that the person controlling the corporation did in fact exercise control even though there was no stock ownership.

In International Academy of Management and Economics (I/AME) Litton and Company, Inc. v. Litton and Company, Inc., however, the Supreme Court applied the reverse piercing doctrine and made a nonstock corporation liable for the debts of its member.

In this case, a lawyer-lessee failed to pay his rentals. The lessor filed a complaint for unlawful detainer and secured a favorable judgment. Judgment was not immediately executed but it was eventually revived. The sheriff levied a piece of real property in the name of International Academy of Management and Economics Incorporated (I/AME), a nonstock corporation, in order to execute the judgment against the lessee, who is a member of I/AME. The Supreme Court agreed with the Court of Appeals and sustained the levy, ruling that the corporation is an alter ego of the lessee and the lessee – the natural person is the alter ego of the corporation. The lessee falsely represented himself as president of the corporation in the Deed of Sale when he bought the property at a time when the corporation had not yet existed. Uncontroverted facts also revealed that the lessee and the corporation are one and the same person: The lessee is the conceptualizer and implementor of the corporation and the majority contributor of the corporation. I/AME is basically the corporate entity used by the lessee as his alter ego for the purpose of shielding his assets from the reach of his creditors. **International Academy of Management and Economics (I/AME) v. Litton and Company, Inc., G.R. No. 191525, December 13, 2017.**

Santos was a home-based remote Customer Service Representatives of CyberOne Pty. Ltd. (CyberOne AU), an Australian company. He became full time and permanent employee of CyberOne AU and was eventually promoted as Supervisor.

Mikrut, the Chief Executive Officer of CyberOne AU, asked Santos to become a dummy director and incorporator of CyberOne PH, a Philippine corporation owned fully by CyberOne AU. As a result, Santos was promoted as Manager and was given salary increase. Such salary increase was made to appear as paid for by CyberOne PH.

After a year, Mikrut reduced Santos' salary on account of the losses suffered by CyberOne AU. Santos was later on paid his final pay.

Santos filed a case for illegal dismissal against CyberOne AU and claimed payment of underpaid salaries and 13th month pay, moral and exemplary damages, and attorney's fees. In its defense, CyberOne AU alleged the National Labor Relation Commission (NLRC) has no jurisdiction over it because it is a foreign corporation not doing business in the Philippines. Santos countered that NLRC has jurisdiction over CyberOne AU since it is deemed doing business in the Philippines through CyberOne PH applying the doctrine of piercing the veil of corporate fiction.

Rule on the contention of Santos.

The contention of Santos is not meritorious.

At the outset, since there is an issue involving the piercing of the corporate veils of CyberOne PH and CyberOne AU, it must be emphasized that the facts and records of the case are bereft of any showing that jurisdiction over CyberOne AU, a foreign corporation, was obtained through a valid service of summons.

While it is true that CyberOne AU owns majority of the shares of CyberOne PH, this, nonetheless, does not warrant the conclusion that CyberOne PH is a mere conduit of CyberOne AU. The doctrine of piercing the corporate veil applies only in three basic instances, namely: (a) when the separate distinct corporate personality defeats public convenience, as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (b) in fraud cases, or when the corporate entity is used to justify a wrong, protect a fraud, or defend a crime; or (c) is used in alter ego cases, i.e., where a corporation is essentially a farce, since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

The application of the doctrine of piercing the corporate veil is unwarranted in the present case. First, no evidence was presented to prove that CyberOne PH was organized for the purpose of defeating public convenience or evading an existing obligation. Second, Santos failed to allege any fraudulent acts committed by CyberOne PH in order to justify a wrong, protect a fraud, or defend a crime. Lastly, the mere fact that CyberOne PH's major stockholders are CyberOne AU and Mikrut does not prove that CyberOne PH was organized and controlled and its affairs conducted in a manner that made it merely an instrumentality, agency, conduit or adjunct of CyberOne AU. In order to disregard the separate corporate personality of a corporation, the wrongdoing must be clearly and convincingly established.

Moreover, Santos failed to prove that CyberOne AU and Mikrut, acting as the Managing Director of both corporations, had absolute control over CyberOne PH. Even granting that CyberOne AU and Mikrut exercised a certain degree of control over the finances, policies and practices of CyberOne PH, such control does not necessarily warrant piercing the veil of corporate fiction since there was not a single proof that CyberOne PH was formed to defraud Santos or that CyberOne PH was guilty of bad faith or fraud.

Hence, the doctrine of piercing the corporate veil cannot be applied in the instant case. This means that CyberOne AU cannot be considered as doing business in the Philippines through its local subsidiary CyberOne PH. This means as well that CyberOne AU is to be classified as a non-resident corporation not doing business in the Philippines. **(Gesolgon v. CyberOne PH., Inc., G.R. No. 210741, 14 October 2020, J. Hernando)**

De facto corporations versus corporations by estoppel

Elements of a de facto corporation

The requisites of a de facto corporation are as follows:

a. Existence of a valid law under which it may be incorporated;
b. Attempt in good faith to incorporate; and
c. Actual use or exercise in good faith of corporate powers.

With regard to the second element, attempt in good faith to incorporate, at the very least, means obtaining a certificate of incorporation from the SEC. The execution of the articles of incorporation and adoption of bylaws, per se, are not enough to warrant de facto existence. In other words, there is no bona fide attempt to incorporate until the SEC at the very least issues the certificate of incorporation.

The filing of articles of incorporation and the issuance of the certificate of incorporation are essential for the existence of a de facto corporation. In fine, it is the act of registration with the SEC through the issuance of a certificate of incorporation that marks the beginning of an entity's corporate existence. **Missionary Sisters of Our Lady of Fatima v. Alzona, et al., G.R. No. 224307, August 6, 2018.**

Corporation by estoppel.

Who cannot invoke the doctrine of corporation by estoppel?

The doctrine of corporation by estoppel is founded on principles of equity and is designed to prevent injustice and unfairness. It applies when a non-existent corporation enters into contracts or dealings with third persons. In which case, the person who has contracted or otherwise dealt with the non-existent corporation is estopped to deny the latter's legal existence in any action leading out of or involving such contract or dealing. While the doctrine is generally applied to protect the sanctity of dealings with the public, nothing prevents its application in the reverse, in fact, the very wording of the law which sets forth the doctrine of corporation by estoppel permits such interpretation. Such that a person who has assumed an obligation in favor of a non-existent corporation, having transacted with the latter as if it was duly incorporated, is prevented from denying the existence of the latter to avoid the enforcement of the contract. In this case, while the donation was accepted at the time the donee was not yet incorporated, the subsequent incorporation of the donee-corporation and its affirmation of the recipient's authority to accept on its behalf cured whatever defect that may have attended the acceptance of the donation, applying the doctrine of corporation by estoppel under the Corporation Code. **Missionary Sisters of Our Lady of Fatima v. Alzona, et al., G.R. No. 224307, August 6, 2018.**

Doctrine of apparent authority

The doctrine of apparent authority provides that a corporation will be estopped from denying the agent’s authority if it knowingly permits one of its officers or any other agent to act within the scope of apparent authority, and it holds him out to the public as possessing the power to do those acts.

The Doctrine of Apparent Authority is determined by the acts of the principal and not by the acts of the agent. As applied to corporations, the doctrine of apparent authority provides that "a corporation is estopped from denying the officer's authority if it knowingly permits such officer to act within the scope of an apparent authority, and it holds him out to the public as possessing the power to do those acts.” In a case involving a Toll Agreement (under which Agro agreed to dress the chickens supplied by Vitarich for a toll fee), amendments to the toll fee agreements approved and carried out by the officer of Agro were considered binding on the latter, despite the lack of board authority, under this doctrine of apparent authority. Evaluating the evidence presented by Vitarich, the conduct by which Agro clothed its officer with authority is evident on the following: first, in over a span of two (2) years, with over eighty nine (89) billings and three (3) instances of amendments, Agro never contested the amended toll fees; second, even after receipt of several demand letters from Vitarich, Agro never made an issue of the amended toll fees, and only raised the same in its Answer; and third, Agro accepted the benefits arising from the amendments through the extension of the period for its payment of the P20 million deposit (brought about by the decrease in the percentage of billings to be deducted from the P20 million deposit of Vitarich) **AGRO FOOD PROCESSING CORP. vs. VITARICH CORPORATION G.R. No. 217454. January 11, 2021, (Caguioa, J.)**

Definition of trust fund doctrine

The trust fund doctrine provides that subscriptions to the capital stock of a corporation constitute a fund to which the creditors have a right to look for the satisfaction of their claims. In a sense, they have to be unimpaired for the protection of creditors. These cover the entire consideration received for the issuance of no par value shares or the aggregate amount for the par value shares issued by the corporation. **Ong v. Tiu, G.R. Nos. 144476 and 144629, April 8, 2003.**

It must be noted, however, that the trust fund doctrine is not limited to the stockholders' subscriptions. The scope of the doctrine encompasses not only the capital stock but also other property and assets generally regarded in equity as a trust fund for the payment of corporate debts. **Halley v. Printwell, Inc., G.R. No. 157549, May 30, 2011; 2015 and 2019 Bar Exams.**

The Trust Fund Doctrine is violated in the following cases:

a. The corporation has distributed its capital among the stockholders without providing for the payment of creditors.
b. It released the subscribers to the capital stock from their unpaid subscriptions.
c. It transferred corporate property in fraud of its creditors.
d. It distributed properties to stockholders except by way of dissolution and liquidation, the redemption of redeemable shares, and reduction of capital stock. **Ong v. Tiu, G.R. Nos. 144476 and 144629, April 8, 2003; 2007 and 2015 Bar Exams.**
e. When it declared dividends without unrestricted retained earnings.
f. When it acquired its shares without unrestricted retained earnings.
g. When it pays dissenting stockholders exercising appraisal right without unrestricted retained earnings.

