

## INTRODUCTION

Under the 1987 Constitution, the Supreme Court has the power to promulgate rules concerning the

- protection and enforcement of constitutional rights,
- pleading, practice, and procedure in all courts,
- the admission to the practice of law,
- the Integrated Bar, and
- legal assistance to the underprivileged.

Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights (PHIL. CONST. art. VIII, § 5 (5)).

- Rules of Court, promulgated by authority of law, have the force and effect of law, if not in conflict with positive law. The rule is subordinate to the statute and in case of conflict, the statute will prevail (*Shioji v. Harvey*).
- It is the Supreme Court alone which has the rule-making power. The lower court has no jurisdiction to interpret, much less reverse the Supreme Court's final and executory judgment. The inferior court is bound by the decree as the law of the case, and must carry it into execution according to its mandate. They cannot vary it, or examine it for any other purpose than execution, or give any other or further relief, or review it upon any matter decided on appeal for error apparent, or intermeddle with it, further than to settle so much as has been remanded (*Republic v. De Los Angeles citing Shioji*).
- It is a well-established doctrine that rules of procedure may be modified at any time to become effective at once, so long as the change does not affect vested rights. There are no vested rights to rules of procedure. (*Zulueta v. Asia Brewery*).

### Substantive vs. procedural law

- Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtains redress for their invasion.
- **Test for determining whether a rule is procedural or substantive:** Whether the rule really regulates procedure, that is, the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them (*Bernabe v. Alejo*).

### Force of law

- Like all rules, procedural rules are required to be followed *except only for the most persuasive of reasons* when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.

- Strict compliance with the Rules of Court is indispensable for the orderly and speedy disposition of justice. The Rules must be followed, otherwise, they will become meaningless and useless (*Sps. Bergonia v. CA*).

## GENERAL PROVISIONS RULE 1

- The Rules of Court applies to *all* courts, except as otherwise provided by the Supreme Court (*Casalla v. People*).
- Cases where the Rules of Court are inapplicable (merely suppletory):
  - Election
  - Land registration
  - Cadastral
  - Naturalization
  - Insolvency proceedings
- The lower courts may not introduce exceptions or conditions; neither may it engraft into the law (or the Rules) qualifications not contemplated (*Manguerra v. Risos*).
  - Hence, the trial court committed grave abuse of discretion when it allowed the deposition to take place in Makati City though the case is pending in Cebu City.

### Ordinary vs. special civil action

- Civil action – One by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.
- Special civil action or special proceeding – A remedy by which a party seeks to establish a status, a right, or a particular fact (e.g., declaration of heirship) (*Heirs of Yaptinchay v. Del Rosario*).

### Retroactive

- Remedial statutes, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retroactive law, or the general rule against retroactive operation of statutes.
  - Statutes regulating to the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage.
  - Procedural laws are retroactive in that sense and to that extent.
  - No vested right may attach nor arise from procedural laws (*System Factors Corp. v. NLRC*).

### Liberal application

- While procedural rules are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business (*Labao v. Flores*).
  - There should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.
- Any liberal application has to be justified by ample and sufficient reasons that maintain the

integrity of, and do not detract from, the mandatory character of the rule (*BPI v. CA*).

- Where strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction.
  - Thus, a rigid application of the rules of procedure will not be entertained if it will obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration (*CMTC Int'l v. Bhagis Int'l Trading*).
- The Supreme Court Court's power to liberally construe and even to suspend the rules, presupposes the existence of substantial rights in favor of which, the strict application of technical rules must concede (*Redeña v. CA*).

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## JURISDICTION

- Courts may exercise their powers validly and with binding effect if they acquire jurisdiction over:
  - Cause of the action or subject matter of the case
  - The thing or the *res*
  - The parties
  - The remedy (*De Pedro v. Romasan*)

*Grave abuse of discretion amounting to lack or excess of jurisdiction*

- Grave abuse of discretion – The capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law.
  - Without jurisdiction – The court acted with absolute lack of authority
  - Excess of jurisdiction – The court transcended its power or acted without any statutory authority (*Denila v. Republic*).

### Jurisdiction conferred by law

- Jurisdiction over the subject matter is conferred only by the Constitution or the law, and cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court (*Republic v. Bantigue Point*).
  - Hence, lack of jurisdiction over the subject matter may be raised at any stage of the proceedings.
- It can never be conferred by:
  - Voluntary act or agreement
  - Acquired through or waived, enlarged or diminished by their act or omission
  - The acquiescence of the court.

*Determined by the law in force at the time of commencement*

- Jurisdiction over the subject matter is determined by the statute in force at the time of the commencement of the action.

