

RULE 17 DISMISSALS

Three kinds of dismissals under Rule 17:

1. Dismissal upon *notice by plaintiff*
2. Dismissal upon *motion of plaintiff*
3. Dismissal due to *fault of plaintiff*

Notice by plaintiff

- A complaint may be dismissed *at any time before service of answer or of a motion for summary judgment* by filing of a notice of dismissal.
- The court then issues an order dismissing the complaint.
- Effect: The dismissal is *without prejudice*.
 - Exception: It's with prejudice, if a previous complaint has already been dismissed based on or including the same claim (two-dismissal rule).

Two-dismissal rule, requisites:

1. A previous case was filed but dismissed by a competent court (a court with jurisdiction)
2. Both cases were based on/include the same claim
3. Both notices of dismissal were filed by the plaintiff
4. The motion to dismiss filed by plaintiff was consented to by the defendant on the ground that claims have been paid and satisfied by the former (*Ching v. Cheng*)
 - a. Thus, a MTD filed by the *defendant* (not the plaintiff!) does not count toward the two-dismissal rule.

Motion by plaintiff

- If an answer or a motion for summary judgment has been filed, dismissal shall only upon *approval of the court* and upon such terms the court will order.
- Effects:
 - If there is a counterclaim before the filing of the motion, the dismissal shall be limited to the complaint (the counterclaim survives).
 - In this case, the defendant may opt to prosecute his counterclaim in a separate action, unless he manifests within 15 days from notice of the motion that he wants to continue under the same action.
 - The dismissal is *without prejudice*, unless the court otherwise orders.

- For **class actions**, the dismissal shall **only** be upon motion (the first type is inapplicable).

Fault of plaintiff

- Grounds:
 1. Plaintiff fails to appear on the date of the presentation of his evidence in chief, for no justifiable cause
 2. Fails to prosecute his action for an unreasonable length of time
 3. Failure to comply with these Rules, or any order of the court
- How done:
 - By the court, *motu proprio*
 - Upon defendant's motion
 - Without prejudice to prosecute the counterclaim in a separate action
- Effect: The dismissal is *with prejudice*, unless the court orders otherwise. It is an adjudication on the merits (*Pinga v. Heirs of Santiago*).

Rules for dismissal of counterclaim, cross-claim or third-party complaint

- A voluntary dismissal by notice by the claimant must be made before:
 - A responsive pleading (e.g., answer to the counterclaim)
 - A motion for summary judgment is served, or if none:
 - Before the introduction of evidence at the trial or hearing

Remedies for dismissal:

1. If with prejudice – appeal
2. If without prejudice – refile the action.
 - a. Exceptionally, a Rule 65 petition may be availed of, alleging grave abuse of discretion in the dismissal (*Martinez v. Buen*).

DEFAULTS

Requisites

1. The court has validly acquired jurisdiction over the defendant
2. Defendant failed to file his answer within the time allowed therefor (usually, 15 days)
3. There must be a motion to declare the defendant in default, with notice to the latter (*Monzon v. Sps. Relova*)
 - a. A court cannot declare it *motu proprio*; there must be a written motion and notice (*Rodriguez v. Government of the USA*)

What happens

- The court proceeds to render judgment granting the claimant such relief, unless the court orders the claimant to present evidence.

- In any case, the judgment rendered in favor of the plaintiff shall not exceed the amount or be different from what he prayed for.
- Also prohibited: An award of unliquidated damages.
- The reception of evidence may be delegated to the branch clerk.

Effects

1. The party in default can no longer take part in the trial
2. He is still entitled to notice of subsequent proceedings

Effects of default are followed only in three instances

1. An actual default for failure to file a responsive pleading
2. Failure to appear in the pre-trial conference ("as in default")
3. Refusal to comply with modes of discovery under Rule 29, § 3 (c) (*Monzon, supra*)

Partial default – There are multiple defendants, and some of whom answer, and the others fail to do so.

- In this case, the court shall try the case upon those who answered and render judgment upon the evidence presented.
- The defaulting party is deprived of no more than the right to take part in the trial. But the result of the action shall affect and bind **both** the answering and defaulting defendants (*Grageda v. Gomez*)

Instance where there can be no default – In declaration of nullity or marriages or legal separation.

- If the defendant did not answer, the solicitor-general must investigate whether a collusion exists between the parties.
- The state must intervene to ensure that evidence is not fabricated.

Relief from default

1. Time of filing – Any time after notice of default and before judgment
2. What to file – A motion under oath to set aside the order of default
3. Grounds – That the failure to answer was due to **FAME** and that he has a meritorious defense:
 - a. Fraud
 - b. Accident
 - c. Mistake
 - d. Excusable negligence

Requisites to set aside order of default:

1. It must be made by motion under oath by one that has knowledge of the facts
2. It must be shown that the failure to file an answer was due to FAME
3. There must be a proper showing of the existence of a meritorious defense (*Manuel v. Ong*).

Remedies of a party in default:

1. File a motion under oath, any time after discovery and before judgment, to set aside his default (FAME)
2. If the judgment has already been rendered, but *before finality*, a motion for new trial under Rule 37 (and an MR)
3. If the judgment had already been final and executory, a petition for relief under Rule 38
4. Appeal (*Crisologo v. Globe*)

Appealing a default order (may a party in default appeal?) – YES.

1. If the defendant did not ask the RTC to set aside the default order and, on appeal, the CA sets aside the default – Defendant can get a review of the RTC's default judgment *without* the opportunity of having the CA consider defense evidence
2. If the defendant first asks the RTC to set aside default and he prevails – The declaration of default will be set aside, and he will be allowed to present his evidence in the RTC.
 - a. If the RTC affirms the default order, he can still appeal.

DISCOVERIES

See George S.D. Aquino & Katrina Monica C. Gaw, *Discovering Litigation Practice: A Reintroduction to the Modes of Discovery*, 61 ATENEO L.J. 454 (2016).

1. Depositions pending action – Taking of testimony of any person, whether a party or not, through oral examination or written interrogatories.
 - a. It is taken upon an *ex parte* motion.
2. Depositions before action or pending appeal – A method to perpetuate (preserve) testimony for future use.
3. Interrogatories to parties – A set of written questions served specifically upon an adverse party to elicit material and relevant facts.
 - a. A party must fully answer in writing, signed and sworn to, within 15 days.
 - b. A party may not serve more than one set without leave of court.
4. Request for admission – A written request for the adverse party to admit the genuineness of documents or the truth of material facts.
 - a. If the party fails to file a sworn denial or inability to answer within the designated period, the matters are deemed admitted.
5. Production or inspection of documents or things – An order requiring the party to produce documents, books, accounts or tangible things for inspection, copying or photographing.
 - a. It is granted upon motion showing good cause.

- b. It can also utilize entry into land or property controlled by a party for inspecting, measuring or surveying.
- 6. Physical and mental examinations of persons – A court-ordered examination by a physician.
 - a. It is availed of when the mental or physical condition of a party is in controversy.
 - b. The court issues the order specifying the time, place, and scope of the examination.

RULE 18 PRE-TRIAL

Nature and purpose

- It is a procedural device intended to clarify and limit the basic issues raised by the parties and to take the trial of cases out of the realm of surprises and maneuvering.
 - It is an answer to the clarion call for the speedy disposition of cases.
 - Hailed as the most important procedural innovation in Anglo Saxon justice in the nineteenth century, it paves the way for a less cluttered trial and resolution of the case.
 - It is, thus, mandatory for the trial court to conduct pre-trial in civil cases in order to realize the paramount objective of simplifying; abbreviating, and expediting trial (*Parañaque Kings v. Santos*)
- It seeks to achieve the following:
 - The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution
 - Simplification of the issues
 - Necessity or desirability of amendments to the pleadings
 - Possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof
 - The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission (*Toshiba v. CIR*).
 - Limitation of the number of witnesses
 - The advisability of a preliminary reference of issues to a commissioner
 - The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist
 - The advisability or necessity of suspending the proceedings
 - Such other matters as may aid in the prompt disposition of the action (*Tiu v. Middleton*)
- In a pre-trial, the judge is not a passive arbiter; he is an active participant who constantly seeks

avenues through which trial can be expedited, simplified or even avoided by a resort to alternative modes of dispute resolution (*supra*).

Waivable?

- Unless there is a showing of substantial prejudice caused to a party, the trial court's inadvertent failure to calendar the case for a pre-trial or a preliminary conference cannot render the proceedings illegal or void *ab initio* (*Sps. Martinez v. Dela Merced*).
- Failure to timely object to the absence of a pre-trial constitutes waiver of that procedural right, especially when the party is not prejudiced and has participated in trial (*Madrid v. Mapoy*).

When conducted

- After the last responsive pleading has been served and filed
- The branch clerk shall issue a notice of pre-trial, within five days from above
- The pre-trial shall be set not later than 60 days from the filing of the last responsive pleading

Pre-trial brief (PTB)

- When filed – At least three calendar days before the date of the pre-trial
- Contents:
 - A concise statement of the case and the reliefs
 - A summary of the admitted facts and the proposed stipulation of facts
 - The main factual and legal issues to be tried or resolved
 - The propriety of referral of factual issues to a commissioner
 - The documents or other object evidence to be marked, and their purpose
 - The names of the witnesses and the summary of their testimonies
 - A brief statement of points of law and citation of authorities
- Failure to file the PTB shall have the same effect as failure to appear at the pre-trial.
 - Thus, its submission is mandatory (*Elgar v. Santos; Saguid v. CA*).
- The PTB serves as a guide during the pre-trial conference so as to simplify, abbreviate and expedite the trial, if not to dispense with it (*De Agatep v. Rodriguez*).
- No evidence may be introduced during trial if it was not identified and pre-marked during pre-trial. However, if there is good cause, the evidence not pre-marked may be introduced.
 - “Good cause” – A substantial reason that affords a legal excuse (*Heirs of Lagon v. Ultramax*).
- If the **plaintiff fails to file PTB** → complaint may be dismissed.

- If the defendant fails → plaintiff will present his evidence *ex parte* (*Dela Cruz v. Victa Realty*).

Appearance of parties

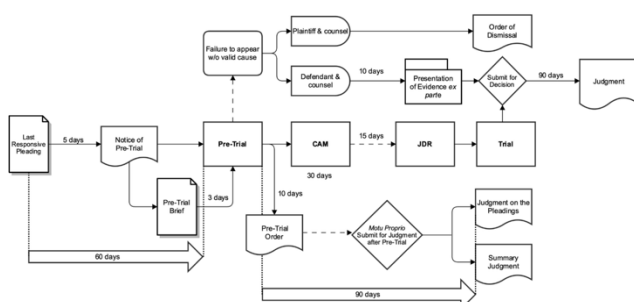
- Parties and their counsel **must appear** during the pre-trial, CAM and JDR.
- Failure to appear may be **excused only for**:
 - Acts of God
 - Force majeure
 - Duly substantiated physical inability
- A representative may appear on behalf of a party, but the representative must have a **Special Power of Attorney**.
- In deciding on a motion for postponement of pre-trial, court must consider: (1) reason for postponement and (2) merits of the case of movant (*Philippine Transmarine v. CA*).