APIC forms part of the equity emanating from the original subscription agreement. APIC, as a premium, forms part of the capital of the corporation and therefore, falls within the purview of the trust fund doctrine.

In Halley v. Printwell, Inc., there was no insolvency proceeding and yet the Supreme Court affirmed the right of the creditor to enforce the payment of the unpaid subscription in the same collection suit against the corporation. It is submitted that the appropriate remedy is to enforce the judgment against the corporation first and it is only when the writ of execution is returned unsatisfied for lack of leviable assets sufficient to satisfy the judgment debt that the judgment against the unpaid subscriber may be enforced. Otherwise, the unpaid subscriber effectively becomes solidarily liable with the corporation. Such solidary liability has no basis in law.

In another case though (penned by Justice Caguioa), the Court, citing Halley v Printwell, recognized three instances when the creditor is allowed to maintain an action upon any unpaid subscriptions based on the trust fund doctrine: (1) where the debtor corporation released the subscriber to its capital stock from the obligation of paying for their shares, in whole or in part, without a valuable consideration, or fraudulently, to the prejudice of creditors; and (2) where the debtor corporation is insolvent or has been dissolved without providing for the payment of its creditors. . In this case, the Supreme Court ruled that the trust fund doctrine can not be invoked to justify a collection suit against both the corporation-lessee and its stockholders since the lessor did not plead the insolvency or dissolution of the corporation. **Jennifer M. Enano-Bote, et al v. Jose Ch Alvarez and SBMA G.R. No 223572. November 10, 2020, (J. Caguioa)**

Board of Directors and trustees

Business judgment rule

Questions of policy and management are left to the sound discretion and honest decision of the officers and directors of a corporation, and the courts are without authority to substitute their judgment for the judgment of the board of directors. The board is the business manager of the corporation, and so long as it acts in good faith, its orders are not reviewable by the courts. **Cua, Jr. v. Tan, G.R. Nos. 181455-56 and 182008, December 4, 2009; Sales v. Securities and Exchange Commission, G.R. No. 54330, January 13, 1989.**

Courts are barred from intruding into the business judgments of the corporation when the same are made in good faith. **Balinghasay v. Castillo, G.R. No. 185664, April 8, 2015.**

If a hold-over director resigns, the vacancy is due to the expiration of term and not resignation. Accordingly, the vacancy can only be filled by the stockholders in a meeting called for the purpose and not by the board of directors even though the remaining directors may still constitute a quorum. **Valle Verde, ibid., see discussion on "Vacancies in the Office of Director or Trustee".**

The election of the new members of the Board of Directors of the Condominium Corporation ("CondoCor") has been nullified due to a.) lack of quorum and b.) disqualification of the nominee-directors of the developer for the position. Consequently, it caused the nullification of the subsequent organizational meeting and election of officers. Under the circumstances, may the incumbent Board of Directors continuously function in a "hold-over" capacity until a new set of members of the Board of Directors are elected and qualified? If the answer is in the affirmative, is the authority of the Board of Directors limited only to handle the corporation's daily operations such as payment of utilities, salaries, the management of personnel, and other issues/problems that requires immediate attention?

The old or incumbent Board of Directors can act as a legitimate managing body pending the election of the successor directors. Pursuant to the hold-over principle as provided in Section 22 of the RCC the incumbent Board of Directors shall serve as directors until their successors are elected and qualified in accordance with the RCC or the Bylaws.

On the other hand, the position that the hold-over Board's authority is limited only to "handling the corporation's daily operation such as payment of utilities, salaries, the management of personnel and other issues/problems that requires immediate attention" is mistaken. The RCC expressly states that the "corporate powers of all corporations formed under the Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees." Thus, the Board of Directors has the authority to: (1) exercise all powers provided for under the RCC; (2) conduct all business of the corporation; and (3) control and hold all property of the corporation.

CMCI is required by the Securities and Regulation Code ("SRC") to have two (2) independent directors in its Board. Thus, the Bylaws of CMCI provides for the segregation of casting of votes for the election of their regular and independent directors, as follows:

"1. That the segregation of the votes for regular and independent directors is acceptable, such that one vote cast per independent director (since there are only two nominees for independent director) would already be sufficient to elect them. On the other hand, for the regular directors, the nominees with the highest votes cast in their favor would be elected. Under this procedure, the losing nominee for regular director, even if he/she gets a higher number of votes than the independent directors, would still not be elected."

Is the segregate casting of votes for regular and independent directors sanctioned by the Corporation Code?

The segregate casting of votes for regular and independent directors is not contrary to the Corporation Code. The segregation of the voting for regular directors and independent ones is a practical device in order to ensure that at least two (2) independent directors are elected to the CMCI's member Board of Directors in accordance with SRC Rule 38. **Procedure for Election of Directors, SEC-OGC Opinion No. 19-11, March 23, 2011.**

Election and removal of directors

EPCC is a nonstock corporation. Article 6 of EPCC Articles of Incorporation states: "That the number of trustees of the association shall be 15."

Based on the foregoing:

a. **Should there be 11 nominees to the Board of Trustees, which is below the required number of trustees to be elected [15] as provided by the Corporation's Articles of Incorporation, are all 11 considered automatically elected regardless of the number of votes received by each?**
b. **What is the minimum number of trustees/nominees in order for the election to be valid?**

a. While the Corporation Code requires the presence of at least a majority of the members of a nonstock corporation for the election of its Board, it does not require such number of votes for one to be declared elected. Under the aforecited provision, the candidates receiving the highest number of votes shall be declared elected.

Thus, for a candidate to be elected as trustee, said candidate must be among the group of candidates who received the highest number of votes. In case the number of candidates does not exceed the number of seats in the board, said candidates, provided they received votes, can be said to have received the highest number of votes, as the law requires only plurality of the votes cast at the election.

b. SEC has previously opined that an election of less number of directors than the number which the meeting was called to elect is valid as to those actually elected.

Thus, the stockholders or members of a corporation may opt to elect a number of directors/trustees less than the number of directors/trustees as fixed in the articles of incorporation. Such a situation would merely give rise to a vacancy in the board, which may be later filled up. The power of the board is not suspended by vacancies in the board unless the number is reduced below a quorum.

The number of candidates elected, however, is not without importance.

The grant of corporate power is to the Board as a body, and not to the individual members thereof, and that the corporation can be bound only by the collective act of the Board. In relation to this, the Board can only transact business if it reaches a quorum.

Emergency quorum

What happens if no election is held, or the owners of majority of the outstanding capital stock or majority of the members entitled to vote are not present in person, by proxy, or through remote communication or not voting in absentia at the meeting?

The meeting may be adjourned and the outgoing directors or trustee shall serve in a hold-over capacity.

The non-holding of elections and the reasons therefor shall be reported to the SEC within 30 days from the date of the scheduled election. The report shall specify a new date for the election, which shall not be later than 60 days from the scheduled date.

If no new date has been designated, or if the rescheduled election is likewise not held, the SEC may, upon the application of a stockholder, member, director or trustee, and after verification of the unjustified non-holding of the election, summarily order that an election be held. The SEC shall have the power to issue such orders as may be appropriate, including orders directing the issuance of a notice stating the time and place of the election, designated presiding officer, and the record date or dates for the determination of stockholders or members entitled to vote.

Notwithstanding any provision of the articles of incorporation or bylaws to the contrary, the shares of stock or membership represented at such meeting and entitled to vote shall constitute a quorum for purposes of conducting an election under this section.

Requisites to create an Emergency Board

a. The vacancy prevents the remaining directors from constituting a quorum;
b. Emergency action is required to prevent grave, substantial, and irreparable loss or damage to the corporation;
c. The vacancy may be temporarily filled from among the officers of the corporation;
d. The appointment must be made by the unanimous vote of the remaining directors or trustees; and
e. The action by the designated director or trustee shall be limited to the emergency action necessary, and the term shall cease within a reasonable time from the termination of the emergency or upon the election of the replacement director or trustee, whichever comes earlier.

The corporation must notify the SEC within three (3) days from the creation of the emergency board, stating therein the reason for its creation.

Instances when personal liability may attach to directors, trustees, or officers of the corporation.

A director, officer, or trustee may be held personally liable in the following cases:

a. Knowingly voting for or assenting to patently unlawful acts of the corporation;
b. Gross negligence or bad faith in directing the affairs of the corporation;
c. Acquiring any personal or pecuniary interest in conflict with his duty as director or trustee or officer resulting in damage to the corporation;
d. He consents to the issuance of watered stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto;
e. He agrees to hold himself personally liable with the corporation; and

f. He is made, by a specific provision of law, to personally answer for his corporate action. **Pioneer Insurance Surety Corporation v. Morning Star Travel & Tours Inc., G.R. No. 198436, July 8, 2015; Carag v. NLRC, G.R. No. 147590, April 2, 2007; Atrium Management v. Court of Appeals, et al., G.R. No. 109491, February 28, 2001; John F. McLeod v. National Labor Relations Commission First Division, et al., G.R. No. 146667, January 23, 2007; Philex Gold Philippines v. Philex Bulawan Supervisors Union, G.R. No. 149758, April 25, 2005.**

There is no hard and fast rule as to when an act amounts to ordinary or gross negligence or bad faith. It depends on the surrounding circumstances.