- Once jurisdiction is vested in the court, it is retained up to the end of the litigation (*Dela Cruz v. Moya*).

*Determined by the allegations of the complaint or other initiatory pleading*

- It is a basic rule that jurisdiction over the subject matter is determined by the allegations in the complaint.
  - Hence, jurisdiction is not affected by the pleas or theories set up by the defendant in an answer or a motion to dismiss (*Mendoza v. Germino*).
- If the main or one of the causes of action is for damages, the amount of such claim shall be considered in determining the jurisdiction of the court (*Sante v. Claravall*).
- The assessed value must be alleged in the complaint to determine which court has jurisdiction over the action.
  - Hence, the failure to allege such a fact will lead to the complaint's dismissal (*Heirs of Julao v. Sps. De Jesus*).
- The factual allegations in a complaint should be considered in tandem with the statements and inscriptions on the documents attached to it as annexes or integral parts (*Tumpag v. Tumpag*).

### Jurisdiction over the parties

- Jurisdiction over a defendant in a civil case is acquired either through:
  - Service of summons, or
  - Voluntary appearance
- Hence, when a defendant, who was not validly served summons, but filed a pleading seeking affirmative relief, the court is vested with jurisdiction over the defendant (*Planters Development Bank v. Chandumal*).
- Failure to serve summons over one or some (but not all) of the defendants will not be a cause for the dismissal of the complaint against other defendants, who have been validly served with copies of the summons and complaints (*Boston Equity Resources Inc. v. CA*).

### Jurisdiction over the issue

- The issue being tried and decided by the court be within the issues raised in the pleadings. This may be conferred by consent, either express or implied by the parties.
  - Whether or not the court has jurisdiction over a specific issue is a question that requires an examination of the pleadings (*Reyes v. Diaz*).
- A party is entitled only to such relief consistent with and limited to that sought by the pleadings or incidental thereto. A court would be acting beyond its jurisdiction if it grants relief to a party beyond the scope of the pleadings. A judgment which grants reliefs which has not been prayed for is void (*Sps. Gonzaga v. CA*).

### Jurisdiction over the res

1. Action *in personam* – An action against a person on the basis of his personal liability.
2. Action *in rem* – An action against the thing or the *res* itself instead of against the person.
3. Action *quasi in rem* – An action wherein an individual is named as defendant and the purpose of the proceeding is to subject his interest therein to the obligation or lien

burdening the property (e.g., judicial foreclosure).

- For proceedings *in personam*, jurisdiction over the defendant is necessary for the court to validly try and decide the case.
- For proceedings *in rem* or *quasi in rem*, jurisdiction over the defendant is unnecessary, provided that the court acquires jurisdiction over the *res*, which is acquired either:
  - By seizure of the property under legal process, or
  - As a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.
    - Nevertheless, summons must be served upon the defendant for the purpose of satisfying due process.
    - Hence, the violation of a defendant's constitutional right to due process arising from want of valid service of summons warrants the annulment of the judgment of the trial court (*Biacco v. Philippine Countryside Rural Bank*).

#### Exercise of jurisdiction vs. jurisdiction

- “Jurisdiction” should be distinguished from the “exercise of jurisdiction.” Jurisdiction refers to the authority to decide a case, not the orders or the decision rendered therein. Where a court has jurisdiction over the person and the subject matter, as in the instant case, the decision on all questions arising from the case is but an exercise of such jurisdiction. Any error that the court may commit *in the exercise of its jurisdiction* is merely an error of judgment which does not affect its authority to decide the case, much less divest the court of the jurisdiction over the case (*Platinum Tours and Travel Inc. v. Panilio*).

#### Jurisdiction vs. venue

Jurisdiction	Venue
Authority to hear and determine a case	The place where the case is to be heard or tried
Substantive law	Procedural law
Relation between court and subject matter	Relation between parties
Fixed by law	May be conferred by the act or agreement of the parties

- In civil cases, venue is not jurisdictional (*Nocum v. Tan*).
- The venue of an action, fixed by statute, can be changed by the consent of the parties, and an objection of improper venue may be waived by failure of the defendant to make a timely objection. In any case, the court may render a valid judgment (*Davao Light & Power Co. Inc v. CA*).

#### Payment of docket fees/staggered docket fees

- A case is deemed filed only upon payment of the docket fees, regardless of the actual date of filing in court. Hence, the payment of docket

fees is jurisdictional—without such, the court cannot acquire jurisdiction over the case, and it cannot be cured by amendment of the complaint (*Manchester Development Corp. v. CA*).

