



PHILJA Bulletin



April to June 2002

Volume IV, Issue No. 14

From the Chancellor's Desk

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Distinctive engagements punctuated the regular programs of the Academy for the second quarter of 2002. The regular programs are featured elsewhere in this issue.

In May, a highly interactive two-day *Lecture and Tutorial Workshop on Judicial Writing*, attended by eleven executive judges from three court levels, was conducted by Prof. James C. Raymond, Ph.D., a judicial writing expert. The program received a high 77% "excellent" rating from the participants.

A number of special projects carried out within the period were made possible by the unflagging support of partner organizations. As before, we extend our heartfelt appreciation to the US Agency for International Development (USAID) and The Asia Foundation (TAF) for co-sponsoring the 2nd *Tele-Video Conference on the Rules on Electronic Evidence and E-Commerce Act*, held simultaneously at Makati, Tarlac and Cagayan de Oro Cities. Participants were introduced to this new medium of distance education. With the cooperation of the USAID, The Asia Foundaton and the Embassy of Finland, the 2nd to 4th *Judicial Seminars on Indigenous Peoples' Rights Act* were also held in the cities of Baguio, Cebu, and Davao.

Special thanks also goes to the Asian Development Bank (ADB) for its *Focus Group Discussion on the Philippine Governance Assessment Project* (in cooperation with AGILE), to which PHILJA was invited. In connection with ADB's *Technical Assistance to Strengthen the Independence of the Judiciary*, fifteen (15) judicial officers attended a three-week *Training Course on Court/Caseflow Management* from June 3 to 24, 2002, in Japan. The participants returned with enthusiastic and impressive reports.

The Academy's international exposure was heightened with the participation of the Chancellor in two relevant activities held in Canada in June, as a member of the Philippine delegation led by the Chief Justice, namely, (1) the *Courts 2nd International Working Conversation on Biotechnology Issues* with EINSHAC in Ottawa, and (2) the signing of the *Memorandum of Understanding and Project Appraisal Document for the Judicial Reform Support Program*, a Cdn\$7 million assistance to bolster the Academy's mediation efforts, among other things. The delegation also visited the Commonwealth Judicial Education Institute (CJIE) headed by Judge Sandra Oxner in Halifax, Nova Scotia, which was conducting an intensive training program for judicial educators that two of our PHILJA Professors were attending.

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REGIONAL SEMINARS

On March 2002, PHILJA conducted 3 of the 4 batches of the *Regional Seminar for Judges, Clerks of Court, Legal Researchers & Sheriffs of the Regional Trial Courts and 1st Level Courts* of the National Capital Judicial Region at the International Center (Angelo King), Manila. 303, 299 and 262 participants attended the March 6 to 8, March 13 to 15 and March 20 to 22 schedules, respectively.



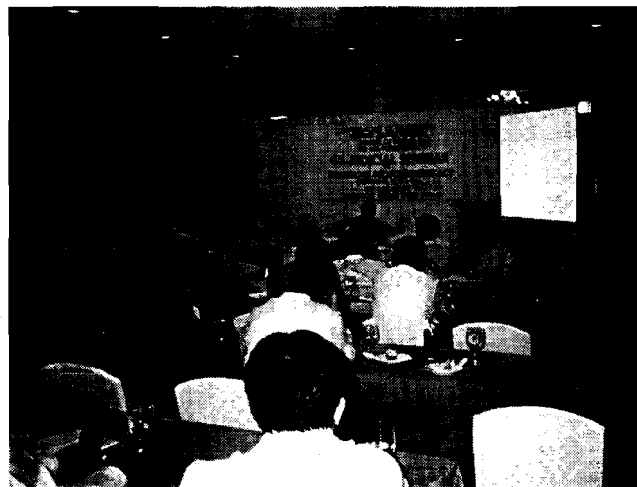
TELE-VIDEO CONFERENCE ON E-EVIDENCE & E-COMMERCE

The 2nd *Tele-Video Conference on the Rules on Electronic Evidence and the E-Commerce Act*, held on March 13, 2002, was simultaneously conducted by PHILJA at Moscom Makati Business Center, Moscom Tarlac and Cagayan de Oro City. Forty-three (43) judges participated in the conference: seventeen (17) in the Tarlac site comprising of four (4) Tarlac City judges and thirteen (13) Nueva Ecija judges; in Makati City site, comprising of three (3) Pasig City judges and four (4) Manila judges; and fourteen (14) were in the Cagayan de Oro site. PHILJA's partners in this conference were USAID and The Asia Foundation (TAF). Justice Ameurfina A. Melencio Herrera, PHILJA Chancellor, presided the proceedings. Mr. Steven Rood of The Asia Foundation (TAF) and Mr. Robert Wuertz of the USAID gave the Opening Remarks and Closing Remarks, respectively.



JUDICIAL SEMINAR ON INDIGENOUS PEOPLES' RIGHTS

PHILJA successfully completed its special series of seminars on Indigenous Peoples' Rights Act. The 2nd, 3rd, and 4th *Judicial Seminar on Indigenous People's Rights Act*, conducted with the assistance of the USAID, The Asia Foundation, and the Embassy of Finland, were held on March 20 to 21, at the Benguet Prime Hotel, Baguio City; May 2 to 3, at the Montebello Villa Hotel, Cebu City; and May 9 to 10, 2002 at the Waterfront Insular Hotel, Davao City, respectively. Selected Executive Judges and Vice Executive Judges of Regions I and II, Regions V, VI, & VII, and Regions IX, X, XI & XII attended. Justice Conchita C. Morales of the Court of Appeals delivered the Inspirational Message at Baguio City. Ms. Kristiina Kuvaja, Second Secretary of the Embassy of Finland, delivered the Opening Remarks on behalf of Ambassador Raimo Anttola at Cebu and Davao Cities. Also at Cebu City, the judges had the privilege of a dialogue with Chief Justice Hilario G. Davide, Jr.. Ambassador Howard Q. Dee, Former Presidential Adviser for Indigenous Peoples' Affairs, gave the Inspirational Message at the closing ceremonies of the last of the series of IPRA seminars in Davao City.



JUDICIARY CONVENTION SEMINARS

This quarter, four judiciary associations conducted their respective convention seminars in coordination with PHILJA.

The *Philippine Association of Court Social Workers, Inc. (PACSWI)* held its *3rd Convention and Seminar* on April 10 to 12, 2002 at the Punta Villa Resort, Arevalo, Iloilo City. 117 Court Social Workers gathered from the country's thirteen (13) judicial regions. Congressman Raul M. Gonzales gave the Keynote Address. The program's highlight was the very first lecture on the Rule on Juveniles in Conflict with the Law and the Rule on Commitment of Children delivered by Senior DCA Zenaida N. Elepaño. This year's convention theme is: "The Court Social Worker as a Servant of Justice."