Effect of failure to appear

Party who failed to appear	Effect
Plaintiff and counsel	Dismissal of the action with prejudice*
Defendant and counsel	Plaintiff will present his evidence <i>ex-parte</i>

- The dismissal with prejudice remains at the sound discretion of the court. It may dismiss the action *without* prejudice, especially if the action is a tax collection case (lifeblood doctrine) (*Chingcoe v. Republic*).
- By way of exception, the non-appearance of a party and counsel may be excused if:
 - A valid cause is shown; or
 - There is an appearance of a representative on behalf of a party fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents (*Ultra Mar v. Fermida*).
- It is only when *both* the party-litigant *and* their counsel fail to appear in pre-trial would there be the concomitant consequence of either: (a) dismissal (if plaintiff and counsel were absent), or (b) presentation of evidence *ex parte* (defendant and counsel were absent) (*Gemina v. Heirs of Espejo*).

Procedure



Pre-trial order; contents:

1. An enumeration of the admitted facts
2. The minutes of the pre-trial conference
3. The legal and factual issue/s to be tried
4. The applicable law, rules and jurisprudence
5. The evidence marked
6. The specific trial dates for continuous trial
7. The case flowchart
8. A statement that the one-day examination of witness rule and most important witness rule shall be strictly followed
9. A statement that the court shall render judgment on the pleading or summary judgment, as the case may be.
 - a. Courts are now allowed to *motu proprio* submit a case for judgment on the pleadings or summary judgment when the answer fails to tender an issue (*Sioland Development v. Fair*).

Cases

- Admissions clearly made during the pre-trial conference are conclusive upon the parties that made it (*Alarcon v. CA*).
- Issues not raised or stipulated during pre-trial are deemed waived and cannot be raised for the first time on appeal (*PPA v. City of Iloilo*).
 - Still, issues that are impliedly included among those listed or that may be inferable by necessary implication from the stated issues are considered integral parts of the pre-trial order (*Philippines Export v. Amalgamated*).
 - An issue may also be admitted to prevent manifest injustice. Thus, a party may file an amended or supplemental pleading (*Son v. Son*).
- Parties are bound by the delimitation of issues during the pre-trial. They may not change a defense not included in the pre-trial order (*Licomen v. Abainza*).
- Parties must disclose all issues of law and fact they intend to raise at trial during the pre-trial conference, in order to obviate the element of surprise. However, this rule does not apply when:
 - The issue involves privileged matters.
 - The issues are impliedly included or may be inferable by necessary implication to be integral parts of the pre-trial order as much as those expressly stipulated (*LCK v. Planters Bank*).

Court-annexed mediation (CAM) and judicial dispute resolution (JDR)

1. CAM – After pre-trial and joinder of issues, the court shall refer the parties for CAM.
 - a. The period shall not extend 30 days.
 - b. Parties are encouraged to personally appear. Else, a counsel must have an SPA. The court can impose upon a

party who fails to appear in the CAM which includes censure, reprimand, contempt, and even dismissal of the action in relation to Rule 18, § 5 (*Kent v. Micarez*).

- c. While courts and their personnel are enjoined to assist in the successful implementation of mediation, A.M. No. 01-10-05- SC-PHILJA does not authorize them to conduct the mediation themselves. The Philippine Mediation Center conducts the CAM (*In re Bandong*).
2. JDR – Only if the judge of the court is convinced that settlement is still possible, the case may be referred to *another* judge for JDR.
 - a. The JDR shall be conducted within a 15-day period from notice of failure of the CAM.
 - b. The absence/denial of a JDR does not invalidate the proceedings of the court, nor does it deprive the right to due process (*Tuazon v. Fuentes*).

TRIAL

Calendar of Cases Rule 20

Calendar of cases

- The branch clerk is responsible for keeping a calendar of cases for pre-trial, trial, and those whose trials were adjourned or postponed, and those with motions to set for hearing (i.e., litigious motions).
- Preference:
 - Habeas corpus petitions
 - Election cases
 - Special civil actions
 - Other so required by law

Assignment of cases; by raffle

- The assignment of cases to the different branches of a court shall be done exclusively by raffle.
- Strict compliance with rules and administrative orders on the raffle and assignment of cases is mandatory to ensure impartiality and prevent forum shopping or manipulation of case assignments. Any deviation constitutes a serious administrative offense and undermines the integrity of the judiciary (*OCA v. Gako*).

Trial Rule 30

Schedule of trial

Case	Period
Plaintiff's evidence	Start: 30 days after end of pre-trial Period: 90 days

Defendant's evidence	Start: 30 days after court's ruling on plaintiff's offer (orally!) Period: 90 days
TPC, cross-claim, counterclaim, etc.	Period: 90 days
Rebuttal evidence	Period: 30 days

Hard stops:

1. Presentation of evidence of *all* parties shall be terminated within 300 days or 10 months.
2. If there are no TPC, counterclaim or cross-claim, within 180 days or 6 months.

Adjournments and postponements

- General rule: Court cannot adjourn trial for a longer period than one month, nor more than three months in all
 - Exception: Longer adjournments must be authorized by the OCA
- The party who caused the postponement must still finish its presentation of evidence on the remaining dates agreed in the PTO.
- Requisites of motion to postpone trial for illness of party or counsel:
 - An affidavit or sworn certification that the presence of such party or counsel is indispensable
 - The character of the illness will render his attendance excusable

Order of trial

1. Plaintiff
2. Defendant
3. Third-party defendant, if any
4. Fourth-party, and so forth, if any
5. The parties against whom any counterclaim or cross-claim has been pleaded
6. The parties' rebutting evidence
7. *Unless the court, for good reasons and in the furtherance of justice, permits them to adduce additional evidence upon their original case.*
 - a. (1) Where the evidence is rebuttal in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other; or (2) where the evidence sought to be presented is in the nature of newly discovered evidence, the party's right to introduce further evidence must be recognized (*Republic v. Sandiganbayan*).

Reception of evidence

- The judge must receive the evidence.
- The branch clerk (who must be a lawyer) may do so, in default or *ex parte* hearings, and where the parties agree in writing.
 - The branch clerk, however, has no power to rule on objections to any question or to the admission of exhibits.

- The court must decide on those upon the clerk's submission of his report and the transcripts within 10 days from termination of the hearing.
- Upon submission of the evidence, the case is deemed submitted, unless the court requires the submission of memoranda or further pleadings.

Consolidation or Severance Rule 31

Consolidation

- Joint hearing on any or all of issues may be done if cases involve a common question of law or fact
- The court may also order all the actions consolidated
- The court may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay
- Consolidation is a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties (*Goodland v. BDO*).
- Failure to consolidate a case with a related case does not necessarily result in the dismissal of the case, unless there is *litis pendentia* or *res judicata* (*supra*; *Puncia v. Toyota*).

Three types of consolidation

1. **Quasi-consolidation** – Where all except one of several actions are stayed until one is tried, in which case the judgment in the one trial is conclusive as to the others. This is not actually consolidation but is referred to as such.
2. **Actual consolidation** – Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint.
3. **Consolidation for trial** – Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other (*Republic v. Heirs of Oribello*).

Separate trials (severance)

- In furtherance of convenience, or to avoid prejudice, the court may order a separate trial of any claim, cross-claim, counterclaim, TPC, or any separate issue.

- Thus, as a *general rule*, all issues in every case must be tried at one time, except (severance):
 - Extraordinary grounds
 - If the separate trial will avoid prejudicing the parties
 - If the separate trial will further convenience
 - If the separate trial would promote justice
 - If the separate trial will give a fair trial to the parties (*Metrobank v. Sandoval*)

Trial by Commissioner Rule 32

When done

1. When the trial of an issue of fact requires the examination of a long account
2. When the taking of an account is necessary for the information of the court before judgment
3. When a question of fact, other than upon the pleadings, arises upon motion or in any stage of a case, or for carrying a judgment or order into effect

Powers of the commissioner:

1. Issue *subpoena duces tecum*
 2. Swear witnesses
 3. Rule upon the admissibility of evidence (unless otherwise provided in the Order of Reference)
- The commissioner's role is to receive and record evidence, not to decide the case; the trial court still renders the final judgment based on the commissioner's report (*Wassmer v. Velez*)

Subpoena Rule 21

Nature

- Subpoena is a process directed to a person requiring him to attend and to testify at the hearing or the trial of an action, or at any investigation conducted by competent authority, or for the taking of his deposition (*subpoena ad testificandum*).
- It may also require him to bring with him any books, documents, or other things under his control (*subpoena duces tecum*).
 - Thus, in a suit for unfair competition, it is only through the issuance of a *subpoena duces tecum* that the complaining party is afforded his full rights of redress (*Universal Rubber v. CA*).
- It shall be served in the same manner as personal or substituted service of summons.
- Personal appearance is required.

Form and contents

1. Name of the court
2. Title of the action or investigation

- For subpoena duces tecum, a reasonable description of the books, documents or things demanded

Quashing a subpoena; grounds

Ad testificandum	Duces tecum
1. The witness is not bound thereby	1. Unreasonable and oppressive
2. The witness fee and kilometrage were not tendered	2. The relevancy of the things do not appear (irrelevant)
	3. The party fails to advance the reasonable cost of the production

Compelling attendance

- The court may issue a warrant and arrest the witness
- The cost of such warrant and seizure of such witness shall be paid by the witness, if the court determines that his failure to answer was *willful and without just excuse*.

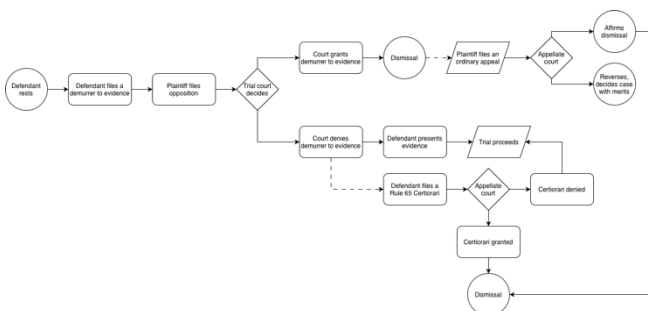
Contempt

- Failure by any person *without adequate cause to obey a subpoena* shall be deemed a **contempt of court**.

Exceptions

- Viatory right – A witness who resides 100 kilometers from his residence to the court
- Deterntion prisoner – The process will not apply if no permission of the court has been given.

Demurrer to Evidence Rule 33



- A demurrer to evidence can only be filed *after the plaintiff has presented evidence*. The ground is lack of cause of action (*Domondon v. Lopez*).
- Upon reversal of the order granting the demurrer to evidence, the defendant loses the right to present his evidence and the appellate court shall proceed to render judgment on the merits (*Republic v. Tuvera*).
- An order denying a demurrer to evidence may be challenged by certiorari when issued with grave abuse of discretion, as courts must promptly and objectively assess evidence to avoid unnecessary trials (*Choa v. Choa*).

- A denial of demurrer to evidence is interlocutory in character (does not finally dispose a case), and is not a final judgment. As such, the format and statements required in a judgment on the merits do not apply (*Nepomuceno v. COMELEC*).
- In resolving a demurrer to evidence, the court should only consider the evidence presented by the plaintiff (*GMA Network v. Central CATV*).
- A demurrer to evidence cannot set up the ground of *res judicata* (*Uy v. Chua*).
 - Instead, the proper remedy is a motion to dismiss (see Rule 9, § 1).

RULE 36

JUDGMENTS, FINAL ORDERS AND ENTRY THEREOF

- A decision that does not conform to the form and substance required by the Constitution and the law is void and deemed legally inexistent (*Velarde v. SJS*).
 - No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the basis therefor (PHIL. CONST. art. VIII, § 14).
 - For a judgment to be valid, it must provide the facts and the law relied on. If such a judgment were to be overturned or set aside, then the resolution or decision must also provide the factual and legal bases for coming to such a conclusion (*Mangelen v. CA*).
 - A trial court must clearly and distinctly state the reasons for denying or granting a motion to dismiss. A mere declaration that the motion is “without merit” is insufficient and violative of *procedural due process* (*Barrazona v. RTC*).