- The same rule applies to counterclaims, third party claims and similar pleadings, which shall not be considered filed until and unless the filing fee is paid.
- Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
  - Any additional unpaid docket fees shall constitute a lien on the judgment (*Sun Insurance v. Asuncion*).
- While the payment of prescribed docket fee is a jurisdictional requirement, even its nonpayment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is paid within the applicable prescriptive or reglementary period, more so when the party involved demonstrates a willingness to abide by the rules prescribing such payment.
  - If the plaintiff fails to comply with this requirement, the defendant should timely raise the issue of jurisdiction or else he would be considered in estoppel (*Metrobank v. Perez*).
- The plaintiff is liable for any difference between the actual fees paid and the correct payable docket fees assessed, which shall constitute a lien on the judgment.
- The strict application of requirement of payment of appellate docket fees is qualified by the following:
  - The failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; and
  - Such power should be used by the court in conjunction with its exercise of sound discretion (*Heirs of Reinoso v. CA*).

#### Staggered payment

- As a rule, docket fees should be paid upon the filing of the initiatory pleadings.
  - For cogent reasons to be determined by the trial judge, staggered payment thereof within a reasonable period may be allowed.
  - Unless grave abuse of discretion is demonstrated, the discretion of the trial judge in granting staggered payment shall not be disturbed (*Sps. Go v. Tong*).

#### Indigent parties

- As a general rule, they are exempt from payment of docket and other lawful fees and of TSNs. The amount of fees which the indigent was exempted from paying shall be a lien on any judgment rendered in the case favorable to the indigent.
- Under Rule 141, Sec. 19, it is the litigant alone who shall execute the affidavit that he and his immediate family do not earn a gross income double the monthly minimum wage, and does

not own any real property more than P300,000 (*Tokio Marine v. Valdez*).

### Adherence to jurisdiction

- In cases of concurrent jurisdiction, the court first acquiring jurisdiction excludes the other courts.
- When a court of competent jurisdiction acquires jurisdiction over the subject matter of a case, its authority continues, subject only to the appellate authority, until the matter is finally and completely disposed of, and that no court of co-ordinate authority is at liberty to interfere with its action (*Pacific Ace Finance Ltd. V. Yanagisawa*).
- When a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to final determination of the case is not affected by a new legislation transferring jurisdiction over such proceedings to another tribunal.
  - *Exceptions:*
    - When the change in jurisdiction is curative in character (*Vda. De Ballesteros v. Rural Bank of Canaman Inc.*).
    - When the statute expressly so provides or when the statute is clearly intended to apply to actions pending before its enactment (*Union Bank v. Concepcion*).

### Effect of lack of jurisdiction

- A void judgment or order has no legal and binding effect, force or efficacy for any purpose. Hence, any relief (e.g., a monetary award) emanating from a void judgment cannot be properly implemented (*Land Bank of the Philippines v. Sps. Placido*).
- A decision of the court without jurisdiction is null and void; hence, it could never logically become final and executory. Such a judgment may be attacked directly or collaterally (*Padre v. Badillo*).
- A party cannot invoke the jurisdiction of a court to sure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (*Tijam v. Sibonghanoy*).

### Suspended jurisdiction

- The jurisdiction of a court hearing a case may be suspended pending the defendant-corporation's rehabilitation proceedings (*Philippine Airlines v. Kurangking*).

### Hierarchy of courts

- Under the principle of the hierarchy of courts, decisions, final orders or resolutions of an MTC should be appealed to the RTC exercising territorial jurisdiction over the former. On the other hand, RTC judgments, final orders or resolutions are appealable to the CA through either of the following: an ordinary appeal if the case was originally decided by the RTC; or a petition for review under Rule 42, if the case was decided under the RTC's appellate jurisdiction.
  - Nonetheless, a direct recourse to this Court can be taken for a review of the

decisions, final orders or resolutions of the RTC, but only on questions of law (Rule 45) (*Mendoza v. Villas*).

- Exceptions to the doctrine of hierarchy of courts:
  - special and important reasons
  - dictated by public welfare and advancement of public policy
  - demanded by the broader interest of justice
  - when the challenged orders were patent nullities
  - when analogous exceptional and compelling circumstances called for and justified direct resort to the Supreme Court (*Republic v. Caguioa*).