However, before a director or officer of a corporation can be held personally liable for corporate obligations, the following requisites must concur:

i. The complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and

ii. The complainant must clearly and convincingly prove such unlawful acts, negligence, or bad faith.

It should be noted that the stockholders are not included in the enumeration of persons who may be held personally liable. Stockholders are liable only to the extent of their subscription unless they also act as directors, officers, or agents of the corporation.

On whether payment of bonuses to officers despite knowledge of substantial losses of the company is a criminal offense under Section 144 of the Corporation Code (now Section 170 of the RCC), it was held that the lack of specific language imposing criminal liability in Sections 31 (gross negligence and bad faith in conducting the affairs of the corporation) and 34 (doctrine of corporate opportunity) shows legislative intent to limit the consequences of their violation to the civil liabilities mentioned therein. Had it been the intention of the drafters of the law to define Sections 31 and 34 as offenses, they could have easily included similar language as that found in Section 74 (violation of right of inspection).

The Corporation Code was intended as a regulatory measure, not primarily as a penal statute. Sections 31 and 34 in particular were intended to impose exacting standards of fidelity on corporate officers and directors but without unduly impeding them in the discharge of their work with concerns of litigation. Considering the object and policy of the Corporation Code to encourage the use of the corporate entity as a vehicle for economic growth, we cannot espouse a strict construction of Sections 31 and 34 as penal offenses in relation to Section 144 in the absence of unambiguous statutory language and legislative intent to that effect.

The liability of the erring director, trustee or officer under Section 31 of the Corporation Code (for gross negligence and bad faith in conducting the affairs of the corporation) being purely civil, i.e., "all damages resulting [from its violation] suffered by the corporation, its stockholders or members and other persons," the Civil Code is the controlling law to determine prescription of action, particularly, Article 1146 of the Civil Code which provides for a four year period for an action upon an injury to the rights of the plaintiff, and quasi-delict. **United Coconut Planters Bank v. Secretary of Justice, et al., G.R. No. 209601, January 12, 2021 (J. Caguioa)**

Proprietary rights

It is not necessary for the corporation to seek prior approval/advice from the SEC to declare cash and stock dividend. However, if the stock dividend declaration requires an increase of authorized capital stock, an application therefor is mandated to be filed with the SEC pursuant to Section 37 of the RCC. **Re: SEC Approval of Issuance of Cash and Stock Dividends, SEC-OGC Opinion No. 23-19, June 17, 2019.**

Did the RCC de-criminalize violation of stockholder’s right of inspection?

The RCC did not de-criminalize the violation of stockholder’s right of inspection. It only removed the penalty of imprisonment and limited the penalty to monetary fines.

Is an action to recover possession of a stock transfer from the former secretary of the corporation enforceable by criminal prosecution based on violation of the stockholders' right of inspection?

No, a criminal action based on the violation of a stockholder's right to examine or inspect the corporate records and the stock and transfer book of a corporation can only be maintained against corporate officers or any other persons acting on behalf of such corporation. A violation of Section 74 of the OCC (now, Section 73 of the RCC) contemplates a situation wherein a corporation, acting through one of its officers or agents, denies the right of any of its stockholders to inspect the records, minutes and the stock and transfer book of such corporation.

The proprietary right of the corporation to be in possession of such records and book, though certainly legally enforceable by other means, cannot be enforced by a criminal prosecution based on a violation of the Corporation Code. **Aderito Z. Yujuico v. Cezar T. Quiambao, et al., G.R. No. 180416, June 2, 2014.**

Right of inspection not extinguished by the dissolution of the corporation.

The termination of the life of a juridical entity does not, by itself, cause the extinction or diminution of the rights and liabilities of such entity nor those of its owners and creditors. Thus, the revocation of the corporation's registration does not automatically strip off the stockholder of his right to examine pertinent documents and records of the corporation. **Alejandro· D.C. Roque v. People of the Philippines, G.R. No. 211108, June 7, 2017.**

The rights and remedies against, or liabilities of, the officers shall not be removed or impaired by reason of the dissolution of the corporation. Corollary then, a stockholder's right to inspect corporate records subsists during the period of liquidation. Accordingly, if the stockholder was deprived of the exercise of an effective right of inspection, offenses had in fact been committed, regardless of lack of criminal intent. **Alfredo L. Chua v. People of the Philippines, G.R. No. 216146, August 24, 2016.**

Philippine Stock Exchange, Inc. (“PSE”) has two prospective strategic investors which manifested its intent to subscribe to the unsubscribed shares of the PSE. The legal counsel of the PSE posits that the pre-emptive right of the existing shareholders does not apply to the intended subscription based on the following grounds: (1) the shares to be offered to the strategic investors are not new shares but are sourced from the PSE's unsubscribed capital stock; and/or, (2) the sale to the strategic investors is in furtherance of the ownership limits prescribed by Section 33.2 (c) of the Securities and Regulation Code (“SRC”) which provides for the maximum ownership of the stockholders of the PSE, and thus falls under the exceptions recognized by Section 38 of the RCC. Is the position of legal counsel of PSE tenable?

Section 38 of the RCC explicitly states that unless denied in the articles of incorporation or the issuance falls under any of the enumerated exceptions, all existing stockholders of record are entitled to exercise pre-emptive right to subscribe to “all issues or disposition of shares of any class” of a stock corporation.

Since Section 38 of the RCC uses the phrase "all issues or disposition of shares of any class," pre-emptive right extends not only to the issuance of new shares resulting from an increase in capital stock but also to the issuance of previously unsubscribed shares which form part of the existing authorized capital stock, as well as to the disposition of treasury shares.

Considering that Section 38 of the RCC does not distinguish between newly issued shares and previously unsubscribed shares, the pre-emptive right is available to existing shareholders of PSE upon its issuance of unsubscribed authorized capital stock to potential strategic investors.

Neither does the issuance of shares to potential strategic investors fall under the exceptions enumerated in Section 38 of the RCC. It is apparent from Section 38 of the RCC that pre-emptive right does not extend to the issue of shares made in compliance with laws requiring stock offerings or minimum stock ownership by the public. However, PSE's issuance of shares to potential strategic investors to comply with Section 33.2 (c) of the SRC cannot be considered as one in compliance with laws requiring stock offerings or minimum stock ownership. Section 33.2 (c) of the SRC clearly provides a maximum, not the minimum, limit on stock ownership, and does not necessarily require the issuance of shares to comply with the legal requirements provided therein. **Availability of Pre-Emptive Rights; Ownership Restrictions in the PSE, SEC-OGC Opinion No. 41-11, October 5, 2011.**

Intra-corporate disputes (individual vs representative vs derivative suits)

When is a dispute considered intra-corporate in nature?

A dispute is considered intra-corporate in nature if it satisfies the relationship test and nature of the controversy test. The two tests must concur. Under the relationship test, the parties in dispute must be any one of the following: (a) between the corporation, partnership, or association and the public; (b) between the corporation, partnership, or association and its stockholders, partners, members, or officers; (c) between the corporation, partnership, or association and the State as far as its franchise, permit or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves.

Jurisprudence where the Supreme Court ruled that the case is not intra-corporate in nature.

A complaint for damages filed by a member of the subdivision homeowners association for the harm he suffered when another member maliciously closed a portion of the plaintiff's drainage pipe which led to the overflowing of his septic tank is not an intra corporate controversy following nature of the controversy test. **Gulfo vs. Ancheta, G.R. No. 175301, August 15, 2012.**

Test to determine if the removal of an officer of the corporation is a labor dispute or an intra-corporate controversy

The test to determine if the removal of an officer of the corporation is a labor dispute or an intra-corporate controversy is the nature of the office the officer is occupying in the corporation. If he is holding an office specified in the in the charter or bylaws, then he is a corporate officer. Any issue pertaining to his removal is intra-corporate in nature and therefore cognizable by the appropriate Regional Trial Court. If the officer is not holding a bylaws position, his removal is considered a labor dispute, falling within the jurisdiction of the labor arbiter.

Section 25 of the Corporation Code (now Section 24 of the RCC) explicitly provides for the election of the corporation's president, treasurer, secretary, and such other officers as may be provided for in the by-laws. In interpreting this provision, the Court has ruled that if the position is other than the corporate president, treasurer, or secretary, it must be expressly mentioned in the by-laws in order to be considered as a corporate office.

This means therefore that the removal of any of the statutory officers, President, Secretary and Treasurer (even compliance officer for corporations vested with public interest) is an intra-corporate dispute. It is because being statutory officers, their positions ought to be specified in the bylaws too. **Norma D. Cacho and North Star International Travel, Inc. vs. Virginia D. Balagtas, G.R. No. 202974. February 7, 2018.**

Company X issued preferred shares to A. The terms and conditions of the certificate of stock entitle the holder of preferred shares to 1% quarterly interest as a quarterly dividend. After the end of the first quarter, A demanded the interest due but Company X declined to pay for lack of unrestricted retained earnings. Can A compel the payment of the quarterly interest?