On April 18 to 20, 2002, the *Judicial Clerks of the Philippines (JACOPHIL)* held their *3rd Convention and Seminar* with the theme, "A Commitment of Excellence: Clerks in the Judiciary," at the Grand Men Seng Hotel, Davao City, with 907 participants. Deputy Court Administrator Christopher O. Lock gave the Keynote Address and Court Administrator Presbitero Velasco, Jr. gave the Inspirational Message during the occasion.

274 members of the *Court Legal Researchers Association of the Philippines (CLERAP)* attended their *Convention and Seminar* held on April 24 to 26, 2002, at the Amigo Terrace Hotel, Iloilo City. The theme of the program is: "Legal Research and Emerging Technology." Governor Niel D. Tupas, Jr. of the Province of Iloilo and Mayor Jerry P. Treñas of Iloilo City delivered their Opening Remarks. Senior Deputy Court Administrator Zenaida N. Elepaño gave the Keynote Address.

The *Convention and Seminar of the RTC Clerks of Court Association of the Philippines* was held on May 15 – 17, 2002 at the Business Inn, Bacolod City. 227 RTC Clerks of Court attended the year's convention with the theme, "New Vista for Clerks of Court."



REGIONAL JUDICIAL CAREER ENHANCEMENT PROGRAM

PHILJA held its 2nd round of *Regional Judicial Career Enhancement Program (RJCEP)* for Region X on May 21 to 24, 2002, at the Dynasty Hotel, Cagayan de Oro City. A total of four hundred eight (408) participants attended the seminar which included seventy (70) Judges, one hundred fifteen (115) Clerks of Court, eighty-eight (88) Interpreters, and one hundred thirty five (135) Docket Clerks. They were welcomed by Judge Noli T. Catli, the Executive Judge of Cagayan de Oro City, during the opening ceremonies which was formally opened by Dean Reynaldo L. Suarez, Professor II of PHILJA.

NEWLY APPOINTED JUDGES

A total of twenty four (24) participants attended the 23rd Orientation Seminar – Workshop for Newly Appointed Judges conducted by the Philippine Judicial Academy on May 6 to 10, 2002 at PHILJA, Tagaytay City.



Newly Appointed

Hon. PHILIP A. AGUINALDO	RTC 207, Muntinlupa City
Hon. MATEO B. ALTAREJOS	MeTC 82, Valenzuela City
Hon. DINAH EVANGELINE B BANDONG	MTC Pila, Laguna
Hon. CESAR MANUEL U. CADIZ, JR.	MTC 36, Dumaguete City
Hon. ERANIO G. CEDILLO	MTC Meycauayan, Bulacan
Hon. PATRIA MANALASTAS DE LEON	RTC 206, Muntinlupa City
Hon. JENNY LIND ALDECOA DELORINO	RTC 37, Dumaguete City
Hon. LEONCIA REAL DIMAGIBA	RTC 194, Paranaque City
Hon. ANTONIO D. MARIGOMEN	RTC 61, Bogo, Cebu
Hon. RUSTICO D. PADERANGA	RTC 28, Mambajao, Camiguin
Hon. GEORGES S. PATRIARCA	RTC 45, Bacolod City
Hon. LEONOR GERONA ROMEO	RTC 54, Gubat, Sorsogon
Hon. MARIA NENA JUABAN SANTOS	RTC 171, Valenzuela City
Hon. JOSEFINA ECO SISCAR	MTC Binan, Laguna
Hon. TEODORO N. SOLIS	MTC Sta. Rosa, Laguna
Hon. MONA LISA T. TABORA	MCTC San Juan-San Gabriel, La Union
nHon. ERASTO D. TANCIONGCO	MCTC 01 Dinalupihan-Hermosa, Bataan
Hon. CECILYN BURGOS VILLAVERT	MeTC 81, Valenzuela City

Promoted to RTC

Hon. NICOLAS E. ELIAZO, JR.	RTC 71, Iba, Zambales
Hon. JOSEFINA D. LUNA	RTC 69, Iba, Zambales
Hon. RUTH C. SANTOS	RTC 72, Antipolo City
Hon. MYRNA L. VERANO	RTC 205, Muntinlupa City

Lateral Transferees

Hon. FORTUNITO L. MADRONA	RTC 274, Paranaque City
Hon. PEDRO M. SABUNDAYO, JR.	RTC 203, Muntinlupa City

Chancellor's Desk, continued from page 1

With its steadily growing reputation as the premier judicial academy in the region, and the election of the Chancellor as the Deputy President for Australasia of the *International Organization for Judicial Training (IOJT)*, a regional survey of judicial training institutions is currently being conducted by the Office of the Chancellor. Part of the Philippines' commitment as a member of the IOJT is the development of its own website. To this end, the *PHILJA website* was formally launched during the Supreme Court's 101st Anniversary on June 11, 2002.

CIVIL LAW

Special Education Fund established under R.A. 5447 may be used to pay salaries of extension class teachers; doctrine of necessary implication.

Under the doctrine of necessary implication the allocation of the Special Education Fund for the establishment and maintenance of extension classes logically implies the hiring of teachers who should as a matter of course be compensated for their services. Every statute is understood by implication to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis*. The services and the corresponding compensation of the teachers are necessary and indispensable to the establishment and maintenance of extension classes. (*Ynares-Santiago, J., COA v. Province of Cebu, G.R. 141386, November 29, 2001*)

Homeowners Associations; Housing and Land Use Regulatory Board; membership in homeowners association.

Under Republic act 8763, the Housing and Land Use Regulatory Board is the government agency tasked to supervise homeowners associations. It has jurisdiction to hear and decide cases involving the following:

- a) Devices or schemes employed by or any acts of the Board of Directors or officers of the association amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the members of the association or the association registered with the Board.
- b) Controversies arising out of intra-corporate relations between and among members of the association; between any or all of them and the association of which they are members; and between such association and the state/general public or other entity in so far as it concerns its right to exist as a corporate entity.

The constitutionally guaranteed freedom of association includes the freedom not to associate. The constitutional provision guarantees the right to form an association. It does not include the right to compel others to form or join one. Private respondents cannot be compelled to become members of the association by the simple expedient of including them in its Articles of Incorporation and By-laws without their express or implied consent. (*Panganiban, J., Sta. Clara Homeowners Association, et al., v. Spouses Victor Ma. Gaston and Lydia Gaston, January 23, 2002*)

Equity dictates that a loss brought about by the concurrent negligence of two persons shall be borne by one who was in the immediate, primary and overriding position to prevent it.