### Subject matter jurisdiction

Supreme Court	
Exclusive original	Petitions for certiorari, prohibition, and mandamus against (Rule 65): a. Court of Appeals b. COMELEC c. COA d. Sandiganbayan e. CTA
Concurrent original with CA	Petitions for certiorari, prohibition, and mandamus against (Rule 65): 1. RTC 2. CSC 3. Central Board of Assessment Appeals 4. NLRC 5. Other quasi-judicial agencies
Concurrent original with CA and RTC	1. Petitions for certiorari, prohibition, and mandamus against lower courts and bodies (Rule 65) 2. Petition for quo warranto 3. Petition for writ of habeas corpus 4. Petition for writ of amparo 5. Petition for writ of habeas data where the action concerns public data files of government offices
Concurrent with RTC	Cases affecting ambassadors, public ministers, and consuls
Appellate	Review, revise, reverse, modify, or affirm on appeal or certiorari final judgments and orders of lower courts in a. All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question b. All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto c. All cases in which the jurisdiction of any lower court is in issue

	<p>d. All criminal cases in which the penalty imposed is <i>reclusion perpetua</i> or higher</p> <p>e. All cases in which only an error or question of law is involved</p>
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- No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence (PHIL. CONST. art. VI, § 30).
- BP 129, § 9 (3) vests appellate jurisdiction over all final judgment of quasi-judicial agencies to the CA. Hence, decisions of the Board of Investments are appealable to the CA, and not the Supreme Court (*First Lepanto Ceramics v. CA*).

Court of Appeals	
Exclusive original	Actions for annulment of the judgments of RTCs
Concurrent original with the SC	<p>See <i>previous table</i>.</p> <ul style="list-style-type: none"> <li>• Petition for certiorari against the NLRC (Rule 65) (<i>St. Martin Funeral Homes v. NLRC</i>)</li> </ul>
Concurrent original with the SC and RTC	See <i>previous table</i> .
Exclusive appellate	<ol style="list-style-type: none"> <li>1. Ordinary appeal from the judgments of the RTC (including decisions of MTC in cadastral or land registration cases pursuant to its delegated jurisdiction) (Rule 41)</li> <li>2. Petition for review from the judgments of the RTC rendered in its appellate jurisdiction (Rule 42)</li> <li>3. Petition for review from the CSC and other quasi-judicial bodies (see Rule 43)</li> </ol>

Regional Trial Courts	
Exclusive original	<ol style="list-style-type: none"> <li>1. All civil actions in which the subject of the litigation is <u>incapable of pecuniary estimation</u></li> <li>2. All civil actions which involve the title or possession of <u>real property</u>, where the <u>assessed value exceeds P400,000</u> (except ejectment)</li> <li>3. All actions in admiralty and maritime jurisdiction where the demand or claims exceeds P2 million</li> <li>4. All matters of probate where the gross value of the estate exceeds P2 million</li> <li>5. All actions involving the contract of <u>marriage and marital relations</u></li> <li>6. All cases not within the exclusive jurisdiction of</li> </ol>

	<p>any court, tribunal, person or body exercising jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions</p> <ol style="list-style-type: none"> <li>7. All civil actions and special proceedings falling within the exclusive original jurisdiction of a Juvenile and Domestic Relations Court and Court of Agrarian Relations</li> <li>8. All other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy <u>exceeds P2 million</u></li> </ol>
Concurrent original with the SC	See <i>previous tables</i> .
Concurrent original with the CA and SC	See <i>previous tables</i> .
Appellate jurisdiction	<p>All cases decided by the</p> <ol style="list-style-type: none"> <li>a. Metropolitan Trial Courts</li> <li>b. Municipal Trial Courts</li> <li>c. Municipal Circuit Trial Courts</li> </ol> <p>in their respective territorial jurisdictions (Rule 40).</p>

- *Accion interdictal* is within the exclusive original jurisdiction of the first-level courts (Rule 70, § 1).
- The jurisdiction over *accion publiciana* and *accion reivindicatoria*, however, depends on the assessed value of the property being litigated (*Encarnacion v. Amigo*)—it can either be RTC or MTC.
- Actions for specific performance are incapable of pecuniary estimation and therefore fall under the jurisdiction of the RTC (*RCPI v. CA*).
- If the principal relief sought in their complaint is for the court *a quo* to issue an injunction, then, it is a civil action which is incapable of pecuniary estimation. Therefore, it falls under the RTC's jurisdiction (*Bokingo v. CA*).
- If the complaint is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the MTC or RTC would depend on the amount of the claim. Where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by RTC (*Cabrera v. Francisco*).