No. Dividends cannot be declared for preferred shares which were guaranteed a quarterly dividend if there are no unrestricted retained earnings. “Interest-bearing stocks,” on which the corporation agrees absolutely to pay interest before dividends are paid to common stockholders, is legal only when construed as requiring payment of interest as dividends from net earnings or surplus only. **Republic Planters Bank v. Agana, G.R. No. 51765, March 3, 1997.**

Note however what the Supreme Court, through Justice Caguioa, stated in Roy v. Herbosa .A mandatory redeemable preference shares may be issued by a corporation to augment its financing. In form, the mandatory redeemable preferred shares are equity instruments but in substance, they are debt instruments and liabilities of the issuing corporation because the fixed dividend payment and the mandatory redemption feature constitute a contractual obligation to deliver cash.

The foregoing rule should, however, be construed to mean, based on Republic Planters Bank case, that the corporation has available surplus profit to pay dividends or sufficient funds to redeem the redeemable shares.

The Articles of Incorporation of a corporation provides for voting rights privilege of its founders' shares, as follows:

"In terms of voting rights, FOUNDERS' shares shall have a 1:10 ratio as opposed to 1:1 ratio for the COMMON shares. In the other words, one FOUNDERS' share is equivalent to ten votes. All shares regardless of whether it is FOUNDERS' or COMMON shall be allowed to vote on all matters of the holding corporation, including the right to vote and be voted for in the election of directors."

Is the 1:10 voting rights ratio for founders' shares subject to a limited period not to exceed five (5) years provided under Section 7 of the RCC?

The 1:10 voting rights ratio for founders' shares is not subject to the limited period not to exceed five (5) years provided under Section 7 of the RCC since this provision only applies to the exclusive right to vote and be voted for in the election of directors. **Close Holding Corporation; Founder's Shares, SEC-OGC Opinion No. 02-10, January 15, 2010.**

The law clearly sets out the parameters when a corporation may reacquire its shares and convert them into treasury shares. According to Section 9 of the Corporation Code , "treasury shares are shares of stock which have been issued and fully paid for, but subsequently reacquired by the issuing corporation by purchase, redemption, donation or through some other lawful means." Apart from reacquiring the shares through some lawful means, the Corporation Code is also explicit that while a corporation has the power to purchase or acquire its own shares, the corporation must have unrestricted retained earnings in its books to cover the shares to be purchased or acquired.

In addition, in cases where the reason for reacquiring the shares is because of the unpaid subscription, the Corporation Code is likewise explicit that the corporation must purchase the same during a delinquency sale and not to direct the reduction on the number of subscribed shares to what has been paid. Simply agreeing in a meeting for their reduction, thereby releasing the stockholder from his obligation to pay the unpaid subscriptions, cannot be the mode by which said unpaid subscriptions are settled. To allow corporations to do such an act would violate the aforementioned trust fund doctrine in corporation law.

Verily, if it were true that subscriber had unpaid subscriptions, it was invalid for the Board of Directors to waive such payment, for it would amount to a decrease in the corporation's capital stock which could not be accomplished without the formalities under Section 38 of the Corporation Code (Section 37 under the Revised Corporation Code) which includes, among others, the prior approval of the SEC. **Salido, Jr. v. Aramaywan Metals, G.R. No. 233857, March 18, 2021, as penned by J. Caguioa)**

May a corporation consider the portion paid by a shareholder as full payment for the corresponding number of shares and cancel the subscription as to the rest?

The SEC has consistently opined that a subscription is one, entire and indivisible whole contract. This indivisibility of subscription is absolute as Section 63 of the RCC speaks no exception.

The purpose of the doctrine is to prevent the partial disposition of a subscription, which is not fully paid, because if it is permitted and the stockholder subsequently becomes delinquent in the payment of his subscription, the corporation may not be able to sell as many of his subscribed shares as would be necessary to cover the total amount from him pursuant to Section 67 of the RCC.

Applying the aforementioned doctrine, a corporation cannot issue certificates of stock for the portion of the subscription that is paid and cancel the portion which remains unpaid as it violates the doctrine of indivisibility of subscription contracts. In effect, it is also condonation of part of the subscription of a stockholder, which is violative of the trust fund doctrine. **Re: Condonation of Subscriptions Receivables or Cancellation of Subscriptions, SEC-OGC Opinion No. 50-19, October 11, 2019.**

Mr. A is a stockholder/founding member of Rural Bank of Maria Aurora Incorporated, (RBMAI for brevity). Previously, he was able to sell shares of stock of RBMAI.

However, at present, Mr. A could not sell his shares to outsiders since the new manager/majority stockholder imposed a new policy that the shares should be sold only to insiders, particularly, to the employees who are also stockholders of RBMAI. Mr. A is now questioning the new policy since these employees/stockholders buy at very low prices while there are third-party buyers willing to buy his shares at a higher price.

Is the restriction on the transfer of shares to insiders a valid restriction?

The company policy restricting the transferability of shares is not valid.

In order to be valid and enforceable, any restriction on the transfer of shares of stock must be explicitly provided for in the articles of incorporation and in the certificate of stocks.

Restrictions on the transfer of shares are essentially contractual in nature between the stockholders and the corporation. Hence, such restrictions must be embodied in their contract, i.e., the articles of incorporation.

Considering further that shares of stock burdened with restrictions on transferability may fall into the hands of innocent purchasers, the SEC, as a matter of policy, also requires that the restrictions on the transfer of shares must be printed in the stock certificates. **Re: Restrictions on Transferability of Shares, SEC Opinion No. 22-05, December 12, 2005.**

Dissolution and liquidation

Thus, a real estate mortgage executed by a corporation after its dissolution is void. The redemption of the mortgaged property is likewise void for being inconsistent with liquidation. A real estate mortgage is not part of the liquidation powers that could have been extended to the corporation. It could not have been for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets.

Consequently, any redemption exercised by the Corporation pursuant to this void real estate mortgage is likewise void, and could not be given any effect. If a real estate mortgage agreement was entered prior to its dissolution, then the redemption of the subject property, even if already after its dissolution (as long as it would not exceed three [3] years thereafter), would still be valid because of the liquidation/winding up powers accorded by the Corporation Code. **Dr. Gil J. Rich v. Guillermo Paloma III, G.R. No. 210538, March 7, 2018.**

Barn filed an action to enjoin SN Company's board of directors from selling a parcel of land registered in the corporation's name, to compel the corporation to recognize Barn as a stockholder with 50 shares, to allow him to inspect the corporate books, and to claim damages against the corporation and its officers. Subsequently, the corporation and the individual defendants moved to dismiss the complaint since the corporation's certificate of registration was revoked by the SEC during the pendency of Barn's case on the ground of noncompliance with reportorial requirements. The special commercial court granted the motion and reasoned that only action for liquidation of assets can be maintained when a corporation has been dissolved and Barn cannot seek reliefs which in effect lead to the continuation of the corporation's business. The court also ruled that it lost jurisdiction over the intra-corporate controversy upon the dissolution of the corporation.

a. Was the court correct?

The court is not correct. An action to be recognized as a stockholder and to inspect corporate documents is an intra-corporate dispute which does not constitute a continuation of the business. The dissolution of the corporation simply prohibits it from continuing its business. Moreover, under Section 145 of the OCC (now Section 184 of the RCC), no right or remedy in favor of or against any corporation, its stockholders, members, directors and officers shall be removed or impaired by the subsequent dissolution of the corporation.

The dissolution does not automatically convert the parties into strangers or change their intra-corporate relationship. Neither does it terminate existing causes of action which arose because of the corporate ties of the parties. The cause of action involving an intra-corporate controversy remains and must be filed as an intra-corporate dispute despite the subsequent dissolution of the corporation. **Aguirre v. FQB +7, Inc., G.R. No. 170770, January 9, 2013.**

b. Four (4) years later, SN Company files an action against Barn to recover corporate assets allegedly held by the latter for liquidation. Will this action prosper?

The action cannot prosper because the corporation has no more legal capacity to sue after three (3) years from its dissolution. **Alabang Development Corporation v. Alabang Hills Village Association, G.R. No. 187456, June 2, 2014.**

It would have been different if the complaint was filed during the three-year liquidation period for in such case, the action may be continued even thereafter.

Liquidation after three (3) years

Based on the above provision, there is, as a general rule, no juridical personality after dissolution. If there is, it is only a juridical personality to serve but one purpose — liquidation, culminating in the disposition and distribution of the dissolved corporation's remaining assets. As pointed out, any matter entered into that is not for the purpose of liquidation will be a void transaction because of the non-existence of the corporate party.

While Section 139 of the RCC gives a dissolved corporation three (3) years to continue as a body corporate for purposes of liquidation, the disposition of the remaining undistributed assets must necessarily continue even after such period. This should not, however, be construed to prevent a corporation from pursuing activities which would complete the final liquidation of a dissolved corporation. Accordingly, it should be allowed to continue liquidating its remaining assets in order to complete the process of dissolving the corporation. Likewise, it should be allowed to distribute the proceeds from the said disposition to its stockholders or creditors if any. A contrary interpretation would have unjust and absurd results.

In Clemente v. Court of Appeals, the Supreme Court affirmed that if the three-year extended life has expired without a trustee or receiver having been expressly designated by the corporation within that period, the board of directors (or trustees) itself, following the rationale of the Supreme Court's decision in Gelano v. Court of Appeals, G.R. No. L-39050, February 24, 1981, maybe permitted to continue as "trustees" by legal implication to complete the corporate liquidation. Still, in the absence of a board of directors or trustees, those having any pecuniary interest in the assets including not only the shareholders but likewise the creditors of the corporation, acting for and on its behalf, might make proper representations with the SEC which has primary and sufficiently broad jurisdiction in matters of this nature, for working out a final settlement of the corporate concerns. **See SEC-OGC Opinion No. 31-09, December 9, 2009.**

Nonstock corporations

BCDA is a government instrumentality vested with corporate powers. As such, it is exempt from the payment of docket fees. A government instrumentality may be endowed with corporate powers and at the same time retain its classification as a government "instrumentality" for all other purposes.