The failure of respondent to verify essential facts was the immediate cause of his predicament. If he were an ordinary individual without any expertise or experience in mortgages and real estate dealings, his failure to verify essential facts would have been understandable. However, he has been in the mortgage business for seven years. Thus, assuming that both parties were negligent, respondent should bear the loss. His superior knowledge of the matter should have made him more cautious before releasing the loan and accepting the identity of the mortgagor. (*Panganiban, J., Guillermo Adriano v. Romulo Pangilinan, G.R. 137471, January 16, 2002*)

Special parental authority over a minor child; liability of special parents.

Under Article 218 of the Family Code, the following shall have special parental authority over a minor child while under their supervision, instruction or custody: (1) the school, its administrators and teachers; or (2) the individual, entity or institution engaged in child care. This special parental authority and responsibility applies to all authorized activities, whether inside or outside the premises of the school, entity or institution. Thus, such authority and responsibility applies to field trips, excursions and other affairs of the pupils and students outside the school premises whenever authorized by the school or its teachers.

Under Article 219 of said Code, if the person under custody is a minor, those exercising special parental authority are principally and solidarily liable for damages caused by the acts or omission of the unemancipated minor while under their supervision, instruction, or custody. However, to be liable, there must be a finding that the act or omission considered as negligent was the proximate cause of the injury caused because the negligence must have a casual connection to the accident. (*Pardo, J., St. Mary's Academy v. William Carpitanos et al., G.R. 143363, February 6, 2002*)

REMEDIAL LAW

Motu proprio dismissal of claims.

Under the new rules, a court may motu proprio dismiss a claim when it appears from the pleadings or evidence on record that it has no jurisdiction over the subject matter; when there is another cause of action

REMEDIAL LAW *continued*

pending between the same parties for the same cause, or where the action is barred by a prior judgment or by statute of limitations. Improper venue not being included in the enumeration, it follows that motu proprio dismissal on said ground is not allowed. (*Vitug, J., Mariano Gumabon v. Aquilino Larin*, G.R. 142529, November 27, 2001)

The deletion of Section 3, Rule 4 of the old rule from the 1997 Rules of Civil Procedure particularly Section 1 of Rule 9 cannot be taken to mean that objection to venue may now be raised at any time.

Venue unlike jurisdiction looks primarily at the convenience of the litigants. It can be the subject of agreement of the parties. Under the old rules such an agreement to venue may be impliedly made by the defendant when he fails to seasonably object to it. While the 1997 Rules of Civil Procedure does not contain provisions similar to Section 3 and 4 of the old rules, the deletion, however cannot be taken to mean that objection to venue may now be raised at anytime but that, rather an objection to venue may still be made in an answer if no motion to dismiss is filed. (*Vitug, J., Mariano Gumabon et al v. Aquilino Larin*, G.R. 142529, November 27, 2001)

Trial court cannot adjudge civil matters that are beyond its competence and powers.

While a court may have authority to pass upon the criminal liability of the accused, it cannot make any civil awards that relate to the agrarian relationship of the parties because the matter is beyond its jurisdiction. It should have confined itself to the determination of whether private respondents were guilty of qualified theft, instead of automatically awarding the proceeds of the copra sale to petitioner. Such matter, being an offshoot of the agrarian dispute between the parties is cognizable exclusively by the DARAB. (*Panganiban, J., Leonarda Monsanto v. Jesus and Teresita Zerna and Court of Appeals*, G.R. 142501, December 7, 2001)

Examination of a child witness.

The trend in procedural law is to give wide latitude to the courts in exercising control over the questioning of a child witness. The reasons are spelled out in the Rule on Examination of a Child Witness which took effect on December 15, 2001, namely, (1) to facilitate the ascertainment of the truth; (2) to ensure that questions are stated in a form appropriate to the developmental level of the child; (3) to protect children from harassment or undue embarrassment and (4) avoid waste of time. Leading questions in all stages of examination of a child witness are allowed if the same will further the interest of justice. (*Per Curiam, People v. Rodito Daganio*, G.R. 137385, January 23, 2002)

Action to revive judgment requires only proof of a final judgment which has not prescribed and has remained unexecuted after the lapse of five (5) years but not more than ten (10) years from its finality.

Section 6, Rule 39 of the Rules of Court provides that an action to revive judgment only requires proof of a final judgment which has not prescribed and has remained unexecuted after 5 years. Nowhere does the rule require proof that the judgment is still enforceable by and against the original parties who have died. While the action is still subject to defenses and counterclaims which arose after the judgment became effective, proof of the death of some of the parties is not required because the judgment can still be enforced by the executor, administrator or successor-in-interest of the judgment creditor against the judgment debtor. An action to revive judgment is not meant to retry the case all over again. (*Quisumbing, J., Juan Enriquez et al v. Court of Appeals, Pablo Esporlas et al*, G.R. 137391, December 14, 2001)

Forms of proof of a person's indebtedness to the judgment debtor.

Proof of a person's indebtedness to the judgment debtor may be in an affidavit or some other form so long as the judge is satisfied. Moreover, that proof other than an affidavit is sufficient, is clear from the 1997 Revised Rules of Criminal Procedure. Section 37 of Rule 39 provides that proof to the satisfaction of the court is sufficient to cause an examination of a judgment debtor's debtor. (*Quisumbing, J., PNB Management and Development Corporation v. R & R Metal Casting and Fabricating, Inc.*, G.R. 132245, January 2, 2002)

ELECTION LAW

A motion for reconsideration of a COMELEC *En Banc* resolution is a prohibited pleading except in election offense cases.

Petitioners did not exhaust all the remedies available to them at the COMELEC level. Specifically, they did not seek a reconsideration of the assailed en banc resolution as required by the 1993 COMELEC Rules of Procedure which provides that except in election offense cases, motions for reconsideration of an en banc ruling is not allowed. It is not disputed that petitioner's complaint of vote-buying is an election offense, hence, his failure to file the required motion for reconsideration utterly disregarded the rules intended to achieve an orderly, just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the COMELEC. (*Sandoval-Gutierrez, J., Antonio Bernardo et al v. Benjamin Abalos, Jr., COMELEC*, G.R. 137266, December 6, 2001)

CIVIL LAW

Republic Act 6552, the Realty Installment Buyer Protection Act; rights of both seller and buyer under said Act.

R.A. 6552 recognizes in conditional sales of all kinds of real estate (industrial, commercial, residential) the right of the seller to cancel the contract upon non-payment of an installment by the buyer, which is simply an event that prevents the obligation of the vendor to convey title from acquiring binding force. The law also provides for the rights of the buyer in case of cancellation, i.e., the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to 50% of the total payments made and after five (5) years of installments, an additional five (5%) percent every year but not to exceed ninety (90) percent of the total payments. The actual cancellation of the contract shall take place 30 days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer. In case there is no payment of the cash surrender value, there is no actual cancellation of the contract, hence, the buyer may still reinstate the contract by updating his account during the grace period and before actual cancellation. (*Pardo, J., Carmelita Leaño v. Court of Appeals, G.R. 129318, November 15, 2001*)

Obligations; solidary obligation distinguished from joint obligation; solidary obligation must be positively and clearly expressed.