Parts of a decision:

- Statement of the case
- Statement of facts
- Issues or assignment of errors
- Court ruling in which issue is separately considered and resolved
- Dispositive portion (*Id.*)

Fallo

- The operative part in every decision is the dispositive portion or the *fallo*, and where there is conflict between the *fallo* and the body of the decision, the *fallo* controls.
 - Exception:* Where the inevitable conclusion from the body of the decision is so clear as to show that

there was a mistake in the dispositive portion, the body of the decision will prevail (*Santos-Yllana Realty v. Sps. Deang*).

- Test of completeness for a proper *fallo*:
 - Parties should know their rights and obligations
 - Parties should know how to execute the decision under alternative contingencies
 - There should be no need for further proceedings to dispose of the issues
 - The case should be terminated according to the proper relief.
 - The “proper relief” depends upon the parties’ prayer (*Florentino v. Rivera*).

Final and interlocutory judgments

- A **final order** puts an end to the particular matter involved, or settles definitively the matter therein disposed of, as to leave nothing for the trial court to do other than to execute the order (*Alma Jose v. Javellana*).
- **Interlocutory orders** never become final and executory, because something more needs to be done by the court relative to the merits of the case. They do not become executory.
 - Thus, they are not appealable (*PALESLAI v. PAL*).

Partial judgments

- *Partial judgments are interlocutory* and not immediately appealable when it does not completely dispose of the case but leaves other matters to be resolved.
 - It must be appealed together with the final judgment.
 - Several judgments are proper only when the liability of each party is clearly separate and distinct.
 - But where parties are sued under a *common cause of action* (e.g., solidary debtors), there can only be *one final judgment* (*De Leon v. CA*).

Amended and supplemental judgments

- Amended and clarified judgment – The court makes a thorough study of the original judgment, and after consideration of all the factual issues, it will amend and clarify the judgment. **It is an entirely new decision which supersedes the original decision.**
- Supplemental decision – It does not replace or extinguish the original decision. It merely bolsters or adds something to the primary decision, but exists side-by-side with the original. **It does not replace the decision which it supplements.**
- Partially amended decision – Only certain portions were changed or superseded, but **some portions** of the original decision remain

unchanged and binding (*Associated Anglo-American Tobacco v. CA*).

Judgment and opinion

- Opinion – The informal expression of the views of the court and cannot prevail against its final order or decision.
 - The opinion forms no part of the judgment (*Republic v. Nolasco*).

Conditional judgments

- Conditional judgments are void.
- A judgment partakes the nature of a conditional judgment when the order or a part thereof is dependent upon the happening of a *future event* (“and if defendants...”) (*Pascua v. Heirs of Simeon*).

Memorandum decision

- A memorandum decision can be welcomed as an acceptable method of dealing expeditiously with the caseload of the courts of justice.
- For the incorporation by reference to be allowed, it must provide for direct access to the facts and the law being adopted, which must be contained in a statement attached to the said decision (*Francisco v. Permskul*).
- The memorandum decision may be employed in simple litigations only, such as ordinary collection cases, where the appeal is obviously groundless and deserves no more than the time needed to dismiss it (*Lacurom v. Tienzo*).

Minute resolutions

- Not allowed for lower courts, but allowed in the Supreme Court (*Barrera v. Militante*).
- The Supreme Court may deny a Rule 45 petition by *minute resolution*, which is a valid adjudication on the merits so long as it states the legal basis for denial. They are actual adjudications on the merits (*Agoy v. Araneta Center*).

Promulgation

- A final order or judgment shall be in **writing, personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk.**
- No judgment or order—whether final or interlocutory—has juridical existence until and unless it is set down in **writing, signed, and promulgated.**
 - It will become binding on the parties upon notice thereof is duly served on them (*Echaus v. CA*).
- The filing of the judgment with the branch clerk is the **essential act** that constitutes rendition of the decision and gives it validity and binding effect.

- The filing of the decision with the branch clerk constitutes the rendition thereof (*Castro v. Malazo*).

Second motion for reconsideration

- As a general rule, they are barred.
- The filing of a second MR does not toll the 15-day period of deeming a decision or resolution final and executory (*Club Filipino v. Bautista*).

Law of the case

- When an appellate court has declared the law in a case, such declaration continues to be the law of the case even on a subsequent appeal.
- It means that whatever is irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which the legal rule or decision was predicated continue to be the facts of the case before the court (*PNCC v. Superlines*).

Doctrine of immutability of judgment

- If no appeal or MNT/MR is filed within the time provided in these rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgment.
 - The date of finality shall be deemed to be the date of its entry.
- The court decision holds finality and can no longer be changed even in the face of correcting an error of law or fact.
- Exceptions:
 - Life, liberty, honor, or property are at stake
 - Special and compelling circumstances exist
 - Merits of the case
 - A cause not entirely attributable to the fault or negligence of the party favored by the relaxation of the doctrine
 - A lack of showing that the review sought is merely frivolous or dilatory
 - The other party will not be unjustly prejudiced thereby (*Apo Fruits v. LBP*).
- Thus, a final and executory decision can only be annulled by a petition to annul the same on the ground of extrinsic fraud and lack of jurisdiction (Rule 47) or a petition for relief (Rule 38).
- Once judgment becomes final and executory, it can no longer be disturbed, altered or modified, in any respect except to correct clerical errors or to make *nunc pro tunc* entries (*Salting v. Velez*).

Stay of execution

- The court may stay the immediate execution of a judgment when supervening events *subsequent* to the judgment bring about a material change in the situation of the parties. To justify the stay, the supervening events must:
 - Have a direct effect on the matter litigated
 - Create a substantial change in the rights or relations of the parties which would render the final judgment unjust, impossible, or inequitable, making it imperative to stay the immediate execution in the interest of justice (*Silverio v. FBCI*).

Judgment on the merits

- A judgment may be considered as one rendered on the merits when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical, or dilatory objections; or when the judgment is rendered after a determination of which party is right (*cf.* judgment rendered upon some preliminary or formal or merely technical point).
 - It is required that a trial, actual hearing or argument on the facts of the case ensued, for as long as the parties had the full legal opportunity to be heard on their respective claims and contentions.
 - Thus, a dismissal with prejudice is an adjudication on the merits (*Aledro-Ruña v. Lead Export*).

Judgments by compromise

- A judgment by compromise is a judgment rendered by the court on the basis of a compromise agreement entered into between the parties to the action.
 - Thus, the parties may enter into a new or modified compromise agreement even after the final judgment of the court (*Sps. Garcia v. Sps. Soriano*).
- A judgment on compromise agreement is a judgment on the merits. It has the effect of *res judicata*, and is immediately final and executory unless set aside because of falsity or vices of consent (*Gadrinab v. Salamanca*).
- A compromise agreement, as a contract, is binding only upon the parties to the compromise, and not upon non-parties.
 - A court judgment made solely on the basis of a compromise agreement binds only the parties to the compromise, and cannot bind a party litigant who did not take part in the compromise agreement.
 - This is the doctrine of relativity of contracts (*PNB v. Banatao*).
- Remedies when a party refuses to abide by the compromise agreement:

- File a motion for execution (Rule 39, § 1)
- An action for indirect contempt (Rule 71)
- The usual remedies against ordinary judgment:
 - MR
 - MNT
 - Appeal
 - Petition for relief (Rule 38)
 - Petition for certiorari (Rule 65)
 - Petition for annulment of judgments (Rule 47)

Judgment by confession

- No judgment shall be based upon a stipulation of facts or confession of judgment on:
 - Annulment of marriage
 - Declaration of nullity of marriage
 - Legal separation (FAMILY CODE, arts. 48 & 60).
- Neither the Code of Civil Procedure nor any other remedial statute expressly or tacitly recognizes a confession of judgment commonly called a judgment note.
 - On the contrary, the provisions of the Code of Civil Procedure, in relation to constitutional safeguards relating to the right to take a man's property only after a day in court and after due process of law, contemplate that all defendants shall have an opportunity to be heard (*PNB v. Manila Oil*).

Nunc pro tunc judgments ("now for then")

- The office of a judgment *nunc pro tunc* ("now for then") is to record some act of the court done at a former time which was not then carried into the record, and the power of a court to make such entries is restricted to placing upon the record evidence of judicial action which has been actually taken.
 - In order for a *nunc pro tunc* order to be issued, it is required that the record presents some visible data of the order which is sought to be supplied by the *nunc pro tunc* order (*Lichauco v. Tan*).
- A *nunc pro tunc* judgment cannot correct judicial error nor supply nonaction by the court (*Vasquez v. CA*).¹
- It neither operates to correct judicial errors nor to supply omitted action by the court. Its sole purpose is to make a present record of a judicial action which has been actually taken (*Mercury Drug v. Sps. Huang*).
- Thus, a court's mistake in leaving out of its decision something which it ought to have put in, and something in issue of which it intended but failed to dispose, is a judicial error, *not* a

mere clerical *misprisión*, and *cannot* be corrected by adding to the entered judgment the omitted matter on the theory of making the entry conform to the actual judgment entered (*Robles v. Timario*).

Judgments for costs

- Costs shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action (costs *de officio*), or that the same be divided, as may be equitable. No costs shall be allowed against the Republic, unless otherwise provided by law (Rule 142, § 1).
 - Thus, Land Bank, performing its role as the financial intermediary in the agrarian reform program is exempt from paying costs (*LBP v. Rivera*).

Declaratory judgments (Rule 63)²

- Requisites:
 - The subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance;
 - The terms of said documents and the validity thereof are doubtful and require judicial construction;
 - There must have been no breach of the documents in question;
 - There must be an actual justiciable controversy or the ripening seeds of one between persons whose interests are adverse;
 - The issue must be ripe for judicial determination; and
 - Adequate relief is not available through other means or other forms of action or proceeding (*Almeda v. Bathala*).
- Other actions covered by Rule 63:
 - Reformation of an instrument
 - Quieting of title
 - Consolidation of ownership.

Foreign judgments

- *See appropriate report.*

<i>In rem or quasi in rem</i>	<i>In personam</i>
The final order is conclusive upon the title to the thing	The final order is <i>presumptive evidence</i> of a right as between the parties and their successors in interest by a subsequent title

- In either case, the judgment may be repelled by evidence of:
 - Lack of jurisdiction
 - Lack of notice to the party
 - Collusion

¹ This stems from the doctrine of immutability of judgments. It has three exceptions: (1) clerical errors; (2) *nunc pro tunc* judgments; and (3) void judgments.

² This will be fully discussed in Civil Procedure 2, next year. Just wait. Be patient.

- Fraud
- Clear mistake of law/fact (Rule 39, § 48).

REVIEW AND CORRECTION OF TRIAL COURT ERRORS

Before finality	After finality
1. Motion for reconsideration	1. Petition for relief
2. Motion for new trial	2. Petition for annulment of judgment
3. Appeal	3. Petition for certiorari
	4. Collateral attack

Within the same proceedings	Independent action
1. Motion for reconsideration	1. Direct attack or annulment of judgment
2. Motion for new trial	2. Certiorari, prohibition and mandamus
3. Petition for relief	3. Collateral attack

Motion for reconsideration/motion for new trial³

- Both MNT and MR are *litigious motions*.
 - Thus, the opposing party may file an opposition within 5 days from service of said motion, and be resolved by the court 15 days from receipt of said opposition (Rule 15, § 5).