First-level courts (MTC, MeTC, MCTC, MTCC)	
Exclusive original	<ol style="list-style-type: none"> <li>1. Civil actions and probate proceedings, including the grant of provisional remedies in proper cases, where the value of the</li> </ol>

	<p>personal property, estate, or amount of demand does not exceed P2 million, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs</p> <p>2. Cases of <u>forcible entry and unlawful detainer</u></p> <p>3. All civil actions which involve title or possession of real property, where the assessed value does not exceed P400,000 exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs</p> <p>4. Admiralty and maritime actions where the demand or claim does not exceed P2 million</p>
Delegated (from RTC)	Cadastral or land registration cases covering lots where there is no controversy or opposition, or contested lots where the value of which does not exceed P100,000
Special	Petitions for writ of habeas corpus or applications for bail in criminal cases in the province or city where the RTC judge is absent

### Expedited procedure in first-level courts

Covered cases:

1. Forcible entry and unlawful detainer cases not exceeding P100,000
2. All civil actions, except probate, admiralty and maritime actions and small claims cases, where the total amount of the plaintiff's claim does not exceed P2 million
3. Complaints for damages where the claim does not exceed P2 million
4. Cases for enforcement of barangay amicable settlement agreements and arbitration awards where the money claim exceeds P1 million
5. Cases solely for the revival of judgment of any first-level court
6. The civil aspect of a violation of BP 22, if no criminal action has been instituted therefor

**Small claims**, where the demand does not exceed P1 million:

1. For money owed under any of the following:
    - a. Contract of lease
    - b. Contract of loan and other credit accommodations
    - c. Contract of services
    - d. Contract of sale of personal property, excluding the recovery, unless it is made the subject of a compromise between the parties
  2. Enforcement of barangay amicable settlement and arbitration awards where the money claim does not exceed P1 million
- Considering the nature of a small claims case, only one appeal is allowed to the RTC (notice of appeal), under Rule 40. The judgment of the RTC on the appeal shall be final, executory and unappealable.

- Nonetheless, a writ of *certiorari* is always available (*A.L. Ang Network v. Mondejar*).
- As a rule, a motion for reconsideration on the merits is prohibited. Hence, a motion for reconsideration may be entertained from the denial of a motion to dismiss (*Lucas v. Fabros*).
- A motion to dismiss on the ground of lack of jurisdiction over the subject matter is *not* a prohibited pleading (*Bongato v. Malvaar*).
- The failure of the defendant to answer the complaint within a 10-day period empowers the court motu proprio or on motion of plaintiff to render judgment immediately (*Luna v. Mirafuente*).
- In situations wherein a summary proceeding is suspended indefinitely, a petition for *certiorari* alleging grave abuse of discretion may be allowed.
  - In any other cases, a petition for *certiorari* cannot be filed against any interlocutory order (*Go v. CA*).

### Specialized Trial Courts

#### Family Courts

The Family Courts shall have exclusive original jurisdiction over:

1. Criminal cases where the accused is below 18 but not less than 9, or where a victim is a minor
2. Petitions for guardianship, custody of children, and habeas corpus in relation to custody
3. Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife, and petitions for dissolution of CPG
4. Petitions for support and/or acknowledgment
5. Summary proceedings under the Family Code
6. Petitions for declaration of children as abandoned, dependent or neglected; petition for voluntary or involuntary commitment of children; the suspension, termination or restoration of parental authority
7. Petitions for the constitution of the family home
8. Cases against minors under the Dangerous Drugs Act
9. Violations of RA 7610 (Child Abuse)
10. Violations of RA 9262 (Anti-VAWC Law)

- Family Courts have concurrent jurisdiction with the Court of Appeals and the Supreme Court in petitions for habeas corpus where the custody of minors is at issue.
  - Family Courts are only vested with exclusive original jurisdiction in custody cases, not in habeas corpus cases.

#### Special Commercial Courts

The Special Commercial Courts have exclusive original jurisdiction over the following:

1. Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations

2. Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity
3. Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations
4. Derivative suits
5. Inspection of corporate books
6. And cases in A.M. No. 20-07-04-SC.\*

\* In the syllabus, *Intellectual Property Courts* were listed as separate. However, following the above-mentioned A.M., the Supreme Court has already merged *Intellectual Property Courts* with *Special Commercial Courts*.

- A prayer for accounting of funds and assets of a company to determine the extent and value of a deceased shareholder will be undertaken by a probate court, and not by a special commercial court (*Reyes v. RTC Makati*).
- Actions of *quo warranto* against persons who usurp an office in a corporation, which were formerly cognizable by the Securities and Exchange Commission have been transferred to the courts of general jurisdiction. Hence, controversies arising out of intra-corporate disputes, and controversies in the election of directors or officers are cognizable by the RTC (*Calleja v. Panday*).