A solidary obligation is one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors. A joint obligation is one in which each debtor is liable only for a proportionate part of a debt, and the creditor is entitled to demand only a proportionate part of the credit from each debtor. The rule is that solidary obligations cannot be inferred lightly. They must be positively and clearly expressed. A liability is solidary only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires. (*Panganiban, J., PH Credit Corporation v. Court of Appeals and Carlos Farrales, G.R. 109648, November 22, 2001*)

Baptismal Certificate not a proof of the parentage of the baptized person.

As held in *Heirs of Pedro Cabais v. Court of Appeals*, a baptismal certificate is evidence only to prove the administration of the sacrament on the dates therein specified, but not the veracity of the declarations therein stated with respect to a person's kinsfolk and those concerning the relationship of the person baptized. (*Quisumbing, J., Ida Labagala v. Nicolasa Santiago, Court of Appeals, G.R. 132305, December 4, 2001*)

Dissolution of partnership; three stages thereof; four year prescription period starts when a final accounting is made.

The three final stages of a partnership are (1) dissolution; (2) winding-up; (3) termination. The partnership, although dissolved continues to exist and its legal personality is retained at which time it completes the winding-up of its affairs, including the partitioning and distribution of the net partnership assets to the partners. As long as the partnership exists, any of the partners may demand an accounting of the partnership business. Prescription of the said right starts to run only upon the dissolution of the partnership when the final accounting is done. (*Ynares-Santiago, J., Emilio Emnace v. Court of Appeals, G.R. 126334, November 23, 2001*)

Assignment of credit does not require the consent of the debtor.

In *Sison and Sison v. Yap Tico and Avanceña, 37 Phil. 587* consent is not necessary in order that assignment may fully produce legal effects, hence the duty to pay does not depend on the consent of the debtor, otherwise, all creditors would be prevented from assigning their credits because of the possibility of the debtor's refusal to give consent. What the law requires is merely notice to the debtor to inform him that payment should be made to the assignee and not to the original creditor. (*Pardo, J., South City Homes, Inc. Fortune Motors et al v. BA Finance Corporation, G.R. 135462, December 7, 2001*)

P.D. 1517, Urban Land Reform Act; requirements to qualify and avail of rights under said decree.

P.D. No. 1517, otherwise known as the Urban Land Reform Act pertains to areas proclaimed as Urban Land Reform Zones. To be able to qualify and avail oneself of the rights and privileges granted by the said decree, one must be (1) a legitimate tenant of the land for ten (10) years or more; (2) must have built his home on the land by contract; and (3) has resided continuously for the last ten (10) years. Those who do not fall within the said category cannot be considered "legitimate tenants," and, therefore, not entitled to the right of first refusal to purchase the property should the owner of the land decide to sell the same at a reasonable price within a reasonable time. (*Pardo, J., Edilberto Alcantara et al v. Cornelio B. Reta, Jr., G.R. 136996, December 14, 2001*)

Proper rates of interest; award of interest in the concept of actual and compensatory damages.

In *Eastern Shipping Lines, Inc. v. Court of Appeals and Mercantile Insurance Co., Inc.*, the following guidelines were set concerning the proper interest rates:

CIVIL LAW *continued*

1. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts, is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
2. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
 - a) When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extra-judicial demand under and subject to the provisions of Article 1169 of the Civil Code.
 - b) When an obligation, not constituting a loan or forbearance of money is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extra-judicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
 - c) When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. (*De Leon, Jr., J., Country Bankers Insurance Corporation v. Lianga Bay*, G.R. 136914, January 25, 2002)

Dacion en pago, its nature and requisites.

In *dacion en pago*, property is alienated to the creditor in satisfaction of a debt in money. It is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. It extinguishes the obligation to the extent of the value of the thing delivered, either as agreed upon by the parties or as may be proved, unless the parties by agreement, express or implied, or by their silence, consider the thing as equivalent to the obligation, in which case the obligation is totally extinguished.

In *Filinvest Credit Corporation v. Philippine Acetylene Co. Inc.*, the Court ruled that in *dacion en pago*, as a special mode of payment, the debtor offers another thing to the creditor who accepts it as equivalent to payment of an outstanding obligation. The undertaking partakes of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely, consent, object certain and cause or consideration must be present. In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price. In any case common consent is an essential prerequisite, be it sale or novation to have the effect of totally extinguishing the debt or obligation. (*Pardo, J., Philippine Lawin Bus Co. et al., v. Court of Appeals*, G.R. 130972, January 23, 2002)

Sale by husband of conjugal property without wife's consent is void; court authorization to sell allowed only if wife is incapacitated.

Respondent Norma Camaisa admittedly did not give her written consent to the sale. Even granting that she actively participated in negotiating for the sale of the subject properties, which she denied, her written consent to the sale is required by law for its validity. Significantly, petitioner herself admits that Norma refused to sign the contract to sell. Respondent may have been aware of the negotiation for the sale of their conjugal properties. However, being merely aware of a transaction is not consent.

Petitioner is correct insofar as she alleges that if the written consent of the other spouse cannot be obtained or is being withheld, the matter may be brought to court which will give such authority if the same is warranted by the circumstances. However, it should be stressed that court authorization under Article 124 of the Family Code

CIVIL LAW *continued*

is only resorted to in cases where the spouse who, does not give consent is incapacitated. Petitioner failed to allege and prove that respondent Norma was incapacitated to give her consent to the contract. In the absence of such showing of the wife's incapacity, court authorization cannot be sought. (*Kapunan, J., Thelma Jader-Mando v. Norma Hernandez C. Camaisa*, G.R. 147978, January 23, 2002)

The award for loss of earning capacity must be adequately proved.

In *People v. Verde*, the Court granted an award for the loss of earning capacity despite the absence of documentary evidence to substantiate such claim. However, the new ruling in *People v. Panabang* modifies this principle and precludes an award for loss of earning capacity without adequate proof. The Court in *Panabang* ruled that indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven. A self-serving statement, being unreliable, is not enough for lost income to be recovered, there must, likewise, be an unbiased proof of the decrease average, not just gross income. An award for lost of earning capacity refers to the net income of the deceased, i.e. his total income net of expenses. (*Panganiban, J., People v. Gerry Cuevas, et al.*, G.R. 143819, January 29, 2002)

A loan contract is not a consensual contract but a real contract.