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.

A stock corporation is one whose "capital stock is divided into shares and authorized to distribute to the holders of such shares dividends." BCDA has an authorized capital of Php100 Billion, however, it is not divided into shares of stock. BCDA has no voting shares. There is likewise no provision which authorizes the distribution of dividends and allotments of surplus and profits to BCDA's stockholders. Hence, BCDA is not a stock corporation. Section 8 of R.A. No. 7227 provides an enumeration of BCDA's purposes and their corresponding percentage shares in the sales proceeds of BCDA. Section 8 likewise states that after distribution of the proceeds acquired from BCDA's activities, the balance, if any, shall accrue and be remitted to the National Treasury. The National Treasury is not a stockholder of BCDA. Hence, none of the proceeds from BCDA's activities will be allotted to its stockholders. BCDA also does not quality as a non-stock corporation because it is not organized for any of the purposes mentioned under Section 88 of the Corporation Code. BCDA is organized for a specific purpose — to own, hold and/or administer the military reservations in the country and implement its conversion to other productive uses. BCDA is neither a stock nor a non-stock corporation. **Bases Conversion and Development Authority v. CIR, GR. No. 205466, January 11, 2021, J. Hernando**

Foreign corporations

Jurisprudence where the Supreme Court ruled that the activities of the foreign corporation are not deemed as doing business.

a. A foreign corporation may file a petition to enforce a foreign arbitral award even though it is not licensed to do business in the Philippines. When a party enters into a contract containing a foreign arbitration clause and submits itself to arbitration, it becomes bound by the contract, by the arbitration and by the result of arbitration, conceding thereby the capacity of the other party to enter into the contract, participate in the arbitration and cause the implementation of the result. **Tuna Processing, Inc. v. Philippine Kingford, Inc., G.R. No. 185582, February 29, 2012.**

b. A foreign corporation, if it is a holder in due course of a draft, can file a suit in the Philippines to enforce the warranties of the drawer and endorser after the drawee dishonored the instrument. The foreign corporation does not need a license to sue because it sued upon a singular and isolated transaction. **Llorente v. Star City Pty Limited, G.R. Nos. 212050 and 212216, January 15, 2020.**

c. Subscribing to shares to stock of a domestic corporation, maintaining investments therein and deriving dividend income therefrom does not qualify as “doing business” contemplated under R.A. No. 7042. Hence, the foreign corporation is not required to secure a license before it can file a claim for tax refund. **Commissioner of Internal Revenue v. Interpublic Group of Companies, G.R. No. 207039, August 14, 2019.**

Mere investment as a shareholder by a foreign corporation in a duly registered domestic corporation shall not be deemed "doing business" in the Philippines. It is clear then that the IGC's act of subscribing shares of stocks from McCann, a duly registered domestic corporation, maintaining investments therein, and deriving dividend income therefrom, does not qualify as "doing business" contemplated under R.A. No. 7042. Hence, the IGC is not required to secure a license before it can file a claim for tax refund. **Commissioner of Internal Revenue v. Interpublic Group of Companies, G.R. No. 207039, August 14, 2019**

Necessity of a license to do business

A foreign corporation that is not doing business in the Philippines must disclose such fact if it desires to sue in Philippine courts under the "isolated transaction rule" because without such disclosure, the court may choose to deny it the right to sue. The qualifying circumstance that if it is doing business in the Philippines, it is duly licensed or if it is not, it is suing upon a singular and isolated transaction, is an essential part of the element of the plaintiffs capacity to sue and must be affirmatively pleaded. **Quintin Artacho Llorente V. Star City Pty Limited, Represented By The Jimeno And Cope Law Offices As Attorney-In-Fact G.R. No. 212050, January 15, 2020, First Division (Caguioa, J.)**

State the principles governing the right to sue and suability of foreign corporations.

The following principles governing a foreign corporation's right to sue in local courts have long been settled, to wit:

a. if a foreign corporation does business in the Philippines without a license, it cannot sue before the Philippine courts;
b. if a foreign corporation is not doing business in the Philippines, it needs no license to sue before Philippine courts on an isolated transaction or on a cause of action entirely independent of any business transaction; and
c. if a foreign corporation does business in the Philippines with the required license, it can sue before Philippine courts on any transaction.

It is not the absence of the prescribed license but the "doing (of) business" in the Philippines without such license which debars the foreign corporation from access to our courts. **MR Holdings, Ltd. v. Sheriff Carlos P. Bajar, Sheriff Ferdinand M. Jandusay, Solidbank Corporation, and Marcopper Mining Corporation, G.R. No. 138104, April 11, 2002.**

Foreign corporations

Characteristics of OPC

- The single stockholder shall be the sole director and president of the OPC.
- The single stockholder is required to designate a nominee and an alternate nominee who shall, in the event of the single stockholder’s death or incapacity, take the place of the single stockholder as director and shall manage the corporation’s affairs.
- The liability of the single stockholder shall be limited to his subscription to the corporation unless there is ground to pierce to pierce the veil of corporate fiction.

Requisites for the limited liability of the single stockholder of OPC.

The liability of the sole stockholder shall be limited to his subscription to the corporation if the following requisites are present:

a. The sole shareholder must show that the corporation was adequately financed;
b. He must prove that the property of the OPC is independent of the stockholder's personal property; and
c. There is no ground to pierce the veil of corporate fiction.

Otherwise, the sole stockholder shall be jointly and severally liable for the debts and other liabilities of the OPC.

Merger and Consolidation

Since BSA incurred delay in the performance of its obligations and subsequently cancelled the omnibus line without the mortgagor's consent, its successor BPI cannot be permitted to foreclose the mortgage for the reason that its predecessor BSA violated the terms of the contract even prior to the mortgagor's justified refusal to continue paying the amortizations. As such, BPI is liable for BSA, its predecessor. BPI did not only acquire all the rights, privileges and assets of BSA but likewise acquired the liabilities and obligations of the latter as if BPI itself incurred it. **Spouses Ong v. BPI Family Savings Bank, G.R. No. 208638, January 14, 2018.**

IV. INTELLECTUAL PROPERTY CODE

(R.A. No. 8293; exclude implementing rules and regulations)

Differences among copyright, trademarks and patents

a. Definition

A trademark is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods [Section 121.1, IPC]. In relation thereto, a trade name means the name or designation identifying or distinguishing an enterprise.

A patent is an exclusive right granted to an inventor over an invention or a utility model or industrial design to sell, use, and make the same for commerce and industry.

A copyright It is an intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he or she is invested, for a specific period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them. **Kensonic v. Uni-Line Multi Resources, Inc., supra and Fernando Juan v Roberto Juan, G.R. No. 221372, August 23, 2017 both citing Black's Law Dictionary, Centennial Edition. 6th ed. West Group, St. Paul Minnesota, USA, 1990, p. 336;**

The rights granted by copyright are, however, not limited to multiplying copies of the literary or artistic work, publishing and selling but also include any form of communication to the public, as well as right of attribution, right to carry out derivative work and other moral rights. Copyright is likewise not confined to literary and artistic work but also extend to scientific and scholarly works similar to those works enumerated in Section 172.1 of the IPC.

Copyright should therefore be defined then as an incorporeal and intangible property granted by law to the originator or creator of certain literary, artistic, scientific and scholarly works whereby he or she is invested for a specific period of time a collection of economic and moral rights on the terms specified by statute.

b. Scope or object

Trademark attaches to goods or services of an enterprise and stamped or marked containers.

Copyright is confined to literary, artistic and scientific works which are original intellectual creations in the literary and artistic domain protected from the moment of their creation. On the other hand, patentable inventions refer to any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable.

c. Term of protection

A patent is valid for 20 years from filing of the application for the grant of patent. Copyright is generally valid for 50 years.

For trademarks, a certificate of registration shall remain in force for ten (10) years: Provided, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise, the mark shall be removed from the Register by the Office.

d. Modes of acquiring the various rights.

Trademark is acquired through registration with the Intellectual Property Office ("IPO"). Patent is likewise acquired through application with and grant by the IPO. Copyright is acquired from the moment of creation.

Who owns inventions created pursuant to a commission but not under an employer-employee relationship?

The person who commissions the work shall own the patent, unless otherwise provided in the contract.

This is different from copyright where the work is owned by the one who commissioned it but the copyright belongs to the author or creator.

Patent infringement

There can be no infringement of a patent until a patent has been issued, since whatever right one has to the invention covered by the patent arises alone from the grant of patent. An inventor has no common law right to a monopoly of his invention. He has the right to make use of and vend his invention, but if he voluntarily discloses it, such as by offering it for sale, the world is free to copy and use it with impunity. A patent, however, gives the inventor the right to exclude all others. To be able to effectively and legally preclude others from copying and profiting from the invention, a patent is a primordial requirement. No patent, no protection.

What is compulsory licensing?

Compulsory licensing is when the government allows another person to produce the patented product or process without the consent of the patent owner or plans to use the patented invention itself.

Trademark

How is trademark acquired?

In Zuneca Pharmaceutical v. Natrapharm, Inc., the Supreme Court abandoned its previous rulings that registration does not confer ownership of the trademark and that the first user in good faith defeats the right of the first filer in good faith. Instead, it was held that trademarks are acquired solely through registration.