#### *Lupong Tagapamayapa*

- Prior referral to the *lupon* as a pre-condition to the filing of an action in court remains.
  - Hence, noncompliance with that condition precedent could affect the sufficiency of the plaintiff's cause of action and make his complaint vulnerable to dismissal on the ground of lack of cause of action or prematurity (*Uy v. Contreras*).
- Noncompliance with the condition precedent would not prevent a court of competent jurisdiction from exercising its power of adjudication over the case before it, where the defendants, as in this case, failed to object to such exercise of jurisdiction in their answer and even during the entire proceedings (*Gonzales v. CA*).
- Noncompliance with the condition precedent would not prevent a court of competent jurisdiction from exercising its power of adjudication over the case before it, where the defendants failed to object to such exercise of jurisdiction in their answer and even during the entire proceedings a quo (*Aquino v. Aure*).
- The *lupon* shall have no jurisdiction over disputes where the parties are not actual residents of the same city or municipality, except where the barangays in which they actually reside adjoin each other (*Agbayani v. Belen*).
- Actions coupled with provisional remedies such as support pendente lite and delivery of

personal property need not go through the *lupon* (*Blardony v. Coscolluela*).

#### *Shari'a Courts*

- Article 143 of the Muslim Code confers upon Shari'a District Courts concurrent original jurisdiction with existing civil courts over real actions not arising from customary contracts wherein the parties involved are Muslims. The parties involved must be Muslims for the Shari'a District Courts to gain jurisdiction in such actions (*Villagracia v. Fifth Shari'a District Court*).
- As to actions not involving customary contracts, the Shari'a District Court has concurrent jurisdiction with the civil courts when the following conditions are met:
  - The complaint is a personal or real action, but not one for forcible entry or unlawful detainer
  - The parties are Muslim
  - The action is not arising from customary contract (*Sps. Maliga v. Sps. Tingao*)

### **VENUE RULE 4**

- The Supreme Court may order a change of venue or place of trial to avoid a miscarriage of justice (PHIL. CONST. art. VIII, § 5 (4)).
- The Supreme Court shall define the territory over which a branch of the Regional Trial Court shall exercise its authority. The territory thus defined shall be deemed to be the territorial area of the branch concerned for purposes of determining the venue of all suits, proceedings or actions, and determining the first-level courts over which the said branch may exercise appellate jurisdiction (BP 129, § 18).

<b>Real action</b>	<b>Personal action</b>
Actions affecting title to or possession of real property or any interest therein	Actions that are <i>not</i> real. The plaintiff seeks the recovery of personal property, the enforcement of a contract, or the recovery of damages.
Must be commenced and tried in the court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.	At the election of the plaintiff: <ol style="list-style-type: none"> <li>a. Where the plaintiff or any of the principal plaintiffs reside, or</li> <li>b. Where the defendant or any of the principal defendants resides, or</li> <li>c. In case of a non-resident defendant where he may be found*</li> </ol>

\* If all the defendants are nonresidents and are not found in the Philippines, the venue shall be: (a) where the plaintiff resides, or (b) where the property/any portion of it is situated/found.

- When are venue rules not applicable:
  - A specific rule or law says so
  - The parties have validly agreed in writing before the filing of the action on the exclusive venue thereof (venue stipulation)

#### Generally

- Venue is determined by the allegations and primary objective of the complaint (not its caption) (*Latorre v. Latorre*).
- The controlling factor in determining venue for cases of a personal action or a real action is the primary objective for which said cases are filed (*Go v. UCPB*).
  - An action for the cancelation of REM is a real action, because its objective is to recover real property.
- In an action for revival of judgment, venue is determined by whether the judgment sought to be revived involves a personal action or a real action (*Infante v. Aran*).
- The ground of improperly laid venue must be raised seasonably, else it is deemed waived. Where the defendant failed to either file a motion to dismiss on the ground of improper venue or include the same as an affirmative defense, he is deemed to have waived his right to object to improper venue (*Marcos-Araneta v. CA*).
- The residence of the counsel is not determinative of the venue, because he is not the real party-in-interest (*Ang v. Sps. Ang*).
- Courts may not motu proprio dismiss a case for improper venue (*URC v. Lim*).
- Change or transfer of venue from that fixed in the rules may be effected upon written agreement of the parties not only before the actual filing of the action but even after the same has been filed.
  - It is only after the action has been filed already that change or transfer of venue by agreement of the parties is understandably controllable in the discretion of the court (*Hoechst v. Torres*).
- In case of juridical persons, their residence is deemed their principal office, not their branches.
  - By the same token, a corporation cannot be allowed to file personal actions in a place other than its principal place of business unless such a place is also the residence of a co-plaintiff or a defendant (*Young Auto Supply v. CA*).
- Residence, for the purpose of venue, the place of abode, whether permanent or temporary, of the plaintiff or the defendant, as distinguished from domicile (*Saludo v. AMEX*).
- The venue of real actions affecting properties found in different provinces is determined by the singularity or plurality of the transactions involving said parcels of land. Where said parcels are the object of one and the same transaction, the venue is in the court of any of the provinces wherein a parcel of land is situated.
  - Hence, when a REM includes properties in various provinces, the venue may be in *any* of the RTCs

covering *any* of the properties (*United Overseas Banking Phils. v. Rosemoore Mining*).