A loan contract is not a consensual contract but a real contract. It is perfected only upon the delivery of the object of the contract. A perfected consensual contract falls under the first clause of Article 1934 of the Civil Code. It is an accepted promise to deliver something by way of simple loan. It can give rise to an action for damages. However, it does not constitute the real contract of loan which requires the delivery of the object of the contract for its perfection and which gives rise to obligations only on the part of the borrower. (*Quisumbing, J., BPI Investment Corporation v. Court of Appeals and ALS Management and Development Corporation*, G.R. 133632, February 15, 2002)

Stipulated penalty in a contract may be reduced by the Court.

Although a court may not at liberty ignore the freedom of the parties to agree on such terms and conditions as they see fit that contravenes neither law or morals, good customs, public order or public policy, a stipulated penalty, nevertheless, may be equitably reduced by the courts if it is iniquitous or unconscionable or if the principal obligation has been partly or irregularly complied with.

The question of whether a penalty is reasonable or iniquitous can be subjective and partly objective. Its resolution would depend on such factors as, but not necessarily confined to, the type, extent and purpose of the penalty, the nature of the obligation, the mode of breach and its consequences, the supervening realities, the standing and relationship of the parties, and the like, the application of which, by and large, is addressed to the sound discretion of the Court. In *Rizal Commercial Banking v. Court of Appeals*, the Supreme Court has tempered the penalty charges after taking into account the debtor's pitiful situation and its offer to settle the entire obligation with the creditor bank. The stipulated penalty might even be deleted such as when there is substantial performance in good faith by the obligor, when the penalty clause itself suffers from fatal infirmity, or when exceptional circumstances so exists as to warrant it. (*Vitug, J., Tolomeo Ligutan and Leonidas dela Llana v. Court of Appeals and Security Bank and Trust Company*, G.R. 138677, February 12, 2002)

REMEDIAL LAW

Additional filing fee as lien on judgment; responsibility of the Clerk of Court to enforce said lien and assess and collect the additional fee.

In *Sun Insurance Office, Ltd., v. Hon. Maximiano Asuncion*, the Court held that when the specific claim has been left for the determination by the court, the additional filing fee therefor shall constitute a lien on the judgment and it shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee. (*Ynares-Santiago, J., Emilio Emnace v. Court of Appeals et al*, G.R. 126334, November 23, 2001)

Real Actions; when considered as such.

In *Hernandez v. Rural Bank of Lucena*, 81 SCRA 75, 1978, the Supreme Court held that a real action is one where the plaintiff seeks the recovery of real property or, as indicated in section 2(a) of Rule 4 (now Section 1, Rule 4 of the 1997 Rules of Civil Procedure), a real action is an action affecting title to or recovery of possession of real property. It also ruled that where a complaint is entitled as one for specific performance but nonetheless prays for the issuance of a deed of sale for a parcel of land, its primary objective and nature is one to recover the land itself and, thus, is deemed a real action. In such a case, the action must be filed in the court where the property is located. (*Ynares Santiago, J., Virginia Gochan et al v. Mercedes Gochan et al*, G.R. 146089, December 13, 2001)

REMEDIAL LAW *continued*

Actions assailing the validity of search warrant should be filed with the court trying the criminal case resulting from the search warrant.

If the criminal case resulting from the search warrant is raffled to a different branch, all incidents relating to the validity of said warrant should be consolidated and under the jurisdiction of the branch trying the criminal case to promote the orderly administration of justice and to avoid confusion. (*Quisumbing, J.*, Eric Ong v. Court of Appeals, GR 132839, November 21, 2001)

Purpose and nature of a preliminary investigation.

As pointed out in *Duterte v. Sandiganbayan*, a preliminary investigation or a previous inquiry of some kind before an accused person is placed on trial, is to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from an open public accusation of a crime, from the trouble, expenses and anxiety of a public trial. It is also intended to protect the state from having to conduct useless and expensive trials. While the right is statutory rather than constitutional, it is a component part of due process in criminal justice. It is not a formal or technical right, it is a substantive right. To deny the accused's claim to a preliminary investigation would be to deprive him of the full measure of his right to due process. Although it is not a trial, it is not a casual affair and should be scrupulously conducted so that the constitutional right to liberty of a potential accused can be protected from any material damage. (*Ynares-Santiago, J.*, Reynolan Sales v. Sandiganbayan, November 16, 2001)

Duties of judges in case an application for bail is filed.

1. In all cases, whether bail is a matter of right or discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation.
2. Where bail is a matter of discretion, conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show the guilt of the accused is strong for the purpose of enabling the court to exercise sound discretion.
3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution.
4. If the guilt of the accused is not strong, discharge the accused upon approval of the bail bond. Otherwise the bail should be denied.

(*Ynares-Santiago, J.*, Melly Te v. Judge Romeo Perez, A.M. MTJ-00-1286, January 21, 2002)

Execution of judgment pending appeal; justification for its grant.

As held in *Echus v. Court of Appeals*, 199 SCRA 381-386, execution pending appeal is allowed when superior circumstances demanding urgency outweigh the damages that may result from the issuance of the writ. Otherwise, instead of being an instrument of solicitude and justice, the writ may well become a tool of oppression and inequity. Merely putting up a bond is not sufficient reason to justify execution pending appeal. To do so would make execution routinary, the rule rather than the exception. (*Quisumbing, J.*, Aida Bañez v. Gabriel Bañez, G.R. 132592, January 23, 2002)

Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in ejectment cases.

Municipal Trial Courts, Metropolitan Trial Courts, and Municipal Circuit Trial Courts now retain jurisdiction over ejectment cases even if the question of possession cannot be resolved without passing upon the issue of ownership. In forcible entry and unlawful detainer cases, even if the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, inferior courts, nonetheless, have the undoubted competence to provisionally resolve the issue of ownership for the sole purpose of determining the issue of possession. Such decision, however, does not bind the title or affect the ownership of the land or building, neither shall it bar an action between the same parties respecting title to the land or building nor be held conclusive of the facts therein found in a case between the same parties upon a different cause involving possession. In an unlawful detainer case, the only issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. Consequently, the filing of an action for reconveyance of title over the same property or for the annulment of the deed of sale over the land does not divest the Municipal Trial Court of its jurisdiction to try the forcible entry or unlawful detainer case before it, and the same may not be successfully pleaded in abatement of an action for unlawful detainer or forcible entry. This is because an ejectment suit is summary in nature and the same cannot be circumvented by the simple expedient of asserting ownership over the property. The fact, therefore, that an action for annulment of deeds and reconveyance was pending before another branch of the Regional Trial Court cannot be pleaded by private respondent in abatement of the ejectment case before the Municipal Circuit Trial Court. (*Kapunan, J.*, Rosana Barba v. Court of Appeals, G.R. 126638, February 6, 2002)

REMEDIAL LAW *continued*

Jurisdiction of Regional Trial Court in boundary disputes.