In this case, the two competing marks involved were “ZYNAPS” and “ZYNAPSE.” They were admitted by both parties to be confusingly similar with each other. “ZYNAPS” (without an E) is owned by Zuneca. It is a drug for the treatment of seizures like epilepsy. On the other hand, Natrapharm owns “ZYNAPSE” (with an E), which is also a medicine, but for stroke.

Zuneca never registered its trademark “ZYNAPS” with the Intellectual Property (IP) Office, but it has been using it since 2004. Meanwhile, Natrapharm has registered its trademark “ZYNAPSE” on September 24, 2007.

With that, Natrapharm sued Zuneca for trademark infringement for using a confusingly similar trademark in the same field of drugs or medicine. Zuneca counter-sued and alleged that Natrapharm was the one in bad faith since it (Natrapharm) knows Zuneca's usage of "ZYNAPS" as a mark since 2004 considering that they both presented their products in the same pharmaceutical convention years prior.

The trial court found Zuneca liable for trademark infringement, essentially saying that Natrapharm was the first one to register the trademark in good faith. The trial court found no bad faith on the part of Natrapharm either since Zuneca failed to prove that Natrapharm actually knew the existence of Zuneca's "ZYNAPS." The Court of Appeals affirmed this decision.

The Supreme Court partly affirmed the lower courts' decision. It definitively ruled that the only mode of acquiring ownership of a trademark is through registration (and not use). According to the Supreme Court: "(i) the language of the IP Code provisions clearly conveys the rule that ownership of a mark is acquired through registration; (ii) the intention of the lawmakers was to abandon the rule that ownership of a mark is acquired through use.

In short, the Supreme Court held that Natrapharm's "ZYNAPSE" must prevail over Zuneca's "ZYNAPS" since the former was first registered. The Supreme Court, however, absolved Zuneca from being liable for trademark infringement because it found Zuneca to be a prior user in good faith. Accordingly, the IP Code contemplates that a prior user in good faith may continue to use its mark even after the registration of the mark by the first to file registrant in good faith.

In another case, however, the registrant's certificate of trademark registration was cancelled when the BLA-IPO concluded that the registrant copied the first user's mark It compared the two and found that petitioner's mark is identical with respondent's. It noted that the word "Mr. Gulaman" in both of their marks are "exactly the same in all aspects" This conclusion was bolstered by its finding that in petitioner's Declaration of Actual Use, she submitted photographs of a packaging showing respondent's "Mr. Gulaman" and its logo design.

The Supreme Court ruled that by reason of its special knowledge and expertise over matters falling within its jurisdiction, the Intellectual Property Office is in a better position to determine whether there was bad faith. Its finding on this matter "are generally accorded great respect, if not finality by the courts, as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant."

While the rule admits of exceptions, the Supreme Court did not find any reason to depart and overturn the factual determination of the BLA-IPO as affirmed by both the Office of the Director General and the Court of Appeals. **Ma Shairmaine Medina/Rackey Crystal Top Corporation v. Global Quest Ventures, G.R. No. 213815, February 8, 2021**

Did the Supreme Court abandon the first-to-file rule?

By ruling that trademark is acquired solely through registration, the Supreme Court did not, nevertheless, abandon the first the file rule. While it is the fact of registration which confers ownership of the mark and enables the owner thereof to exercise the rights expressed in the IP Code, the first to file rule nevertheless prioritizes the first filer of the trademark application and operates to prevent any subsequent applicant from registering the mark.

Concept of actual use

Is the registrant still required to declare actual use of the trademark?

Yes, the applicant or registrant must declare actual use of the trademark. The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

In Mattel v. Francisco, it was held that an admission in a pleading (Comment and Memorandum) that the party has not filed declaration of actual use within three (3) years from application may be construed as an abandonment or withdrawal of any right or interest in his trademark.

The registrant is also required to file a declaration of actual use and evidence to that effect within one (1) year from the fifth anniversary of the date of the registration of the mark.

The Supreme Court, however, held that while the registrant should declare actual use, this does not imply that actual use is the recognized mode of acquisition of ownership. Rather, it must be understood as provision requiring actual use of the mark in order for the registered owner of a mark to maintain his ownership.

Effect of registration

What is the significance of the certificate of registration of a trademark?

A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.

The rule on the prima facie validity of a certificate of registration is merely meant to recognize the instances when such certificate is not reflective of ownership such as when the registration was done contrary to the IP Code.

What are the remedies of the owner of a well-known mark that is not registered in the Philippines?

Without prejudice to other remedies under the law, the owner of the well-known mark may:

a. Oppose the application for registration of a mark which is identical with or confusingly similar or constitutes a translation of such well-known mark;
b. Petition for cancellation of the registration, if one has been granted; and,
c. Unfair competition if the goods are being passed off by another as the goods of the owner of the well-known mark.

What is the scope of protection afforded to registered trademark owners?

The scope of protection afforded to registered trademark owners is not limited to protection from infringers with identical goods. It also extends to protection from infringers with related goods, and to market areas that are the normal expansion of business of the registered trademark owners.

This means that the registered trademark owner may use his mark on the same or similar products, in different segments of the market, and at different price levels depending on variations of the products for specific segments of the market. The Supreme Court has recognized that the registered trademark owner enjoys protection in product and market areas that are the normal potential expansion of his business. **Sketchers USA, Inc. v. Inter Pacific Industrial Trading, G.R. No. 164321, March 23, 2011; Societe Des Produits Nestlé, SA v. Dy, G.R. No. 172276, August 8, 2010.**

In a relevant case, it was held that "PAPA BOY& DEVICE" is confusingly similar with the previously registered mark "PAPA" even though they refer to different products, PAPA BOY is for lechon sauce while PAPA is for catsup. The Supreme Court stated that since petitioner's product, catsup, is also a household product found on the same grocery aisle, in similar packaging, the public could think that petitioner had expanded its product mix to include lechon sauce, and that the "PAPA BOY" lechon sauce is now part of the "PAPA" family of sauces. Thus, if allowed registration, confusion of business may set in, and petitioner's hard-earned goodwill may be associated to the newer product introduced by respondent. **UFC Philippines, Inc. (Now Merged with Nutri-Asia, Inc., with Nutri-Asia, Inc. as the Surviving Entity) v. Fiesta Barrio Manufacturing Corporation, G.R. No. 198889, January 20, 2016.**

In Mang Inasal Philippines v. IFP Manufacturing Corpora-tion, the Supreme Court ruled that the mark “Ok Hotdog Inasal Cheese Flavor” for curl snack product is confusingly similar with the mark “Mang Inasal” for marinated chicken. The Supreme Court also concluded that average buyer who comes across the curls marketed under the OK Hotdog Inasal mark is likely to be confused as to the true source of such curls. “ To our mind, it is not unlikely that such buyer would be led into the assumption that the curls are of petitioner and that the latter has ventured into snack manufacturing or, if not, that the petitioner has supplied the flavorings for respondent’s product. Either way, the reputation of petitioner would be taken advantage of and placed at the mercy of respondent.” **Mang Inasal Philippines, Inc. v. IFP Manufacturing Corporation, G.R. No. 221717, June 19, 2017.**

What is the doctrine of unrelated goods?

One who has adopted, used and registered a trademark on his goods cannot prevent the adoption, use and registration of the same trademark by others on unrelated articles of a different kind.

What is the basis of the doctrine?

The certificate of registration entitles the registrant to use the trademark only for the goods specified in the certificate or goods related thereto. Therefore, the registrant cannot preclude others from adopting and registering the trademark for totally unrelated goods.

It was also held that the prohibition under Section 123 of the Intellectual Property Code extends to goods that are related to the registered goods, not to goods that the registrant may produce in the future. To allow the expansion of coverage is to prevent future registrants of goods from securing a trademark on the basis of mere possibilities and conjectures that may or may not occur at all. Surely, the right to a trademark should not be made to depend on mere possibilities and conjectures**. Kensonic, Inc. v. Uni-Line Multi Resources, Inc., G.R. Nos. 211820-21 and 211834-35, June 6, 2018.**

In the en banc decision of **Kolin Electronics Co. v Kolin Philippines International** , the Supreme Court abandoned the use of product or service classification as a factor in determining relatedness or non-relatedness. The NICE classification (NCL) serves purely administrative purposes - merely a way for trademark offices worldwide to organize the thousands of applications that are filed - and the classification of products/services should not have been included as one of the factors in determining relatedness because there was no legal basis for its inclusion. In fact, it even contradicts specific provisions of the Trademark Law and the IP Code. The use of classification of products/services in determining relatedness also conflicts with a provision of the 2020 Revised Rules of Procedure for Intellectual Property Rights Case.

In this case, after it was ruled that Kolin Electronics Corporation, Inc. (KECI)owns the trademark “ KOLIN “ for voltage regulators, converter, recharger, stereo booster and step-down transformer, Kolin Philippines, Inc. (KPI), a subsidiary of Taiwan Kolin Corporation, applied for the registration of the stylized mark kolin for “Television and DVD players”.

The Supreme Court held that the application of KPI for the registration of the trademark kolin should be rejected because it would cause likelihood of confusion and KECI's trademark rights would be damaged. Accordingly, there is resemblance between KECI's KOLIN and KPII's marks; (2) the goods covered by KECI's KOLIN are related to the goods covered by KPII's kolin; (3) there is evidence of actual confusion between the two marks; (4) the goods covered by KPII's kolin fall within the normal potential expansion of business of KECI; (5) sophistication of buyers is not enough to eliminate confusion; (6) KPII's adoption of KECI's coined and fanciful mark would greatly contribute to likelihood of confusion; and (7) KPII applied for kolin in bad faith.