	MR	MNT
Period to file	Within the period for taking an appeal.	
Grounds	FAME Newly discovered evidence	Damages are excessive Insufficient evidence to justify the decision Decision is contrary to law
Form and notice	In writing, the grounds stated, and served on the adverse party	
Proof	<i>If FAME</i> – Affidavits of merits, which may be rebutted by opposing affidavits <i>If newly discovered evidence</i> – Must be supported by affidavits of witnesses or duly authenticated	Must point out specifically the findings or conclusions not supported by evidence or contrary to law, with express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to

	documents to be introduced in evidence	such findings or conclusions
Action by court	Set aside judgment, and grant a new trial Deny motion	Amend the judgment Deny motion
Effect of <i>pro forma</i> motion	Does not toll the period to appeal	
Period for decision	30 days from submission	
2 nd motion allowed?	Yes, provided it is a ground not existing nor available when the 1 st motion was made	No
If denied?	Appeal	

- [MR] In resolving MRs, the court does not have to deal individually and specifically with the grounds relied therefor.
 - Likewise, issues raised for the first time in MR are prohibited.
 - The court may deal generally and summarily with the MR and merely state a legal ground for its denial, such as:
 - It was merely a reiteration or rehash of arguments already submitted to and pronounced without merit
 - The basic issues have already been passed upon
 - The motion discloses no substantial argument or cogent reason to warrant reconsideration
 - The arguments are too unsubstantial to require consideration (*SJS Officers v. Lim*).
- [MNT] Requisites for newly discovered evidence:
 - The evidence was discovered after trial
 - Such evidence could not have been discovered and produced during trial, even with the exercise of reasonable diligence
 - It is material—not merely cumulative, corroborative, or impeaching—and is of such weight that, if admitted, will probably change the judgment (*Syiaco v. Ong*).
- [MNT] The concept of due diligence has both a time component and a good faith component; the movant for a new trial must act in a timely fashion in gathering evidence in support of the motion, and reasonably and in good faith, in light of the totality of the circumstances and the

³ Unless otherwise stated, this refers to the MR/MNT in trial courts, governed by Rule 37.

facts known to him (*Ybiernas v. Tanco-Gabaldon*).

- [MR] A motion for reconsideration that does not comply with those requirements will, upon the other hand, be treated as *pro forma* intended merely to delay the proceedings and as such, the motion will not stay or suspend the reglementary period.
 - The mere fact that the MR discusses the same issues passed upon does not automatically make it *pro forma* as the movant must convince the court of its error in the initial decision (*Marikina Valley v. Flojo*).
- [MR] The mere reiteration in a motion for reconsideration of the issues raised by the parties and passed upon by the court does not make a motion *pro forma* (*PNB v. Paneda*).

Rule 38 Petition for Relief

Nature

- The relief provided for is of equitable character, allowed only in as where there is no other available or adequate remedy.
 - When a party has another remedy available to him, which may either be a motion for new trial or appeal from an adverse decision of the lower court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking the appeal, he cannot avail himself of the relief provided in Rule 38 (*Samonte v. Naguiat*).
- Rule 38 will *not* be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy was due to his own negligence, or mistaken mode of procedure.
 - Except: When the mistake of counsel is so palpable that it amounts to gross negligence (*Id.*).

Grounds

Relief from judgment, order, other proceedings	Relief from denial of appeal
FAME	FAME and has been prevented from taking an appeal

- **Extrinsic fraud** – Any fraudulent act of the prevailing party in the litigation, which is committed *outside* of the trial of the case, whereby the defeated party has been prevented from exhibiting fully his side of the case, by fraud or deception practiced on him.
- **Intrinsic fraud** – Acts of a party in a litigation during the trial, such as the use of a forged or false document or perjured testimony, which did not affect the presentation of the case, but did prevent a fair and just determination of the case (*Demetriou v. CA*).

- **Excusable negligence** – Must be imputable to the party-litigant and not his counsel whose negligence is binding on his client. *Except*:
 - Where the reckless or gross negligence of counsel deprives the client of due process of law
 - When the rule's application will result in outright deprivation of the client's liberty or property
 - When the interests of justice so require (*City of Dagupan v. Maramba*).
- **Mistake** – Mistake of fact, not mistake of law. It can be of such nature as to cause substantial injustice to one of the parties; it borders on extrinsic fraud (*Id.*).

Where filed

- In the same court which rendered the judgment
- The filing does not stay execution of the judgment. In order to stay the execution of the judgment, it is important that the appellant filed a preliminary injunction pending proceeding (*Service Specialists v. Sheriff*).
- It is **only available in the MTC and RTC** (*Purcon v. MRM*).
- It is not available in cases governed by the Rules on Summary Procedure (e.g., unlawful detainer) (*Afdal v. Carlos*).

When filed

- Within 60 days from knowing the judgment, but not more than 6 months after such judgment was entered or proceedings taken (double period)
- Failure to file within this period renders the judgment final and immutable (*AEDC v. DOTC*).
- The 60-day period starts once the service of judgment is deemed effective and not when the party actually learns of it (*Quelnan v. VHF*).

Content and form of petition

1. Verified
2. Accompanied with affidavits showing the FAME and facts constituting the petitioner's good and substantial cause of action, as the case may be

Procedure after filing the petition

1. The respondent must file an answer within 15 days from receipt of the petition
2. The court shall hear the petition.
 - a. If granted – The judgment may be set aside, and thereafter, the court shall proceed the hear and determine the case as if a timely MNT/MR had been granted. *If the denial of appeal is set aside*, the lower court shall be required to give due course to the appeal and elevate the records of the case.
 - b. If denied – The petition shall be dismissed. The petitioner may appeal.

- i. While a denial of a petition for relief is appealable, such does not permit the reversal or modification of a judgment on the merits. Instead, the more appropriate procedure is that the appellate court sets aside the decision, and remands it to the lower court for new trial (*Id.*).

Rule 47

Annulment of Judgments or Final Orders and Resolutions

Nature

- An action to annul a final judgment is an extraordinary remedy, which is not to be granted indiscriminately by the court. It is a recourse equitable in character and allowed only in exceptional cases.
 - Hence, it is not substitute to a lost appeal (*Republic v. TAFPA*).
- Annulment of judgment is a remedy of last resort available only when no other remedies are accessible through no fault of the petitioner, and only on the grounds of lack of jurisdiction or extrinsic fraud (*Sps. Arcenas v. Queen City*).
- The remedy is by no means an appeal whereby the correctness of the assailed judgment or final order is in issue; hence, the CA is not called upon to address each error allegedly committed by the trial court (*Pinausukan v. Far East Bank*).
- Still, Rule 47 will not lie even with the concurrence of the grounds (*see below*) when:
 - The party has availed himself of the remedy of new trial, appeal, petition for relief, or other appropriate remedy and lost; or
 - He has failed to avail himself of those remedies through his own fault or negligence (*De Pedro v. Romasan*).
- Rule 47 does *not* apply in criminal proceedings (*Llamas v. CA*).
- While it is correct that both the RTC and the CA cannot take cognizance of a petition for annulment of judgment of a quasi-judicial body, they may nevertheless do so, if a law categorically provides for such a remedy and clearly provides them with jurisdiction (*Imperial v. Armes*).

Where filed

- Court of Appeals (if RTC decision is attacked)
- RTC (if MTC decision is attacked)

Grounds

- Extrinsic fraud
 - This is not applicable if it was availed of or could have been availed of in an MNT or petition for relief.

- The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court (*Ramos v. Combong*).
- The fraud is not extrinsic if the act was committed by the petitioner's own counsel (*Pinausukan, supra*).
- Lack of jurisdiction
 - This refers to **both** lack of **subject matter** jurisdiction and lack of jurisdiction over the **defendant** (*Arcelona v. CA*).
 - Hence, if a case were decided in the RTC without impleading an indispensable party, such indispensable party may annul the judgment because (a) the RTC had no jurisdiction over the indispensable party; and (b) the petitioner in the RTC intentionally excluded the indispensable party (extrinsic fraud) (*Chico v. Ciudadano*).
 - In a petition for annulment of judgment based on lack of jurisdiction, petitioner must show not merely an abuse of jurisdictional discretion but an absolute lack of authority to hear and decide the case.
 - Hence, error in the exercise of jurisdiction is not a ground for annulment (*Heirs of So v. Obliosca*).
- Denial of due process
 - Jurisprudence recognizes **denial of due process** as an *additional ground* to annul a final judgment, especially where the judgment is patently void for noncompliance with due process (*Intestate Estate of Sian v. PNB*).
 - A final and executory judgment may still be set aside if (annulled), upon mere inspection thereof, its patent nullity can be shown for having been issued without jurisdiction or for lack of due process of law (*Diona v. Balangue*).
 - For instance, where the party's counsel commits a mistake so gross, palpable and inexcusable as to result in violation of his or her client's substantive rights, such mistake may also constitute due process violation (*Sps. Flores v. Sps. Estrellado*).

Period for filing

- If extrinsic fraud – Within 4 years from discovery
- If lack of jurisdiction – Before it is barred by laches or estoppel

Content and form of petition

1. Verified
2. CAFS
3. A certified true copy of the judgment sought to be annulled
4. Affidavits of witnesses or documents supporting the cause of action or defense
 - a. If the petition is based on *extrinsic fraud*, the remedy is subject to a condition precedent, i.e., that the ordinary remedies are no longer available through no fault of the petitioner.
 - b. If the petition is based on *lack of jurisdiction*, the petitioner need not allege the one in (a), because a judgment rendered without jurisdiction is null and void (*Ancheta v. Ancheta*).

Procedure

- The court may dismiss the petition outright, if it lacks substantial merit.
- If the petition has *prima facie* merit, the summons shall be served on the respondents.
- The procedure in ordinary civil cases shall be observed.
- The court may delegate reception of evidence to a member of the division or an RTC judge.
- If the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the CA may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein (*Pinausukan, supra*).

Certiorari, Prohibition and Mandamus Rule 65⁴

- It is a special civil action.
- Standard of review: Grave abuse of discretion amounting to lack or excess of jurisdiction.

Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit Rule 64

Standard of review

- Rule 65 certiorari—grave abuse of discretion amounting to lack or excess of jurisdiction.
 - Thus, the remedy is properly captioned as “Rule 64 in relation to Rule 65.”
- The grounds in filing petition for Certiorari under Rule 65 are limited to:
 - errors of jurisdiction
 - grave abuse of discretion.
 - **Simple errors of judgment are insufficient** (*Reblora v. AFPRSBS*).
- Thus, questions of fact cannot be raised, except when there is grave abuse of discretion over the

fact (e.g., gross misapprehension of facts) (*Chavez v. COMELEC [resolution]*).

- *But see*: Rule 64 is not the sole not the exclusive remedy of all acts of the COMELEC. Rule 65 may also be availed of when objections relating to a grave abuse of discretion resulting in the ouster of jurisdiction is raised (*Diocese of Bacolod v. COMELEC*).

Where filed

- Supreme Court **only**.

When filed

- Within 30 days from receipt of the assailed judgment or final order or resolution.
 - If an MR in the COMELEC/CSC is filed, it shall **not** toll the 30-day period.
 - If the MR is denied, the party only has the remainder of the 30 days, but **not less than 5 days**.
- This period is different from a Rule 65 petition (which has 60 days to file). The fresh-period rule used in Rule 65 also does not similarly apply to the timeliness of petitions filed under Rule 64 (*Lokin v. COMELEC; Pates v. COMELEC*).
 - Thus, the belated filing of the petition is fatal (may be dismissed) (*Apbi v. COA*).