After the land has been originally registered, the Court of Land Registration ceases to have jurisdiction over contests concerning the location of boundary lines. In such case, the action *in personam* has to be instituted before an ordinary court of general jurisdiction. (*Pardo, J., Ceroferr Realty Corporation v. Court of Appeals and Ernesto Santiago*, G.R. 139539, February 5, 2002)

Third party claim; remedies of a third party whose property was wrongfully levied upon.

A third party whose property has been levied upon by a sheriff to enforce a decision against a judgment debtor is afforded with several alternative remedies to protect its interests. He may avail of the following remedies cumulatively and one will not preclude him from availing himself of the other alternative remedies in the event he failed in the first availed of:

- (a) file a third party claim with the sheriff of the Labor Arbiter;
- (b) If denied, appeal to the NLRC;
- (c) If denied by the NLRC, file a proper action with a competent court to recover ownership of the property illegally seized by the sheriff pursuant to Section 17 (now 16), Rule 39, Revised Rules of Court.

In *Ong v. Tating et al*, the Court held that a third person whose property was seized by a sheriff to answer for the obligation of a judgment debtor may invoke the supervisory powers of the court which authorized such execution. Upon application by the third person, after summary hearing the court may command that the property be released and restored to the rightful owner and possessor. What said court do in these instances, however; is limited to a determination of whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of judgment more specifically, if he has indeed taken hold of property not belonging to the judgment debtor. The court does not and cannot pass upon the question of title to the property with any character of finality.

Independent of the above-stated recourse, a third party claimant may also avail of the remedy known as "*terceria*" provided in Section 17 (now 16) Rule 39 by serving on the sheriff an affidavit of his title and a copy thereof to the judgment creditor. The sheriff shall not be bound to keep the property unless the judgment creditor or his agent on demand of the sheriff indemnifies him by a bond in a sum not greater than the value of the property levied on. And an action against the sheriff for damages within 120 days from the filing of the bond.

The aforesaid remedies are nevertheless without prejudice to any proper action that a third party claimant may deem suitable to vindicate his claim to the property which is entirely separate and distinct action from that in which execution has issued.

The remedies above mentioned are cumulative and may be resorted to by the third party claimant independent of or separately from and without need of availing of the others. If a proper action is opted, he must institute an action distinct and separate from that in which the judgment is enforced with the court of competent jurisdiction even before or without need of filing a claim in the court which issued the writ, the latter not being a condition *sine qua non* for the former. This is an exception to the rule that no court has the power to interfere by injunction with the judgments or decrees of another court with concurrent or coordinate jurisdiction. (*Pardo, J., Yupangco Cotton Mills v. Court of Appeals et al*, G.R. 126322, January 16, 2002)

ADMINISTRATIVE LAW

Abandonment of office; acts constituting abandonment.

A person holding a public office may abandon such office by non-user or acquiescence. Non-user refers to a neglect to use a right or privilege or to execute an office. However, non-performance of the duties of an office does not constitute abandonment where such non-performance results from temporary disability or from involuntary failure to perform. Abandonment may also result from acquiescence by the officer in his wrongful removal or discharge, for instance, after a summary removal, an unreasonable delay by an officer illegally removed in taking steps to vindicate his rights may constitute an abandonment of the office. (*Pardo, J., Lacsasa M. Adiong v. Court of Appeals*, G.R. 136480, December 4, 2001)

CRIMINAL LAW

Periods of Prescription for violations penalized by special laws and municipal ordinances under Act No. 3326 as amended by Act No. 3763.

1. For violations penalized by special acts unless otherwise provided in such acts:
 - a) for offenses punishable by a fine or imprisonment for not more than one month, or both – one year
 - b) those punishable by imprisonment for more than one month but less than two years – four years
 - c) those punishable by imprisonment for two years or more but less than six years – eight years
 - d) for other offenses punishable by imprisonment for six years or more – twelve years
 - e) crime of treason – twenty years

CRIMINAL LAW *continued*

- f) offenses against any law or part of law administered by the Bureau of Internal Revenue – five years
- g) violations penalized by municipal ordinances – two months
- h) violations of the regulations or conditions of certificates of public convenience issued by the Public Service Commission – two months

Prescription shall begin to run from the day of the commission of the violation of the law and if the same be not known at the time from discovery thereof and the institution of judicial proceedings for its investigation and punishment. The prescription shall be interrupted when proceedings are instituted against the guilty person and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. (*De Leon, Jr., J., Carmen Intengan, Rosario Neri and Rita Brawner v. Court of Appeals, Department of Justice et al., G.R. No. 128996, February 15, 2002*)

LAND REGISTRATION**Requirement of notice in reconstitution of titles cases.**

Under R.A. No. 26, reconstitution is validly made only in case the original copy of the certificate of title with the Register of Deeds is lost or destroyed. And if no notice of the date of hearing of a reconstitution case is served on a possessor or one having interest in the property involved he is deprived of his day in court and the order of reconstitution is null and void. When what is lost is the owner's copy of the certificate of title, Section 109 of P.D. 1529 is applicable and it is sufficient that the notice is sent to the Register of Deeds and those persons who are known to have or appear to have an interest in the property as shown in the Memorandum of encumbrances at the back of the original. (*Quisumbing, J., Jesus San Agustin v. Court of Appeals, G.R. 121940, December 4, 2001*)

NEW RULINGS *continued***LEGAL FORMS****Specific form or style in writing an information.**

The fact that the qualifying circumstances were recited in the second paragraph and not in the first paragraph of the information, is a matter of form or style for which the prosecution should not be faulted. That the prosecutor wrote the information differently did not impair its sufficiency. There is nothing in the law that prohibits such form or style. As long as the requirements of the law are observed, the Information will pass judicial scrutiny. (*Carpio, J., People v. Wilson Lab-EO, G.R. 133438, January 16, 2002*)

NEWS *continued***PHILJA WEBSITE LAUNCHED:
philja.gov.ph**

One of the highlights of the Closing Ceremonies of the Centenary Celebrations of the Supreme Court, held on June 11, 2002, was the launching of the Academy's website, philja.gov.ph.

As the Supreme Court's education arm, the PHILJA website includes programs and courses for the members of the Judiciary; projects with various partners; announcements; news; calendar of events; publications; electronic alerts; as well as the Academy's mandate, organizational structure, and board of governance.

The PHILJA website is timely for the establishment of an International Library of the International Organization for Judicial Training (IOJT) where Justice Ameurфина A. M. Herrera, Chancellor of the Academy, is currently its Deputy President for Australasia.

According to Justice Herrera: "Without doubt, it is imperative for the Philippines to keep abreast of trends and developments in judicial education in other countries instead of relying solely on domestic inputs."

**PHILJA MOVES TO A NEW HOME**

Starting July, the Academy can be found at its new location: 3rd Floor, Centennial Building, Supreme Court, Padre Faura St., Manila, 1000. The Centennial Building, with improved premises and facilities, was inaugurated on June 11, 2002.