It should also be stated that in addition to the factors in Mighty Corporation, another ground for finding relatedness of goods/services is their complementarity. The goods covered by KECI's KOLIN are complementary to the goods covered by KPII's kolin and could thus be considered as related. This increases the likelihood that consumers will at least think that the goods come from the same source. In other words, confusion of business will likely arise.

What test is applied to determine confusing similarity between marks?

Only the dominancy test is incorporated in the IP Code in determining the semblance of similar marks. This is found in Section 155.1 of the IPC which defines trademark infringement as the colorable imitation of a registered mark or a dominant feature thereof. Based on the legislative deliberations leading to the enactment of the IPC, the exclusion of the Holistic test was intentional and the dominancy test should be adopted. Considering the adoption of the Dominancy Test and the abandonment of the Holistic Test, as confirmed by the provisions of the IP Code and the legislative deliberations, the Court hereby makes it crystal clear that the use of the Holistic Test in determining the resemblance of marks has been abandoned. **Kolin Electronics Co. INC. V. Kolin Philippines International, Inc., G.R. No. 228165, February 9, 2021 J. Caguioa**

The Holistic Test in determining trademark resemblance has been abandoned hence the Dominancy Test must be used in determining the existence of confusing similarity between the "LEVI'S" and “LIVE’S” marks. This test relies not only on the visual but also on the aural and connotative comparisons and overall impressions between the two trademarks. Here, respondents' “LIVE’S” mark is but a mere anagram of petitioner's "LEVI'S" marks. It would not be farfetched to imagine that a buyer, when confronted with such striking similarity would be led to confuse one over the other. Thus, by simply applying the Dominancy Test, it can already be concluded that there is a likelihood of confusion between petitioner's "LEVI'S" marks and respondents' “LIVE’S” mark. **Levi Strauss & Co. v. Sevilla, G.R. No. 219744, March 1, 2021**

Petitioner's marks "ELARZ LECHON" and "ELAR LECHON" bear an indubitable likeness with respondent's "ELARS LECHON." As can easily be seen, both marks use the essential and dominant word "ELAR". The only difference between the petitioner's mark from that of respondent's are the last letters Z and S, respectively. However, the letters Z and S sound similar when pronounced. Thus, both marks are not only visually similar, but are phonetically and aurally similar as well. To top it all off, both marks are used in selling lechon products. Verily, there exists a high likelihood that the consumers may conclude an association or relation between the products. Likewise, the uncanny resemblance between the marks may even lead purchasers to believe that the petitioner and respondent are the same entity. **Emzee Foods, Inc. v. Elarfoods, Inc., G.R. No. 220558, February 17, 2021**

Unfair Competition

Define unfair competition.

Unfair competition has been defined as the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. Passing off (or palming off) takes place where the defendant, by imitative devices on the general appearance of the goods, misleads prospective purchasers into buying his merchandise under the impression that they are buying that of his competitors. Thus, the defendant gives his goods the general appearance of the goods of his competitor with the intention of deceiving the public that the goods are those of his competitor. **Republic Gas Corporation v. Petron Corporation. G.R. No. 194062, 17 June 2013; 2019 Bar.**

Does the act of refilling empty LPG gas cylinder tank bearing a registered trademark amount to infringement or unfair competition or BOTH?

The act of refilling empty LPG gas cylinder tank bearing a registered trademark amounts to both trademark infringement and unfair competition.

The mere unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods or services which is likely to cause confusion, mistake or deception among the buyers or consumers can be considered as trademark infringement. The petitioners in this case actually committed trademark infringement when they refilled, without the respondents' consent, the LPG containers bearing the registered marks of the respondents.

There is likewise unfair competition. Petitioners' acts will inevitably confuse the consuming public, since they have no way of knowing that the gas contained in the LPG tanks bearing respondents' marks is in reality not the latter's LPG product after the same had been illegally refilled. The public will then be led to believe that petitioners are authorized refillers and distributors of respondents' LPG products, considering that they are accepting empty containers of respondents and refilling them for resale.

Unfair competition has been defined as the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. Passing off (or palming off) takes place where the defendant, by imitative devices on the general appearance of the goods, misleads prospective purchasers into buying his merchandise under the impression that they are buying that of his competitors. Thus, the defendant gives his goods the general appearance of the goods of his competitor with the intention of deceiving the public that the goods are those of his competitor.

In the present case, respondents pertinently observed that by refilling and selling LPG cylinders bearing their registered marks, petitioners are selling goods by giving them the general appearance of goods of another manufacturer. Obviously, the mere use of those LPG cylinders bearing the trademarks "GASUL" and "SHELLANE" will give the LPGs sold by REGASCO the general appearance of the products of the petitioners. **Republic Gas Corporation v. Petron Corporation, G.R. No. 194062, June 17, 2013.**

Copyright

Is a hatch door, which is defined as a small door, small gate or an opening that resembles a window equipped with an escape for use in case of fire or emergency, copyrightable?

Hatch door is not copyrightable. It is by nature, functional and utilitarian serving as egress access during emergency. It is not primarily an artistic creation but rather an object of utility designed to have aesthetic appeal. It is intrinsically a useful article, which, as a whole, is not eligible for copyright.

Thus, the first fabricator of the hatch door cannot sue for copyright infringement all other fabricators of the same article. What is copyrightable is the drawing or the sketch of the hatch door itself. Reproduction of the drawing or sketch without the consent of the creator constitutes copyright infringement. **Sison Olaño, et al. v. Lim Eng Co., G.R. No. 195835, March 14, 2016.**

Overseas Filipino worker Angelo dela Cruz was kidnapped by Iraqi militants and as a condition for his release, a demand was made for the withdrawal of Filipino troops in Iraq. After negotiations, he was released by his captors and was scheduled to return to the country. Occasioned by said homecoming and the public interest it generated, both GMA Network, Inc. and ABS-CBN made their respective broadcasts and coverage of the live event.

ABS-CBN conducted live audio-video coverage of and broadcasted the event. ABS-CBN allowed Reuters Television Service (Reuters) to air the footages it had taken earlier under a special embargo agreement.

ABS-CBN alleged that under the special embargo agreement, no other Philippine subscriber of Reuters would be allowed to use ABS-CBN footage without the latter's consent.

GMA-7 subscribes to Reuters. It received a live video feed of the coverage of Angelo dela Cruz's arrival from Reuters.

GMA-7 immediately carried the live newsfeed in its program "Flash Report," together with its live broadcast. Allegedly, GMA-7 did not receive any notice or was not aware that Reuters was airing footages of ABS-CBN.

ABS-CBN filed the Complaint for copyright infringement under Sections 177and 211 of the Intellectual Property Code against Felipe Gozon and other officers of GMA 7.
Is the news footage of ABS CBN copyrightable?

The event itself is not copyrightable because that is the newsworthy event. However, any footage created from the event itself is an intellectual creation which is copyrightable. While news of the day and other miscellaneous facts having the character of “mere items of press information” are considered unprotected subject matter, the Code does not state that expression of the news of the day, particularly when it underwent a creative process, is not entitled to protection. **ABS-CBN Corporation v. Felipe Gozon, et al., G.R. No. 195956, March 11, 2015.**

Stated otherwise, copyright protection does not extend to news “events” or the facts or ideas which are the subject of news reports. But it is equally well-settled that copyright protection does extend to the reports themselves, as distinguished from the substance of the information contained in the reports. Copyright protects the manner of expression of news reports, “the particular form or collocation of words in which the writer has communicated it.”

Rights conferred by copyright

What is the scope of protection of a copyright?

It is immediate. The aforementioned literary and artistic works are protected from the moment of their creation. Works are protected by the sole fact of their creation, irrespective of their mode or form of expression, as well as of their content, quality and purpose.

Ownership of copyrighted material is shown by proof of originality and copyrightability.

What then is the effect of registration and deposit with the National Library?

The certificates of registration and deposit issued by the National Library serve merely as a notice of recording and registration of the work but do not confer any right or title upon the registered copyright owner or automatically put his work under the protective mantle of the copyright law; it is not a conclusive proof of copyright ownership. Hence, it was held that when there is sufficient proof that the copyrighted products are not original creations but are readily available in the market under various brands, as in one case, validity and originality will not be presumed. **Manly Sportwear Manufacturing, Inc. v. Dadodette Enterprises and/or Hermes Sports Center, G.R. No. 165306, September 20, 2005.**

It was held that the Intellectual Property Code does not require registration of the work to fully recover in an infringement suit. **ABS-CBN v. Gozon, March 11, 2015.**

A copyright certificate nevertheless creates a presumption of the validity and ownership of the copyright and as such, is useful in support of the claim of infringement. This presumption, however, is rebuttable and it cannot be sustained where other evidence in the record casts doubt on the question of ownership. **Sison Olano, ibid.**

What rights are derived from a Copyright?

There are two classifications of rights derived from a copyright:

Economic rights; and
Moral rights.

What are economic rights?

Copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

a. Reproduction of the work or substantial portion of the work;
b. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;
c. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;
d. Rental of the original or a copy of an (i) audiovisual, or (ii) cinematographic work, (iii) a work embodied in a sound recording, (iv) a computer program, (v) a compilation of data and other materials or (vi) a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental;
e. Public display of the original or a copy of the work;
f. Public performance of the work; and
g. Other communication to the public of the work

What are the so-called moral rights of a copyright holder?