What decisions may be reviewed

- Only decisions rendered in the COMELEC’s **adjudicatory or quasi-judicial** powers may be brought directly to the Supreme Court on certiorari (*Querubin v. COMELEC*).
 - Interlocutory orders of the COMELEC cannot be elevated via Rule 64 (*Repol v. COMELEC*).

Form and content

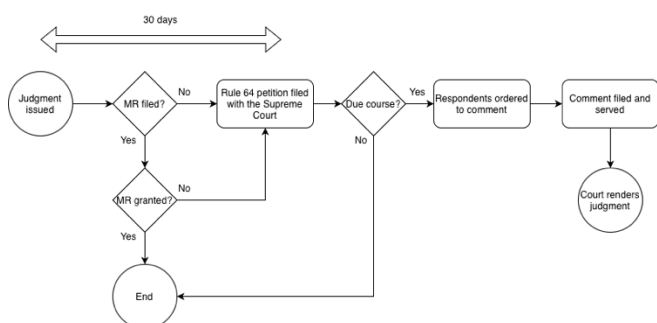
- Form:
 - Verification
 - Parties
 - 18 copies
- Content:
 - Facts
 - Issues
 - Grounds and brief arguments
 - Prayer for judgment annulling or modifying the impugned judgment
 - Statement of material dates, showing the petition is timely filed
 - CAFS
 - Duplicate original or CTC of the judgment
 - Certified true copy of the material portions of the record referred to
 - Proof of service
 - Proof of timely payment of docket fees
- A petitioner’s mere failure to attach certain documents referred to in the course of narrating

⁴ This will be fully discussed in Civil Procedure 2, next year. Just wait. Be patient.

the facts of the case or expounding on arguments will not ipso facto result in the Petition's outright dismissal.

- The completeness, sufficiency, and relevance of the Petition's attachments shall be determined based on the specific material allegations pleaded therein.
- The Court is allowed sufficient discretion in evaluating the necessity for copies of pleadings and other documents (*Sunway Bulders v. COA*).

Procedure



Collateral attack

- Collateral attack – An attack that is not made in a proceeding directly seeking to annul or set aside the judgment, is prohibited when the judgment is valid and regular on its face (*Filinvest v. IAC*).
- In a collateral attack, it is not enough that he shows a mistaken or erroneous decision or a record disclosing non-jurisdictional irregularities in the proceedings leading up to the judgment. He must go beyond this and show to the court, generally from the fact of the record itself, and not by extraneous evidence that the judgment complained of is utterly void (*Arcelona v. CA*).
- A judgment may be voided through either a collateral attack, or by direct attack via a petition for certiorari under Rule 65 or a petition for annulment of judgment under Rule 47.
 - As void judgments produce no legal and binding effect, they are deemed inexistent. They may result from lack of jurisdiction over the subject matter or a lack of jurisdiction over the person of either of the parties. And they may also arise if they were rendered with grave abuse of discretion amounting to lack or excess of jurisdiction (*Titan Dragon v. Veloso-Galenzoga*).

Summarizing the post-judgment reliefs

	Period	Grounds	Court?
MR	15 days	Excessive damages	Same court

		Insufficient evidence Decision is contrary to law	
MNT	15 days	FAME Newly discovered evidence	Same court
Certiorari	60 days	Grave abuse of discretion	Next higher court (RTC or CA)
Relief	Up to 6 months	FAME	Same court
Annulment	EF: 4 yrs. Lack of juris.: So long as not barred by laches	Extrinsic fraud Lack of jurisdiction	Next higher court (RTC or CA)
Appeal	15 days 30 days for ROA, or if Rule 65	Errors of judgment	Next higher court

APPEALS

Definition: An appeal brings up for review any error of judgment committed by a court with jurisdiction over the subject of the suit and over the persons of the parties, or any error committed by the court in the exercise of its jurisdiction amounting to nothing more than an error of judgment (*Heirs of Garcia v. Iba*).

What may be raised	
Appeal to RTC from MTC (R40)	Question of fact; mixed question of law and fact
Appeal to CA from RTC (R41 and R44)	Question of fact; mixed question of law and fact
Pet. for review from RTC to CA (R42)	Questions of fact, of law, or mixed questions of fact and law
Pet. for review of QJ bodies to CA (R43)	
Pet. for review on certiorari to SC (R45)	Pure question of law (PQL)

- A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.

- The test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact (*Republic v. Carraig*).

Types of appeal (R41, § 2)

1. Ordinary appeal
2. Petition for review
3. Appeal by certiorari

Rule 41 vs. Rule 42

Rule 41	Rule 42
Matter of right	Matter of discretion
After trial	After one appeal
By Notice of Appeal	By Petition for Review
Automatic transmittal of records	No automatic transmittal of records
~	CA may deny due course to the petition

(*Heirs of Garcia, supra*)

Period to appeal

- 15 days from the receipt of the assailed decision
- 30 days, if Record on Appeal (for special proceedings)
 - Fresh-period rule – Applies to Rule 40, 41, 42, 43 and 45.
 - It does not apply to administrative procedure (*Panolino v. Tajala*).

Perfection of appeal

- The perfection of an appeal in the manner and period prescribed by law is mandatory and jurisdictional.
 - Thus, if an appeal is essayed to either court by the wrong procedure, the only course of action open is to dismiss the appeal. The court may not transmit it to the proper appellate court (*Sps. Lebin v. Mirasol*).

What may be appealed

- Decisions and final order that completely disposes of the case, or of a particular matter therein.

What may not be appealed

1. An order denying a motion for new trial or reconsideration
2. An order denying a petition for relief or any similar motion seeking relief from judgment
3. An interlocutory order
4. An order disallowing or dismissing an appeal
5. An order denying a motion to set aside a judgment by consent, confession or

compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent

6. An order of execution
7. A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal
8. An order dismissing an action *without* prejudice

Theory of the case

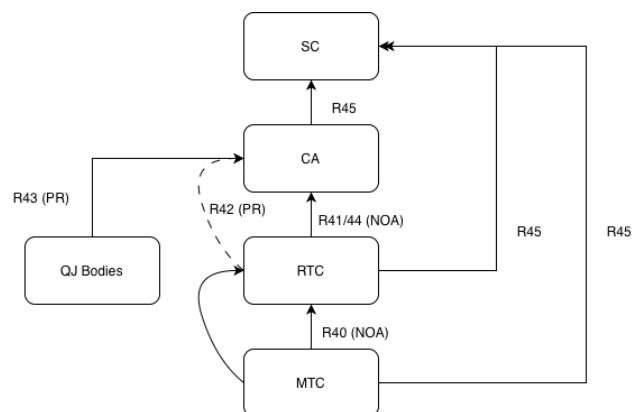
- It is already well-settled in this jurisdiction that a party may not change his theory of the case on appeal (R44, § 15).
- The legal basis of the cause of action or defense, which a party is not permitted to change on appeal.
- A party is bound by the theory he adopts and by the cause of action he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal (*Bote v. Sps. Veloso*).

Lawyers' common mistake—Appeal vs. Certiorari

	Appeal	Certiorari
Purpose	Correct a mistake of judgment	Correct errors of jurisdiction
Manner	A continuation of the original suit	An independent action
Subject	Judgments or final orders and those that the Rules so declare as appealable	May be directed against an interlocutory order where there is no appeal, or any plain, speedy, or adequate remedy
Period	15 days (30 days for record on appeal)	60 days
MR?	No	Yes

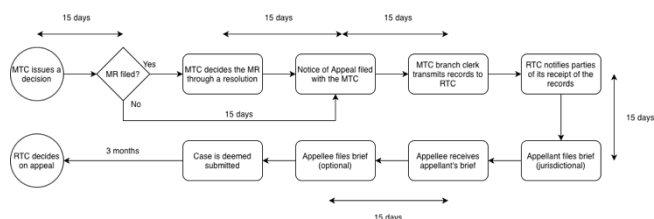
Stays

- **General rule:** An appeal stays the judgment.
- Exceptions:
 - Injunction
 - Receivership
 - Accounting
 - Support
 - Compromise
 - Ejectment (Rule 70)
 - Direct contempt
 - Expropriation (*Diamond Builders v. Country Bankers*).



Appeal from Municipal Trial Courts to the Regional Trial Courts

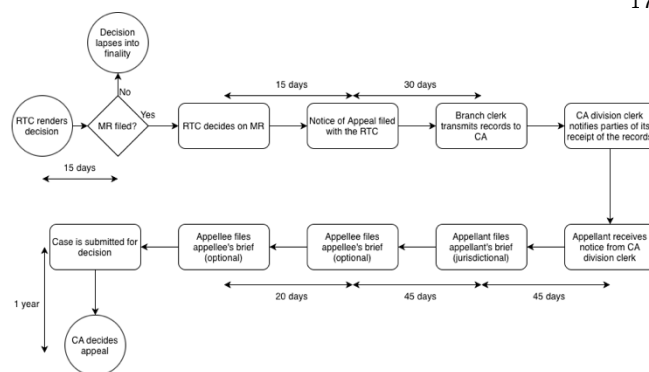
Rule 40



- The appeal is taken by filing a *notice of appeal* with the MTC.
- Appellate courts (e.g., RTC) are *not* precluded from conducting hearings on matters on which the parties need to be heard (*Casalla v. People*).
 - However, when the summary procedure is applied, the RTC should decide the appeal on the basis of the records elevated by the MTCC, as well as the memoranda of the parties. To remand it is a superfluity and contrary to the summary nature of the case (*Five Star v. Booc*).
- The filing of an appellant's brief is required. Only with the filing does the appellate court acquire jurisdiction over the appeal (*Enriquez v. CA*).
 - However, this defect is cured once an appellant's brief is filed, though late, but given due course by the RTC (*Cruz v. Sps. Christensen*).
- If the MTC did not have jurisdiction over the case, the MTC must dismiss the action. The aggrieved party may appeal to the RTC. If the RTC acquires jurisdiction (i.e., it is the *proper* court with original jurisdiction), then the RTC must decide the case on the merits based on the records before it (*De Vera v. Sps. Santiago*).
 - This is § 8, Rule 40.

Appeal from the Regional Trial Courts

Rule 41



- This appeal is taken by filing a notice of appeal with the RTC.
- Strict compliance is required with the period to file a notice of appeal and the service of the notice of appeal to apprise the adverse party of the pendency of an appeal. To deprive the adverse party of such notice is tantamount to a deprivation of the right to be informed (*Casolita v. CA*).
- The fresh period rule applies here (*Makati Insurance Co. v. Reyes*).
- When an appeal has already been perfected by the timely filing of a first notice of appeal, the appellant is not required to file a second notice of appeal even after the trial court modifies the decision (*PNB-Republic Bank v. Cordova*).

What may not be appealed

- Denial of petition for relief or any similar motion seeking relief from judgment
- Interlocutory order
- Order disallowing or dismissing an appeal
- Denial of a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake, duress, or any other ground vitiating consent
- Order of execution
 - Exception: When the RTC also decides on substantive matters (delve into merits of the parties' claims) in the same resolution, it can be appealed (*Hufana v. Genato*).
- Judgment for/against a party or in separate claims while the main case is pending, unless the court allows an appeal therefrom
- Order dismissing an action without prejudice

Notice of appeal

- Indicate the parties to the appeal
- Specify the judgment or part thereof appealed
- Specify the court to which the appeal is being taken
- State the material dates showing the timeliness of the appeal

Record on appeal

- Full names of all the parties
- Include the judgment being appealed

- In chronological order, copies of pleadings and orders as are related to the appealed judgment
- Data as will show that the appeal was perfected on time
- Include by reference all evidence taken, if the appeal raises issues of facts
- If exceeding 20 pages, add a subject index
 - Upon five days from filing, the trial court may approve it or direct amendments.
 - Amendments must be filed within 10 days from receipt of order.