**SC ON TV**

The Supreme Court embarked on two major television productions for the general public - *The Bulwark of Justice*, an educational documentary, and *A Celebration of Justice*, a special video feature which won for the Court its first ever Gawad Oscar M. Florendo Award from the Public Relations Organization of the Philippines (PROP) last year.

SUPREME COURT

RESOLUTION of the COURT EN BANC dated 16 APRIL 2002 on A.M. No. 02-2-17-SC

A.M. No. 02-2-17-SC (Re: Pilot Testing of Mediation in the Court of Appeals). – For resolution is the request of the Philippine Judicial Academy (PHILJA) to allow the pilot testing of mediation proceedings in the Court of Appeals with the following objectives: “(a) to prove the viability of mediation in appealed cases before the Court; (b) to test the rules governing the mediation process in appealed cases before the Court; and (c) to discover the most efficient manner to implement the mediation program.” For this purpose, the PHILJA proposed the following rules to govern the mediation process, *viz*:

“x x x

2. COURT OF APPEALS SETTLEMENT MONTH

A month of the year, preferably May 2002, shall be set aside for the purpose of pilot-testing the efficacy of Mediation for setting disputes in the Court of Appeals, which shall be known as “Settlement Month”.

3. COVERAGE

With the exception of criminal cases, habeas corpus petitions and cases with pending application for restraining orders/preliminary injunctions, unless in the last case, both parties consent to mediation provided that the parties all come from the National Capital Region, Regions III, and IV:

- a. Civil cases brought on ordinary appeal with:
 - (i) both appeal briefs filed; or
 - (ii) only the appellant’s brief filed; or
 - (iii) with no appeal briefs filed but with memoranda filed before the lower court.
- b. labor cases;
- c. special civil actions; and
- d. other cases, e.g., high impact economic cases

Civil cases brought on ordinary appeal without the appellant’s brief or memoranda shall not be referred to mediation.

4. SELECTION OF CASES AND RESOLUTION TO APPEAR

Each Justice shall select one case for each category of the covered cases in Section 3 above. The Justice, with the concurrence of the other members of the Division, shall issue a resolution directing the parties, with or without counsel to appear before the concerned Division of the Court of Appeals to consider the possibility of mediation.

This Resolution shall have the following attachments:

- a. Brochure of the Mediation program; and
- b. Guidelines for the Pilot Testing of Mediation.

5. RESOLUTION TO MEDIATE

Should the parties agree to mediation, the Court shall issue a Resolution to Mediate, in a form provided for the purpose, which shall contain the following:

- a. Statement that the case is placed under mediation;
- b. Directive to parties/counsel to immediately appear before the Philippine Mediation Center at the Court of Appeals Auditorium to choose the Mediator and to set the time and date of the initial mediation conference;
- c. Suspension of the appellate proceedings from the date of the Resolution to Mediate until the end of the Settlement Month.

A Copy of the Resolution to Mediate shall be furnished the Philippine Mediation Center (PMC)/ Philippine Mediation Foundation Inc. (PMFI) together with the following documents:

- a. Appeals briefs or, if no appeals briefs are filed, memoranda; and
- b. Decisions or Orders of the lower court/tribunal being appealed.

6. SCHEDULE OF MEDIATION

All initial mediation conferences shall, as much as practicable, be held within the first ten (10) working days of the Settlement Month.

The Mediator shall endeavor to complete the mediation within the Settlement Month. If significant progress toward settlement has been achieved and an extension of time to mediate will most likely result in a successful settlement of the case, the parties/counsel may, with the concurrence of the Mediator, file with the Court a joint motion for extension. The Court, in its discretion, may grant the extension for a period not exceeding thirty (30) days.

7. PARTY PARTICIPATION

Individual party litigants are required to attend all mediation conferences in person. Corporate litigants shall attend mediation conferences through a representative duly authorized to enter into an amicable settlement.

8. VENUE OF MEDIATION CONFERENCES

The mediation conferences shall be conducted in separate sites within the vicinity of the Court of Appeals. For parties/counsel located outside Metro Manila, mediation conferences may be conducted in

RESOLUTION dated 16 APRIL 2002 *continued*

selected provinces depending upon the volume of the cases and the availability of resources of the PMC/PMFI.

9. CONFIDENTIALITY

All matters discussed, communications made, and documents presented during the mediation conferences shall be privileged and confidential, and the same shall be inadmissible as evidence for any purpose in any other proceeding.

10. QUALIFICATIONS OF MEDIATORS

Retired justices and judges, senior members of the bar and senior law professors who have creative problem solving skills and a strong interest in mediation, after undergoing orientation/training, may be accredited by the Supreme Court for this pilot testing.

11. RECRUITMENT OF MEDIATORS

The Court of Appeals and the PMC/PMFI shall suggest one hundred (100) prospective mediators. Invitations will be sent to the prospective mediators describing the mediation program and inviting them to participate as mediators. Once the invitation is accepted, training in mediation shall be given. There shall be no other requirement than the completion of the mediation training.

12. TRAINING OF MEDIATORS

A two (2) part training is envisioned to cover both basic and advance mediation, Filipino values and behavioral attitudes, business and corporate culture.

13. DISCLOSURES

The Mediator shall refrain from participating in the Mediation of any dispute if he/she perceives that participation as a Mediator will be a clear conflict of interest. The Mediator shall also disclose any circumstance that may create or give the appearance of a conflict of interest and any circumstance that may raise a question as to the Mediator's impartiality.

The duty to disclose is a continuing obligation throughout the process. In addition, if a Mediator has represented either party in any capacity, the Mediator should disclose that representation.

A Mediator shall disclose any known, significant current or past personal or professional relationship with any party or attorney involved in the mediation and the Mediator and parties should discuss on a case-to-case basis whether or not to continue.

After the Mediator makes his disclosures, and a party does not seek inhibition, the Mediator shall continue as such.

No Mediator shall have any interest in any property, real or personal, that is the subject matter of the case referred to him/her for mediation. He/She may not offer to purchase or to sell such property, whether at the inception, during, or at any time after the mediation proceedings, either personally or through other parties.

14. AUTHORITY OF MEDIATOR

Mediators shall have full discretion in the conduct of mediation, including the manner and flow of discussions as well as the calling of caucuses. Mediators may terminate mediation at any time when they see that the parties are not interested to settle. During the conference, the Mediator, may:

- a. inform the parties of the rules and procedures of mediation;
- b. analyze the strength and weaknesses of each party's position;
- c. assess the risks and costs of continuing the litigation;
- d. draw out the parties' underlying interests behind the legal issues and explore common ground for settlement;
- e. suggest options for parties to consider; and
- f. if practical or necessary, to seek the assistance of a co-mediator to assess the strength and weaknesses of each party's case.