The author of a work shall, independently of the economic rights or the grant of an assignment or license with respect to such right, have the following moral rights:

a. To require that the authorship of the works be attributed to him, in particular, the right that his name, as far as practicable, be indicated in a prominent way on the copies, and in connection with the public use of his work; (“Right of attribution”)
b. To make any alterations of his work prior to, or to withhold it from publication;
c. To object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honor or reputation; (“Right of integrity”) and
d. To restrain the use of his name with respect to any work not of his own creation or in a distorted version of his work.357 (“Right against false attribution”)

First public distribution

What is the first sale doctrine?

The first sale doctrine provides that an individual who knowingly purchases a copy of a copyrighted work from the copyright holder receives the right to sell, display or otherwise dispose of that particular copy, notwithstanding the interests of the copyright owner.

The copyright holder’s right to control the distribution of his work goes away after the “first sale” of the work. The “First Sale Doctrine” is codified in U.S. copyright law at 17 U.S.C. Section 109. The doctrine is mirrored in our own copyright laws.

What is the right of Droite de Suite?

Droite de Suite means right to follow. This means that in every sale or lease of an original work of painting or sculpture or of the original manuscript of a writer or composer, subsequent to the first disposition thereof by the author, the author or his heirs shall have an inalienable right to participate in the gross proceeds of the sale or lease to the extent of five percent (5%). This right shall exist during the lifetime of the author and for 50 years after his death.

Limitations on copyright

What do you understand by the must-carry rule?

The must-carry rule is a regulation of the National Telecommunications Commission which obligates cable TV networks to carry the signals of local TV stations and show in full the free-local TV programs.

The improved broadcast signals offered by a cable TV may infringe or encroach upon the audience or viewer market of the free-signal TV. This is so because the latter’s signal may not reach the remote areas or reach them with poor signal quality. To foreclose this possibility and protect the free-TV market (audience market), the must-carry rule was adopted to level the playing field. This, in turn, benefits the public who would have a wide-range of choices of programs or broadcast to watch. This also benefits the free-TV signal as their broadcasts are carried under cable TV’s much-improved broadcast signals thus expanding their viewer’s share. **GMA Network, Inc. v. Central CATV, Inc., G.R. No. 176694, July 18, 2014.**

Hence, it was ruled that the carriage by cable TV providers of ABS-CBN's signals and the showing in full of the local TV programs do not constitute copyright infringement. This is based on Section184.1 (h) of the IPC, as amended, the use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with fair use will not constitute copyright infringement.

It was further held that while the Memorandum Circular of the NTC on the must-carry rule refers to cable television, it should be understood as to include direct-to-home via satellite TV (DTH) which provides essentially the same services.

In GMA Network v. Central CATV, the Supreme Court further ruled that under the must-carry rule, the cable TV networks are required to carry and show in full the free-local TV's programs, including advertisements, without alteration or deletion. The act of showing advertisements does not constitute an infringement of the "television and broadcast markets" under Section 2 of E.O. No. 205.

Is carrying the signals of the local TV station as form of re-broadcasting?

No, the cable TV provider is not the origin nor does it claim to be the origin of the programs broadcasted by the ABS-CBN; the former did not make and transmit on its own but merely carried the existing signals of the latter and when the cable provider subscribers view ABS-CBN's programs in Channels 2 and 23, they know that the origin thereof was the latter. **ABS-CBN Broadcasting Corporation v. Philippine Multi-Media System, Inc., G.R. Nos. 175769-70, January 19, 2009.**

V. ANTI-MONEY LAUNDERING ACT

(R.A. No. 9160, as amended)

May the AMLC examine the bank accounts of the accused-public officials even without seeking a prior court order? Explain.

The AMLC cannot examine the bank accounts of the accused-public officials without seeking a prior court order. Under the Anti-Money Laundering law, the AMLC needs to obtain a bank inquiry order from the Court of Appeals to inquire into funds and deposits if there is probable cause they relate to unlawful activity under AMLA. Bank inquiry order is not necessary only if the predicate crime is any of hijacking, kidnapping, terrorism, murder, arson and violation of the Dangerous Drugs Law. Violation of the Anti-Graft and Corrupt Practices Act does not fall within the exception.

Is the authority of the AMLC to undertake an inquiry into certain bank accounts or deposits arbitrary and as such, unconstitutional?

Taking into account Section 11 of the AMLA, the Court found nothing arbitrary in the allowance and authorization to AMLC to undertake an inquiry into certain bank accounts or deposits. Instead, the Court found that it provides safeguards before a bank inquiry order is issued, ensuring adherence to the general state policy of preserving the absolutely confidential nature of Philippine bank accounts:

a. The AMLC is required to establish probable cause as basis for its ex-parte application for bank inquiry order;
b. The CA, independent of the AMLC's demonstration of probable cause, itself makes a finding of probable cause that the deposits or investments are related to an unlawful activity under Section 3(i) or a money laundering offense under Section 4 of the AMLA;
c. A bank inquiry court order ex-parte for related accounts is preceded by a bank inquiry court order ex-parte for the principal account which court order ex-parte for related accounts is separately based on probable cause that such related account is materially linked to the principal account inquired into; and the authority to inquire into or examine the main or principal account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the Constitution. **Subido Pagente Certeza Mendoza and Binay Law Offices v. The Court of Appeals, G.R. No. 216914, En Banc, December 6, 2016.**

VII. FRIA

FINANCIAL REHABILITATION, INSOLVENCY, LIQUIDATION and SUSPENSION OF PAYMENTS (R.A. No. 10142, FR Rules [A.M. No. 12-12-11-SC], and FLSP Rules [A.M. No.15-04-06-SC])

What are the remedies available to or against an insolvent debtor under FRIA?

An individual insolvent debtor may file a petition for suspension of payments and/or may also file, or be the subject of, petition for liquidation.

A juridical insolvent debtor may file, or be the subject of, a petition for rehabilitation or liquidation. A juridical insolvent debtor refers to, unless specifically excluded by a provision under FRIA, a sole proprietorship duly registered with the Department of Trade and Industry ("DTI"), a partnership duly registered with the Securities and Exchange Commission ("SEC"), a corporation duly organized and existing under Philippine laws.

An individual debtor refers to a natural person who is a resident and citizen of the Philippines who has become insolvent as defined under FRIA.

What are the effects of a Commencement Order?

- Prohibit, or otherwise serve as the legal basis for rendering null and void the results of any extrajudicial activity or process to seize property, sell encumbered property, or otherwise attempt to collect on or enforce a claim against the debtor after the commencement date unless otherwise allowed in FRIA, subject to the provisions of Section 50 hereof.
- Serve as the legal basis for rendering null and void any set-off after the commencement date of any debt owed to the debtor by any of the debtor's creditors.

What are the effects of a Stay or Suspension Order?

The Stay or Suspension Order shall:

a. suspend all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor;
b. suspend all actions to enforce any judgment, attachment or other provisional remedies against the debtor;
c. prohibit the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business; and
d. prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date except as may be provided herein.

What cases/instances are not covered by the Stay or Suspension Order?

The Stay or Suspension Order shall not apply:

- to the enforcement of claims against sureties and other persons solidarily liable with the debtor, and third party or accommodation mortgagors as well as issuers of letters of credit, unless the property subject of the third party or accommodation mortgage is necessary for the rehabilitation of the debtor as determined by the court upon recommendation by the Rehabilitation Receiver;

It was held that the issuance of a stay order did not prevent a Regional Trial Court from acquiring jurisdiction over a guarantor who has waived the benefit of excussion;

- any criminal action against the individual debtor or owner, partner, director or officer of a debtor shall not be affected by any proceeding commenced under FRIA.

It was held that the suspension of claims in corporate rehabilitation does not extend to criminal actions against the distressed corporations or its directors and officers. It would be absurd for one who has engaged in criminal conduct to escape punishment simply because the corporation of which he is director or officer filed a petition for rehabilitation. The prosecution of the officers of the corporation has no bearing on the pending rehabilitation of the corporation.

The stay order shall likewise not cover the payment of administrative expenses as they become due.

Cram down effect

What is the Cram-down clause of a Rehabilitation Plan?

This means that a Rehabilitation Plan may be approved by the Court even over the opposition of the creditors holding a majority of the corporation’s total liabilities if there is a showing that rehabilitation is feasible and the opposition of the creditors is manifestly unreasonable. Also known as the “cram-down” clause, this provision, which is currently incorporated in the FRIA, is necessary to curb the majority creditors’ natural tendency to dictate their own terms and conditions to the rehabilitation, absent due regard to the greater long-term benefit of all stakeholders. Otherwise stated, it forces the creditors to accept the terms and conditions of the Rehabilitation Plan, preferring long-term viability over immediate but incomplete recovery. **Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation, G.R. No. 175844, July 29, 2013.**

Distinguish the remedies of the secured creditors in Rehabilitation proceedings, Suspension of Payments and Liquidation proceedings.

In Rehabilitation, the Stay Order suspends enforcement of the mortgage lien until termination of the Rehabilitation proceedings. The order of the court in Suspension of Payments does not cover secured creditors while in liquidation, the secured creditor can only enforce his lien after 180 days from issuance of the Liquidation Order.

Thank you for listening.

You are now ready for the Bar Exams in Commercial Law.

Congratulations in advance.

God bless you.

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