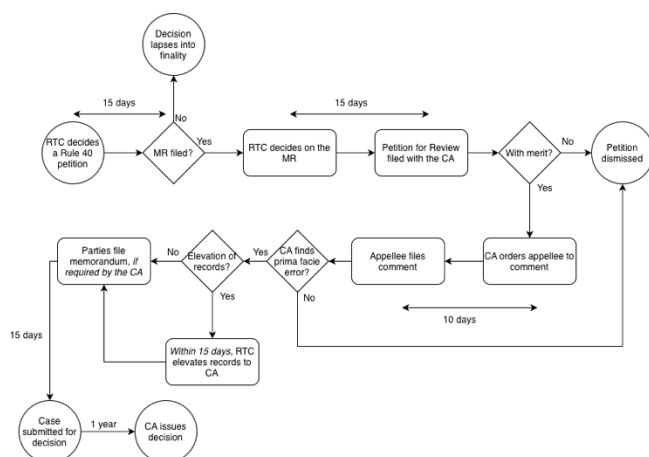
	NOA	ROA
Perfection	Filing of NOA in due time	Approval of the ROA filed in due time
When trial court loses jurisdiction	Perfection of the appeal and expiration of the time to appeal of the other parties	

Grounds for dismissal of appeal

1. Appeal not timely filed
2. Nonpayment of the docket and other lawful fees within the reglementary period

Petition for Review from the Regional Trial Courts to the Court of Appeals

Rule 42



Form and contents

1. Full names of the parties to the case
2. Material dates
3. Statement of the matters involved, issues raised, specification of errors of fact or law, or both, and the arguments relief upon
4. Clearly legible duplicate originals or CTC of the judgments
5. Verification and CNFS

- The CA may validly dismiss a petition for review if the petitioner fails to attach pleadings or material portions of the record necessary to support the allegations in the petition.
 - Noncompliance with §§ 2-3 constitutes sufficient ground for outright dismissal (*Canton v. City of Cebu*).
 - *But see*: Mere failure to attach copies of the pleadings and other material portions of the record as would support the allegations of the petition for review is not necessarily fatal as to warrant the outright denial of due course when the clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the RTC, and other attachments of the petition sufficiently substantiate the allegations (*Galvez v. CA*).⁵
- Only the judgments or final orders of the lower courts must be duplicate originals or duly certified true copies. The pleadings and other material portions of the record are only required to be plain copies (*Sps. Lanaria v. Planta*).

Perfection of appeal

- Jurisdiction transfers to the CA only upon the perfection of the appeal (filing of the petition for review). Until then—and absent the transmittal of records—the RTC retains full authority to resolve a timely MNT.
 - A mere extension to file with the CA does not give the CA jurisdiction (*Fernandez v. CA*).
- The standard remedy from an adverse decision rendered by the RTC exercising its *appellate* jurisdiction is to file a petition for review with the CA under Rule 42.
 - Exceptions (direct resort to Rule 45):
 - Exigency of the situation
 - Pure question of law is involved (*Intramuros Administration v. Offshore*).
- The appeal by petition for review under Rule 42 is a matter of discretion.
 - The discretionary appeal, which is taken from the decision or final order rendered by a court in the exercise of its primary appellate jurisdiction, may be disallowed by the superior court in its discretion. Verily, the CA has the discretion whether to due course to the

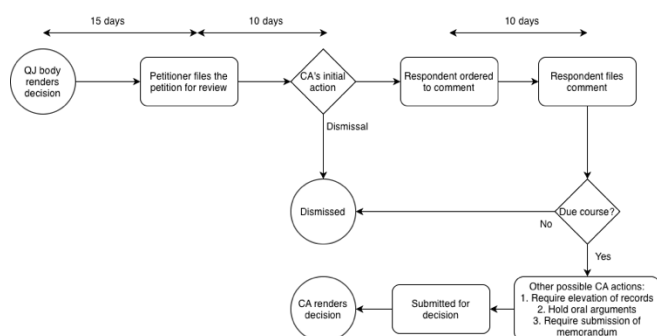
⁵ *Guideposts in determining the necessity of attaching the pleadings and portions of the records to the petition*: (1) Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a prima facie case of grave abuse of discretion as to convince the court to give due course to the petition. (2) Even if a document is relevant and pertinent to the

petition, it need not be appended if it is shown that the contents thereof can also found in another document already attached to the petition. (3) A petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits (*Galvez v. CA*).

petition for review or not. (*Heirs of Garcia I, supra*).

Appeals from the Quasi-Judicial Agencies to the Court of Appeals

Rule 43



Covered agencies⁶

- Quasi-judicial body – An organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making. It performs adjudicatory functions such that its awards, determine the rights of parties, and their decisions have the same effect as judgments of a court (*Santos v. Go*).
 - Thus, the DOJ is not a quasi-judicial body. The SOJ, in the review of the findings of probable cause by the investigating public prosecutor, was not exercising a quasi-judicial function, but performing an executive function (*Caterpillar Inc. v. Samson*).
- By express provision of Rule 43, decisions of the National Labor Relations Commissions cannot be *reviewed* by the CA. The correct remedy is a Rule 65 petition for certiorari with the CA (*PNB v. Gregorio*).
- Court of Appeals jurisdiction extends only to administrative disciplinary decisions of the Ombudsman (*Yatco v. Office of the Deputy Ombudsman*).
- A decision or order issued by a department or agency need not be appealed to the Office of the President when there is a special law that provides for a different mode of appeal (*Moran v. Office of the President*).

Form and content of petition

- The petition for review must contain the following:
 - Full names of the parties

- Concise statement of the facts and issues involved and the grounds for review
- Clearly legible duplicate original or CTC of the appealed decision, together with CTC of material portions of the record
- Verification and CNFS
- Material dates

- Failure to comply with the content, payment of docket fees, deposit, proof of service and contents of and the documents shall be sufficient ground for the dismissal of the petition.
- Under § 6 (c), only the judgment or final order appealed from must be certified. Substantial compliance is allowed, particularly when the certified copies are later submitted with a motion for reconsideration (*Gonzales v. CSC*).
- Pure questions of law may be raised in a Rule 43 petition (*Santos v. Committee on Claims*).

Period to file

- The correct period to appeal the decision or award of the Voluntary Arbitrators or Panel of Arbitrators to the CA via a Rule 43 is the 15-day period reckoned from the notice or receipt of the VA's resolution on the motion for reconsideration, and that the 10-day period provided in Article 276 of the Labor Code refers to the period within which an aggrieved party may file said motion for reconsideration (*Suelo v. MST Marine Services*).

Exhaustion of administrative remedies

- The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice. Where Congress has not clearly required exhaustion, sound judicial discretion governs, guided by congressional intent (*Dorelco v. Dorelco*).

Appeals to the Supreme Court

Rule 45

- **General rule:** Only pure questions of law may be raised (PHIL. CONST. art. VIII, § 5 (2)).
 - **Exceptions:**
 - Writ of Amparo
 - Writ of Habeas Data

⁶ Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications

Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

- Writ of Kalikasan⁷
- Issues purely of law are exclusively reviewable by the Supreme Court (*Republic v. CA*).
 - There is a question of law when the doubt or difference arises as to what the law is pertaining to a certain state of facts (*Quezon City v. ABS-CBN*).

Form and content

- The petition shall contain the following:
 - Full name of the parties
 - Material dates
 - Statement of the matters and arguments for the allowance of the petition
 - Clearly legible duplicate or CTC of the judgment and such material portions of the record as would support the petition
 - Verification and CNFS
- A petition for certiorari (Rule 65) may be treated as a petition for review under Rule 45. This is in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, especially if:
 - The petition was filed within the reglementary period for filing a petition for review;
 - Errors of judgment are averred; and
 - There is sufficient reason to justify the relaxation of the rules (*Oaminal v. Castillo*; *City of Manila v. Grecia-Cuerdo*).

Guideposts on accepting a petition

1. The court below decided a novel question, or decided it in a way not in accord with the law or jurisprudence
2. The court below departed from the usual course of judicial proceedings

Dismissal or denial of petition

- Dismissal
 - Nonpayment of docket and lawful fees
 - Nonpayment of deposit for costs
 - Lack of proof of service of petition
 - Failure to comply with the contents and documents which should accompany the petition
- Denial
 - The appeal is without merit
 - Prosecuted manifestly for delay
 - Questions raised therein are too unsubstantial to require consideration

Who benefits from the appeal

- A party who does not appeal or file a petition for certiorari is not entitled to any affirmative relief.
 - An appellee who is not an appellant may assign errors in his brief where his

purpose is to maintain the judgment but he cannot seek modification or reversal of the judgment or claim affirmative relief unless he has also appealed (*ICA v. Camilon*).

- But see: In *solidary judgments* where parties' liabilities are legally inseparable, the successful appeal of one inures to the benefit of the others (*Maricalum v. Remington*).

The Supreme Court is not a trier of fact

- As a matter of sound practice and procedure, the Court defers and accords finality to the factual findings of trial courts. To do otherwise would defeat the very essence of Rule 45 and would convert the Court into a trier of facts, which is not its intended purpose under the law.
- Exceptions:
 - a. when the findings are grounded entirely on speculation, surmises or conjectures
 - b. when the inference made is manifestly mistaken, absurd or impossible
 - c. when there is grave abuse of discretion
 - d. when the judgment is based on a misapprehension of facts
 - e. when the findings of facts are conflicting
 - f. when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee
 - g. when the findings are contrary to those of the trial court
 - h. when the findings are conclusions without citation of specific evidence on which they are based
 - i. when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent
 - j. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record
 - k. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion (*City of Valenzuela v. RCAM*; see also *Lopez v. Saludo*).

Summarizing the modes of appeal

Appeal	How taken	Contents brief or petition
MTC to RTC (40)	NOA, 15 days	Elevation of record
RTC to CA (41/44)	ROA, 30 days	Subject index, assignment of errors, statement of case, statement

⁷ Both questions of law and questions of fact may be raised in a Rule 45 petition concerning these extraordinary writs.

		of facts, argument, relief
RTC to CA (42)	PR, 15 days	Name of parties, material dates, statement of matters, issues, and specification of errors of fact/law, arguments.
QJ to CA (43)		Name of parties, concise statement of facts and issues and ground relied
To SC (45)		Name of parties, material dates, statement of the matters, reasons or arguments

PROCEDURE IN THE COURT OF APPEALS AND SUPREME COURT

Ordinary Appealed Cases Rule 44⁸

Period of filing

- See *Neypes v. CA* (fresh-period rule).
- However, a second motion for reconsideration does not toll the 15-day period to appeal (*Martires v. Chua*).
- The dismissal of an appeal for failure to file a brief is *discretionary on the part of the CA*, not automatic (*Sibayan v. Costales*).

The appellant's brief—Parts⁹

1. Subject index – A table of contents to facilitate ready reference to arguments, citations, etc. It must include a digest of arguments and a table of cases, textbooks, and statutes cited with page references.
2. Assignment of errors – An enumeration of the specific errors committed by the lower court upon which the appellant seeks reversal.
 - a. Must be separately, distinctly, and concisely stated and numbered consecutively.
 - b. It is the appellant's "complaint" in the appellate court—a general assignment is insufficient. Only errors stated will be considered.
3. Statement of the case – A clear and concise overview of the nature of the action, a summary of the proceedings, the appealed rulings/orders, and the nature of the judgment, with page references.