#### Exclusive venue stipulation

- An exclusive venue stipulation in a contract applies only to causes of action arising from that specific agreement. When other causes of action are based on separate, unrelated contracts without such stipulations, the general rules on venue govern (*Uniwide Holdings v. Cruz*).
- **An exclusive venue stipulation can only be valid and binding**, when:
  - the stipulation on the chosen venue is exclusive in nature or in intent
  - it is expressed in writing by the parties thereto; and
  - it is entered into before the filing of the suit (*Odilao v. Union Bank*).
- The court may declare a venue stipulation to be in effect contrary to public policy— despite that in general, changes and transfers of venue by written agreement of the parties is allowable— whenever it is shown that a stipulation as to venue works injustice by practically denying to the party concerned a fair opportunity to file suit in the place designated by the rules (*Hoechst, supra*).
- Although venue stipulations in an agreement are valid, they do not supersede Rule 4. The venue stipulations prevail when qualifying or restrictive words are used to stipulate the place for legal actions in the agreement (*Phil. Banking v. Tensuan*).
  - When the venue is not qualified or restricted to such, it is only considered as an additional forum.
  - A stipulation as to venue does not preclude the filing of action in other places unless restrictive words are used in the agreement (e.g., “to the exclusion of all courts”) (*Philippine Bank Communications v. Lim*).
- A venue stipulation may also apply in ejectment cases (*Union Bank v. Maunlad*).
- If the action assails the validity of the contract itself containing the venue stipulation, then Rule 4 will be followed and the venue stipulation may be breached (*Briones v. CA*).

### **PARTIES RULE 3**

- A party is one who is to be benefited or injured by a judgment or order of a court, and includes any person who is a “party to the record” (*PHHC v. Jeremias*).

#### Who may be parties

- Only natural or juridical persons, or entities authorized by law may be parties in a civil action. Two groups:
  - Natural or juridical persons
  - Entities authorized by law to institute action (*Iron and Steel Authority v. CA*).
- **Plaintiff** – The claiming party, the counter-claimant, the cross-claimant, or the third (fourth-, etc.)-party plaintiff.
- **Defendant** – The original defending party, the defendant in a counterclaim, the cross-



defendant, or the third (fourth-, etc.)-party defendant.

#### Capacity to sue and be sued

- Spouses – Husband and wife shall sue or be sued jointly, except as provided by law.
- Minor or incompetent persons – They may sue or be sued, with the assistance of his father, mother, guardian, or if he has none, a guardian *ad litem*.
- Entities without juridical personality as defendant – They may be sued under the name by which they are generally or commonly known.
  - The names and addresses of the persons must all be revealed.

Principles governing a foreign corporation's right to sue in local courts:

Doing business?*	With license?	Can sue?
Yes	No	No
Yes	Yes	Yes
No	-	Yes, <i>on an isolated transaction, or on a cause of action entirely independent of any business transaction</i>

\* See § 3 (d) of RA 7042 for the definition of "doing business."

- In order to maintain an action in a court of justice, the plaintiff must have an actual legal existence, that is, he, she or it must be a person in law and possessed of a legal entity as either a natural or an artificial person, and no suit can be lawfully prosecuted save in the name of such a person.
- Neither a dead person nor his estate may be a party plaintiff in a court action. A deceased person does not have such legal entity as is necessary to bring action so much so that a motion to substitute cannot lie and should be denied by the court.
  - The proper action should be in the form of a claim to be filed in the testate or intestate proceedings of the deceased spouse (*Ventura v. Militante*).
- An unincorporated association, in the absence of an enabling law, has no juridical personality and thus, cannot sue in the name of the association.
  - If an association has no juridical personality, then all members of the association must be made parties in the civil action (*Association of Flood Victims v. COMELEC*).

#### Real party-in-interest

- Every action must be prosecuted or defended in the name of the real party-in-interest, who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.
  - Material interest – An interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.
  - Real interest – A present substantial interest, as distinguished from a mere expectancy or a future, contingent,

subordinate, or consequential interest (*Minoza v. Lopez; Ralla v. Ralla*).