The request of the PHILJA has been referred to the Committee on Revision of the Rules of Court which favorably endorsed the same.

IN VIEW WHEREOF, the Court approves the request of PHILJA to allow the pilot testing of mediation proceedings in the Court of Appeals which shall be governed by the rules above-quoted. The project shall be headed by the Philippine Mediation Center but shall be under the control and supervision of the Court of Appeals which shall provide the necessary staff and logistical support. The Court of Appeals may call for such technical assistance as may be needed from appropriate agencies." Davide, Jr., C.J., Melo, Kapunan and Martinez, JJ., are abroad on official business.

Very truly yours,

(Sgd.) LUZVIMINDA D. PUNO
Clerk of Court

ADMINISTRATIVE CIRCULAR NO. 20-2001

TO: OFFICE OF THE COURT ADMINISTRATOR, PHILIPPINE JUDICIAL ACADEMY, ALL PRESIDING JUDGES AND BRANCH CLERKS OF COURT STATIONED IN METRO MANILA, CEBU, DAVAO, AND ALL OTHER AREAS WHEREIN THE PHILIPPINE MEDIATION CENTER (PMC) UNITS MAY BE FURTHER ORGANIZED AND DESIGNATED

Administrative Circular No. 20-2002 continued**SUBJECT: MONTHLY INVENTORY AND REFERRAL OF CASES FOR MEDIATION**

WHEREAS, one of the priority objectives of the Supreme Court is the decongestion of court dockets, and for this purpose, Mediation has been found to be one expeditious mode of alternative dispute resolution;

WHEREAS, the Action Plan for Judicial Reforms (APJR) on Judicial Systems and Procedures includes Alternative Dispute Resolution mechanisms, particularly, the establishment of court-referred mediation system;

WHEREAS, on October 16, 2001, the Supreme Court issued an *en banc* Resolution A.M. Mo. 01-10-5-SC-PHILJA, covering the following:

1. Administrative Order establishing the Philippine Mediation Center (PMC);
2. Second Revised Guidelines for the implementation of mediation proceedings;
3. Code of Ethical Standards for Mediators
4. Standards and Procedure for Accreditation of Mediators for court-referred/court-related mediation cases;
5. Compensation Guidelines for Mediators and Supervisors;

WHEREAS, on 12 November 2001, the Office of the Court Administrator (OCA) issued Circular No. 82-2001 directing all Executive Judges stationed in Metro Manila, Cebu and Davao and all other areas that may be further designated, to assist and support the Philippine Judicial Academy (PHILJA) in the organization, operation and maintenance of the Philippine Mediation Center units;

WHEREAS, on 12 March 2002, the OCA and the Integrated Bar of the Philippines (IBP) entered into a Memorandum on Policy Guidelines under which the IBP commits itself to, *inter alia*, see to it that its members avail of court-referred mediation in appropriate cases;

WHEREAS, the PHILJA has already established PMC units in Makati, Quezon City, Pasay, San Juan, Taguig, Cebu City, Mandaue, Lapu-Lapu, Davao City, Digos, Tagum and Panabo;

WHEREAS, the PMC units in Manila, Caloocan, Las Piñas, Parañaque, Muntinlupa, Marikina, Mandaluyong, Pasig City, and Valenzuela will be fully established as soon as temporary venues are available;

WHEREAS, the results of mediation in the PMC units already operational are encouraging with approximately 80% of the cases mediated settled (Table, Annex "A");

WHEREAS, despite encouraging results, not all trial courts refer cases for mediation resulting in lack of cases being mediated and waste of time for volunteer mediators;

WHEREFORE, the following measures shall be observed and complied with:

Trial Courts (Presiding Judges and Branch Clerks of Court)

1. Conduct a monthly inventory of cases in their dockets referable to mediation. Pursuant to the Court's Second Revised Guidelines, dated 16 October 2001, the cases that may be referred are as follows:
 - a. All civil cases, settlement of estates, and cases covered by the Rule on Summary Procedure except those which by law may not be compromised;
 - b. Cases cognizable by the Lupong Tagapamayapa under the Katarungang Pambarangay Law;
 - c. The civil aspect of B.P. 22 cases; and
 - d. The civil aspect of quasi-offenses under Title 14 of the Revised Penal Code.
2. Upon appearance of the parties during pre-trial in cases covered by mediation, immediately order the parties to appear before the Philippine Mediation Center (PMC) unit located in the courthouse for initial mediation conference;
3. Issue appropriate sanctions upon failure of the parties to appear before the PMC unit, since mediation is part of pre-trial;
4. Ensure the regular referral of cases for mediation to the PMC unit; and
5. The monthly inventory shall be prepared and signed by the Branch Clerk of Court, duly noted by the Presiding Judge, for submission to the Office of the Court Administrator and the Philippine Judicial Academy.

Role of the Court Administrator:

The Office of the Court Administrator shall monitor and ensure that the inventory and referral of cases for mediation are properly observed and undertaken.

Philippine Judicial Academy:

The Philippine Judicial Academy shall formulate and issue implementing rules and regulations for the proper implementation of court-referred mediation.

For strict compliance.

24 April 2002.

(Sgd.) HILARIO G. DAVIDE, JR.
Chief Justice

3rd Floor of the Supreme Court Building
Taft Avenue, Manila

PRESIDING JUDGE

2002 Upcoming PHILJA Events

<i>Date</i>	<i>Seminars / Activities</i>	<i>Venue</i>
June 17-21	24 th Orientation Seminar-Workshop for Newly Appointed Judges	PHILJA, Tagaytay City
June 24-28	Training of Mediation Trainors Program	PHILJA, Tagaytay City
June 25-28	Regional JCEP (Level 2) for Region VII	CAP Convention Center, Cebu City
	Seminar for Court Librarians	PHILJA, Tagaytay City
July 15-19	Seminar-Workshop on Case Management for Family Court Social Workers (Level 2)-1 st batch	Bayview Park Hotel, Manila
July 23-26	Regional JCEP(Level 2) for Region III-1 st batch	Crown Peak Garden Hotel, Subic
July 24-26	National Workshop on Role of Judges, Prosecutors and Public Defense Attorneys on the Prevention of Torture	La Legend Hotel, Subic
July 26	Advocates Forum for Lawyers on ADR	CA Auditorium, Manila
July 30-August 2	Regional JCEP(Level 2) for Region III-2 nd batch	Crown Peak Garden Hotel, Subic
August 13-14	Seminar on Juvenile and Domestic Relations Justice for Single Sala Courts-1 st batch	The Pearl Manila, Manila
August 15-17	PHILACI Convention Seminar	Davao City
August 15-17	PJA Convention Seminar	Bacolod City
August 19-23	Seminar-Workshop on Case Management for Family Court Social Workers (Level 2)- 2 nd batch	PHILJA, Tagaytay City

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