- a. These data enable the appellate court to have a better grasp of the matter entrusted to it for its appraisal.
4. Statement of facts – The "heart" of the brief. It is a clear and concise narrative of admitted facts and facts in controversy, along with the substance of the proof.
 - a. Every statement of fact must be supported by page references to the record.
 5. Statement of issues – A clear and concise statement of the questions of fact or law to be submitted to the court for resolution.
 6. Argument – The appellant's justification supporting his contentions on each assignment of error. It is essential to cite authorities to substantiate the arguments.
 - a. Authorities must be cited by the page the case begins and the specific page where the citation is found.
 7. Relief – A specification of the order or judgment the appellant seeks from the appellate court.
 8. Appendix (if applicable) – In cases not brought up by record on appeal, a copy of the judgment or final order appealed from.
- The statement of issues is *not* to be confused with the assignment of errors.
 - Assignment of errors – An enumeration by the appellant of the errors alleged to have been committed by the trial court for which he/she seeks to obtain a reversal of the judgment.
 - Statement of issues – Puts forth the questions of fact or law to be resolved by the appellate court (*Mendoza v. UCPB*).

New theory

- Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal (*Mercado v. Sps. Espina*).
- Exceptions:
 - a. Lack of jurisdiction over the subject matter
 - b. Jurisprudential developments
 - c. Issues not properly raised below due to plain error (*Del Rosario v. Bonga*).
 - d. Substantial justice (*Sy v. CA*).

Original Cases

Rule 46

- The court acquires jurisdiction over the respondent by service on him of its order or resolution indicating its initial action on the petition or by his voluntary submission to such jurisdiction.

⁸ Rule 44 is a continuation of Rule 41. It all appealed cases under Rule 41 (*i.e.*, ordinary appeal from RTC to CA).

⁹ *De Liano v. CA*, G.R. No. 142316, November 22, 2001.

- The court may conduct hearings to resolve factual issues.
 - Alternatively, the court may also delegate reception of evidence to any of its members, or to an appropriate court, agency or office.
- Failure to comply with the proper form and content of the petition warrants the dismissal of the petition (*Mendoza v. CA*):
 - Full names and actual addresses of the parties
 - For Rule 65 petitions, the following are the **material dates**:
 - Date when notice of judgment or final order or resolution was received
 - Date when the MNT or MR was filed
 - Date when the notice of denial thereof was received (*Atianzar v. Heirs of Bangoy*).

Preliminary Conference Rules 48

What may be tackled

- Consider the possibility of amicable settlement
- Define, simplify and clarify the issues
- Formulate stipulations of facts and admissions of exhibits, limit the number of witnesses to be presented (*i.e.*, when there is a motion for new trial on the ground of newly discovered evidence).
- To take up such other matters which may aid the court in the prompt disposition of the case.

Oral Argument Rule 49

When allowed

- *Motu proprio* or upon motion.
- The arguments shall be limited to such matters as the court may specify in its order or resolution.
- No motion shall be set for oral argument.

Dismissal of Appeal Rule 50

Grounds for dismissal of appeal by the CA (*motu proprio* or upon motion):

1. Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by these rules.

2. Failure to file the notice of appeal or record on appeal within the prescribed period
3. Failure of the *appellant* to pay the docket and other lawful fees¹⁰
4. Unauthorized alterations, omissions or additions in the approved record on appeal
5. Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the prescribed time
 - a. Although the rule is discretionary, courts will not relax procedural requirements absent compelling equitable considerations (*Senho v. PSBank*).
6. Absence of specific assignment of errors in the appellant's brief, or of page references to the record
7. Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court
8. Failure to appear at the preliminary conference, or to comply with orders, circulars, or directives of the court without justifiable cause
9. The order or judgment is not appealable

Wrong remedies

- An appeal to the Court of Appeals raising only questions of law shall be dismissed outright (*Valderama v. Arguelles*).
- Likewise, mistake as to notice of appeal vs. petition for review is subject to dismissal.

Withdrawal of appeal

- An appeal may be withdrawn as a right any time before the filing of the appellee's brief. Thereafter, withdrawal may be allowed in the discretion of the court.

Judgment Rule 51

When is a case deemed submitted

1. In ordinary appeals:
 - a. Upon the filing of the last pleading, brief or memorandum or the expiration of the period for its filing
 - b. Upon termination of the hearing or upon filing of the last pleading or memorandum, or upon the expiration of the period for its filing
2. In original actions and petitions for review:
 - a. Where no comment is filed, upon the expiration of the period to comment

¹⁰ *Sun Insurance v. Asuncion* guidelines: (1) A trial court acquires jurisdiction over the subject matter through the filing of the initiatory pleading and payment of prescribed docket fees. the fee is not paid upon filing, the court may allow the payment within a reasonable time, but this period can in no case extend beyond the applicable prescriptive or reglementary period for filing the action. (2) Same rule applies to permissive

counterclaims, third-party claims and similar pleadings. (3) If the trial court properly acquired jurisdiction (by filing and fee payment) but later awards a claim that was not specified in the pleading, or a claim that was left for the court's determination, the additional filing fee for that awarded amount will constitute a lien on the judgment.

- b. Upon filing of the last pleading required, or the expiration of the period for its filing
- c. Upon termination of the hearing or upon the filing of the last pleading or memorandum, or upon the expiration of the period for its filing

Harmless error

- No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting a new trial or for setting aside, modifying, or otherwise disturbing a judgment or order, *unless refusal to take such action appears to the court inconsistent with substantial justice.*

Questions that may be decided

- No error which does not affect the jurisdiction or validity of the judgment shall be considered.
- Exceptions:
 - If it affects jurisdiction over the subject matter
 - If it involves matters not assigned as errors but are evidently plain or clerical errors within contemplation of law
 - Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice
 - Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored
 - Matters not assigned as errors on appeal but closely related to an error assigned
 - Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent (*Aklan College v. Enero*).
 - These can only be applied for the benefit of the appellant (*Hiponia-Mayuga v. Metrobank*).
- If the judgment of the MTC is appealed to the RTC and the decision of the latter is itself elevated to the CA, whose decision thereafter becomes final, the case should be remanded through the RTC to the MTC for execution (*Galas v. Bongar-Mateo*).

- The judgment or final resolution shall *forthwith* be entered by the clerk in the book of entries of judgment.
- The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry.
- When a court's judgment or order becomes final and executory, it is the ministerial duty of the trial court to issue a writ of execution to enforce that judgment or order.
 - The jurisdiction of a court to execute its final judgment continues even after finality for the purpose of enforcement. The jurisdiction of the court to amend, modify or alter its judgment terminates when the judgment becomes final.
 - On the other hand, the jurisdiction of the court to execute its judgment continues even after the judgment has become final for the purpose of enforcement of judgment (*Natalia Realty v. CA*).

Motion for Reconsideration Rule 52¹¹

Period for filing

- 15 days from notice of the adverse judgment or final resolution.
- The motion must be served on the other party.
- The pendency of a proper MR stays the execution of the judgment.
- It is enough that one party files an MR. The court still has jurisdiction to resolve the MR (*Gonzales III v. OP*).

2nd MR

- Not allowed.

Period for resolution

- Within 90 days from submission.

Stay of execution

- The pendency of a motion for reconsideration filed on time and by the proper party shall stay the execution of the judgment or final resolution sought to be reconsidered.
 - Therefore, as to petitioners Prescilla, *et al.*, whose MR is still pending before the CA-8, it must be stressed that the controversy has not been resolved with finality.
 - As far as petitioners Prescilla, *et al.* are concerned, there is no judgment that is already ripe for execution (*Prescilla v. Lasquite*).

Entry of judgments

New Trial Rule 53¹²

¹¹ Governs the CA proceedings.

¹² *Id.*

Grounds

- Newly discovered evidence which could not have been discovered prior to the new trial in the trial court by the exercise of due diligence and would probably change the result.
- Thus, the movant must be accompanied by affidavits that:
 - State facts, not mere conclusions
 - Identify the newly discovered evidence with certainty
 - Show that such evidence could not have been discovered prior to trial through due diligence (*Heirs of Montinola v. CA*).

Periods for filing

- At any time *after* the appeal from the lower court has been perfected and *before* the CA loses jurisdiction over the case.
- You cannot file an MNT before the Supreme Court (*Navarra v. CA*).
- But see: It may grant an MNT and remand the case when the newly discovered evidence may be considered by the Supreme Court to warrant a reversal of the judgment or conviction (*Cuenca v. CA*).

Hearing and order

- The CA shall consider the new evidence.
- The CA may grant or refuse a new trial, or take further testimony, or other judgment it may deem just.

When may the CA receive evidence

1. In actions falling within its original jurisdiction:
 - a. Rule 65
 - b. Annulment of judgment
 - c. Quo warranto
 - d. Habeas Corpus
 - e. Amparo and Habeas Data
 - f. Anti-money laundering cases
 - g. Cases under the Anti-Terrorism Law
2. In ordinary appeals:
 - a. Motion for new trial based on newly discovered evidence (*Crispino v. Tansay*).

Period for resolution

- Within 90 days from submission.

Internal Business

Rule 54

Publication of Judgments and Final Resolutions

Rule 55

Procedure in the Supreme Court

Rule 56

Original cases cognizable

1. Rule 65

2. Quo warranto
3. Habeas corpus
4. Disciplinary proceedings
5. Cases affecting ambassadors, and other public ministers and consuls

Rules applicable

1. Rule 46 (Original cases)
2. Rule 48 (Preliminary conference)
3. Rule 49 (Oral argument)
4. Rule 51 (Judgments)
5. Rule 52 (Motion for reconsideration)

Appealed cases

- Only petition for review on certiorari.
 - Except: A notice of appeal may be had in criminal cases where the penalty imposed is *reclusion perpetua* or life imprisonment.

Grounds for dismissal of appeal

1. Failure to take the appeal within the reglementary period
2. Lack of merit
3. Failure to pay the requisite docket and other lawful fees or to make a deposit for costs
4. Failure to comply with the requirements regarding proof of service and contents of an the documents which should accompany the petition
5. Failure to comply with any circular, directive or order of the Supreme Court without justifiable cause
6. Error in the choice or mode of appeal
7. The fact that the case is not appealable to the Supreme Court

Dismissal of improper appeal

- No notice of appeal may be had with the Supreme Court, except in criminal cases where the penalty imposed is *reclusion perpetua* or life imprisonment.
- An appeal by certiorari from the RTC, which involves factual issues, may be referred to the CA for decision or appropriate action.

Procedure if equally divided

1. The *en banc* is equally divided
2. The court shall deliberate again
3. The *en banc* remains equally divided:
 - a. The original action is *dismissed*.
 - b. The appealed judgment is *affirmed*.

What are en banc cases

1. Cases involving the constitutionality or validity of any governmental act
2. Criminal cases in which the appealed decision imposes the death penalty
3. Cases raising novel questions of law
4. Cases affecting ambassadors, other public ministers and consuls
5. Cases involving the decisions of the CSC, COMELEC or COA

6. Cases where the penalty to be imposed is dismissal of a judge/employee, disbarment, or suspension of any of them for a period of more than 1 year or a fine exceeding P10,000 or both
7. Cases where a doctrine may be reversed or modified
8. Cases where three members of the division think the case must be heard *en banc* and are acceptable to the majority of the *en banc*
9. All other cases as the *en banc* by a majority may deem of sufficient importance (*Firestone Ceramics v. CA, citing Supreme Court Circular No. 2-89*).

EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS

Rule 39

Outline of Rule 39

- | | |
|------|---|
| I. | When execution can be issued |
| | <ol style="list-style-type: none"> a. As a matter of right b. Discretionary |
| II. | Duration and modes of enforcement |
| | <ol style="list-style-type: none"> a. By motion b. By independent action |
| III. | Procedures for different types of judgments |
| | <ol style="list-style-type: none"> a. Money judgments b. Specific acts |
| IV. | Properties exempt from execution |
| V. | The execution sale |
| | <ol style="list-style-type: none"> a. Notice requirements b. Procedure of sale c. <i>Terceria</i> (third-party claims) |
| VI. | Redemption of real property |
| VII. | Satisfaction and effect of judgments |
| | <ol style="list-style-type: none"> a. Entry of satisfaction b. Effect of domestic judgments c. Effect of foreign judgments |

When execution proper

1. Upon final judgments or orders
 - a. Execution shall issue as a matter of right, on motion, upon final judgment.
2. Pending appeal
 - a. May be done upon motion of the prevailing party with notice to the adverse party, filed either in the original or appellate court (whichever has jurisdiction).
 - b. The court has discretion whether to grant the motion, and may only issue upon “good reasons” stated in a special order after due hearing.
 - c. However, the execution pending appeal may be stayed upon approval of a sufficient supersedeas bond filed by the party against whom the execution is directed.¹³
3. By motion or independent action

- a. By motion – Up to 5 years from date of entry of judgment
- b. By independent action – Beyond 5 years but not more than the statute of limitations.
 - i. It must be filed with the RTC and not the CA (*Anama v. Citibank N.A.*).
 - ii. The action then must be filed before it is barred by the statute of limitations which under the Civil Code is 10 years from finality of judgment (*Terocel Realty v. Mempin*).
 - iii. The winning party may file the motion for execution within the five-year period; and the court should issue the actual writ of execution pursuant to the motion within the same period (*Villareal Jr. v. MWSS*).

4. Execution in case of death of party

- a. In case the obligee dies, the executor, administrator, or successor-in-interest must file
- b. In case the obligor dies, the execution may be done against his executor, administrator, or successor-in-interest if the judgment is for recovery of real or personal property, or enforcement of lien

Form and contents of the writ of execution

1. Issued in the name of the Republic from the court which granted the motion
2. State the name of the court, case number and title, the dispositive portion
3. Require the sheriff to enforce the writ according to its terms

Execution of money judgments

1. Immediate payment on demand
 - a. Cash
 - b. Certified bank check
 - c. Other form of payment acceptable to the obligee
2. Satisfaction by levy – First, personal property, then real property.
 - a. *Levy* is defined as the act or acts by which an officer of the law and court sets apart or appropriates a part or the whole of the loser’s (judgment debtor’s) property for the purpose of eventually conducting an execution sale to the end that the writ of execution may be satisfied, and the judgment debt, paid (*Dagooc v. Erlina*).

¹³ However, the following judgments cannot be stayed by appeal: (1) injunction, (2) receivership, (3) support, and (4) other such judgments that are immediately executory (§ 4).

- b. The present rule now requires the sheriff to first make a demand for payment, and it prescribes the procedure for and the manner of payment as well as the immediate turnover of the payment by the sheriff to the clerk of court. Levy as a mode of satisfying the judgment may be done only if the judgment obligor cannot pay all or part of the obligation in cash, certified bank check, or other mode of payment acceptable to the judgment obligee (*Villarin v. Munasque*).
3. Garnishment of debts and credits
 - a. Covers personal property not capable of manual delivery

Execution of special judgments

1. Conveyance, delivery of deeds, or other specific acts
2. Sale of real/personal property
3. Delivery or restitution of real property
4. Removal of improvements on property subject of execution
5. Delivery of personal property

Execution of special judgments

- Special judgment – That is which a judgment directs the performance of a specific act requiring the party or person to personally do because of his personal qualifications and circumstances (e.g., to direct the City Treasurer to issue a Final Bill of Sale) (*Sia v. Arcenas*).

Return of writ of execution

- If the judgment cannot be satisfied within 30 days from issue, the sheriff shall make a return to the court.
- The writ remains in effect for 5 years.
- The sheriff shall make a report every 30 days until satisfaction in full or expiration.
- Once a writ is placed in his hand, it becomes his duty to proceed with reasonable speed to enforce the writ to the letter, ensuring at all times that the implementation of the judgment is not unjustifiably deferred, unless the execution of which is restrained by the court. Even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ.
 - Periodic reporting also provides the court insights on the efficiency of court processes after promulgation of judgment (*Vda de. Atienza v. Aguilar*).

Property exempt from execution

- Section 13 sets forth a long list of enumeration, but significantly, the judgment obligor's home is exempt.

- The exemption of the family home from execution, forced sale or attachment is limited to P300,000 in urban areas and P200,000 in rural areas, unless those values are adjusted by law (*Eulogio v. Bell Sr.*).
- The right of exemption must be claimed by the debtor himself at the time of levy or within a reasonable period thereafter. Any claim for exemption from execution of properties must be presented before its sale on execution by the sheriff (*Honrado v. CA*).
- The exemption pertains only to natural persons and not to juridical entities (*D'Armoured Security v. Orpian*).

Effect of levy on execution

- The levy shall create a lien in favor of the judgment obligee in such property.

Third-party claims (terceria)

- If a third party claims on the levied property, he may make an affidavit of his title/right thereof, stating the grounds, and serve it to the sheriff and the obligee.
- As a result, the sheriff is no longer bound to keep the property, unless the obligee files a bond not less than the value of the property.
- If a third party files an affidavit of title (third-party claim) over levied property, the execution/levying court must respect the third-party claim and the separate action filed by the claimant; it cannot pre-emptively resolve the issue of ownership in the execution case itself (*Bayer Philippines v. Agana*).
- The court's power is limited to determining whether the sheriff acted correctly or incorrectly in the performance of his duties—specifically, if he levied on property not belonging to the judgment debtor. The court can conduct a summary hearing and, if warranted, order the release of the property.
 - As to the third party claimant, his remedy is to file a separate and independent action to settle the issue of ownership (*Ong v. Tating*).
- For the remedy of *terceria* to prosper, the claim of ownership or right of possession to the levied property by the third-party claimant must first be unmistakably established (*PSALM v. Maunlad Homes Inc.*).

Execution sale

1. At any time before the sale, the obligor can prevent it by paying the judgment and costs.
2. The sale must be conducted via public auction to the highest bidder, starting at the exact time fixed in the notice
 - a. Personal property must be sold within the view of those attending, and if capable of manual delivery, sold in parcels likely to bring the highest price

- b. Real properties must be sold per lot, and the judgment obligor can direct the order in which real properties are sold
- c. The sheriff cannot bid or be interested in any purchase.
- 3. Payment
 - a. If the bidder refuses to pay, the sheriff may sell it to the second-highest bidder.
 - b. The refusing bidder may be punished for contempt.
 - c. If the judgment obligee is the purchaser, he doesn't need to pay, unless the bid exceeds the amount of their judgment.
- 4. Conveyance and certificates
 - a. Manual personal property – The sheriff delivers the property to the purchaser and issues a certificate of sale
 - b. Non-manual personal property – The sheriff issues a certificate of sale
 - c. Real property – The sheriff issues a certificate of sale
- 5. Failure of sale – If the purchaser fails to recover possession or is evicted due to irregularities, reversal of judgment, or third-party claims, they may recover the price paid from the judgment obligee or file a motion to revive the original judgment.
- A writ of possession may issue in favor of a purchaser in an execution sale when the deed of conveyance has been executed and delivered to him after the period of redemption has expired and no redemption has been made by the judgment debtor.
- A writ of possession is complementary to a writ of execution, and in an execution sale, it is a consequence of a writ of execution, a public auction sale, and the fulfillment of several other conditions for conveyance set by law (*Cometa v. IAC*).

Redemption from execution sale

- 1. Who may redeem
 - a. Judgment obligor
 - b. Redemptioner – Creditors having a lien by attachment, judgment or mortgage on the property *subsequent* to the lien under which the property was sold.
- 2. Periods
 - a. From purchaser – 1 year from registration of the COS, and must pay the price plus 1% per month interest.
 - i. When the purchaser at an execution sale is also the assignee of a prior mortgage lien, the redemptioner must pay not only the redemption price but also the amount of the prior mortgage lien with interest (*Cenas v. Santos*).

- b. From redemptioner – May be redeemed within 60 days of the last redemption, and must pay the price plus 2% interest per month.
- 3. Effect of redemption
 - a. If the obligor redeems, no further redemption is allowed.
 - b. During the redemption period, the obligor is entitled to the fruits of the property.
- 4. Final conveyance – Upon lapse of the period for redemption, the sheriff issues the deed of sale.

Three critical dimensions in redemption

- 1. Timely redemption or redemption by expiration date (or, as what happened in this case, the redemptioner was forced to resort to judicial action to “freeze” the expiration of the redemption period)
- 2. Good faith as always, meaning, the filing of the private respondent's action on August 13, 1993 must have been for the sole purpose of determining the redemption price and not to stretch the redemptive period indefinitely
- 3. Once the redemption price is determined within a reasonable time, the redemptioner must make prompt payment in full (*Hi-Yield Realty Inc. v. CA*).
- The period of redemption is not a prescriptive period but a condition precedent provided by law to restrict the right of the person exercising redemption (*De Guzman v. Tabangao*).

Proceedings supplementary to execution

- Examination of obligor – The court may order the obligor to appear and be examined concerning their property and income, if the writ is returned unsatisfied. He may be subpoenaed.
 - This applies to cases where the judgment remains unsatisfied and there is a need for the judgment obligor to appear and be examined concerning his or her property and income to determine whether the same may be properly held to satisfy the full judgment amount (*Britania v. Gepty*).
- Examination of third-party debtors – The court may order third-party debtors to appear and be examined if he owes a debt to the judgment obligor/holds their property. He may be subpoenaed.
- The court may order any nonexempt property to be applied toward the judgment. The court may also order payment of the judgment in fixed monthly installments, if the obligor's earnings exceed what is necessary for support.
- In any case, the court may appoint a receiver for the judgment obligor's property and issue an order forbidding the transfer of any nonexempt property.
- the judgment obligor has an ascertainable interest in real estate (*e.g.*, as a mortgagor or mortgagee), the receiver may be ordered to sell that interest.

- If a third party denies owing a debt to the obligor or claims an adverse interest in the property, the court may authorize the judgment obligee to file a separate action against that third party. The court may forbid the transfer of the disputed interest or debt for 120 days to allow for the filing of the action.
 - The only power of the court in proceedings supplemental to execution is to make an order authorizing the creditor to sue in the proper court to recover an indebtedness due to the judgment debtor.
 - The court has no jurisdiction to try summarily the question whether the third party served with notice of execution and levy is indebted to the defendant when such indebtedness is denied. Otherwise, it is a deprivation of due process (*The Economic Insurance v. Torres*).

Satisfaction of judgment

- Satisfaction of judgment shall be entered by the branch clerk in the court docket and in the execution book upon:
 - Return of the writ
 - Filing of an admission
 - Upon endorsement of such admission by the judgment obligee
 - The obligee may be compelled to execute this admission upon demand of the judgment obligor.