- If the suit is not brought against the real party-in-interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action (*Tanpingco v. IAC*).
  - Thus, a REM executed with the marital consent of a wife requires that it be prosecuted in the name of the wife (because the husband is already dead), not the children (*Equitable PCI Bank v. Heirs of Tiw*).
  - Hence, a lawyer who has already received his compensation can no longer file a petition for review to demand further sums of money (*Ortiz v. San Miguel Corporation*).
- **Two requisites:**
  - to institute an action, the plaintiff must be the real party in interest
  - the action must be prosecuted in the name of the real party in interest (*Oco v. Limbaring*).
- Prospective rights do not make a party a real party in interest. A party in real interest is the party who stands to be benefitted or injured by the judgement in the suit. The interest must be present and substantial, not merely incidental or prospective or consequential (*Celestial Mining v. Macroasia*).
- A party must be the real party-in-interest to institute or defend a suit. A corporation can only act through its Board of Directors, therefore a complaint filed by a person (on behalf of a corporation), but not authorized by the Board of Directors has no legal effect (*Philippine Numismatic and Atinarian Society v. Aquino*).
  - A board resolution is required for a corporation to file suits!

#### Representative parties

- When the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case, i.e.: "*Juan Antonio, Anna Rosario, and Jose Alfonso, minors, and represented by their parents Antonio and Rizalina Oposa*."
  - An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal, except when the contract involves things belonging to the principal.
- Under the CARP, farmer leaders are allowed to represent themselves, their fellow farmers, or their organizations before the DAR. The action may then be brought by:
  - the organization represented by its authorized representative (the organization must have juridical personality), or
  - representative with the beneficiaries identified in the title of the case (*Samahang Magsasaka ng 53 Hektarya v. Mosqueda*).

#### Class suit

- A class suit is:

- A case where one or more may sue for the benefit of all
- A case where the representation of class interest is indispensable as to make each member of the class an affected party (*Newsweek v. IAC*).

• **Elements for the maintenance of a class suit:**

- The subject matter of the controversy is one of common or general interest
- The parties affected are so numerous that it is impracticable to bring them all to court (impracticable joinder)
- The parties bringing the class suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned (adequate and representative plaintiffs) (*Juana Complex I Homeowners Assoc. Inc. v. Fil-Estate Land Inc.*; *Banda v. Ermita*).

- A statement aimed at a large, indeterminate group gives no individual cause of action and cannot be cured by a class suit because each member's reputation is separate and representation would be inadequate (*MVRS Publications Inc. v. Islamic Da'wah Council*).

**Joinder of parties**

- *Permissive joinder* – All persons in whom (plaintiff) or against whom (defendant) any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants.
  - The court may nonetheless make orders to prevent any plaintiff or defendant from being embarrassed or put to expense in which he may have no interest.
- **Requisites for permissive joinder:**
  - A common question of fact or law
  - A right of relief exists in favor of all of them arising out of the same or several transactions, whether severally, jointly, or in the alternative
  - Such joinder is not otherwise proscribed by the rules (jurisdiction or venue) (*International College Inc. v. Argonza*; *Pantranco v. Standard Insurance*).
    - Hence, if the claims were separate and distinct, with no shared factual or legal issues, there can be no joinder. Consequently, the jurisdictional amount will not be the sum of those claims (they will be separated) (*Flores v. Mallare-Philips*).

*Indispensable and necessary parties*

<b>Indispensable</b>	<b>Necessary</b>
Parties-in-interest without whom no final determination can be had of an action	One who is not indispensable but ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a

	complete determination or settlement of the claim
Compulsory joinder	Non-joinder will not prevent the court from proceeding, and the judgment shall not be without prejudice to the necessary party

- Neither misjoinder nor non-joinder of parties is a ground for dismissal of an action. Courts may drop or add parties at any stage.
  - Dismissal is improper unless the absent parties are indispensable (*Cabutihan v. Landcenter*).
  - Failure to comply with the court's order to implead a party may allow the court to dismiss the complaint pursuant to Rule 17 § 3.
- All indispensable parties must be joined for a valid judgment. Without impleading all the indispensable parties, the action risks dismissal (*Speed Distributing Corp. v. CA*).
- The court, either *motu proprio* or upon the motion of a party, may order the inclusion of the indispensable party or give the plaintiff an opportunity to amend his complaint in order to include indispensable parties.
  - If the plaintiff ordered to include the indispensable party refuses to comply with the order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion.
  - Only upon unjustified failure or refusal to obey the order to include or to amend is the action dismissed (*Leonis Navigation v. Villamater*).
- The non-joinder of indispensable parties is not a ground for the outright dismissal of the action; the proper remedy is to implead them, and the case should be remanded for this purpose rather than dismissed outright (*Divinagracia v. Parilla*).
- If an indispensable plaintiff refuses to be joined, he may be made a defendant and the reason therefor shall be stated in the complaint.
- Any claim against a misjoined party may be severed and proceeded with separately.

**Substitution of parties**

- Death of a party – The counsel of the deceased party shall inform the court within 30 days from the death thereof.
  - The heirs may be allowed to substitute, without the need to appoint an executor or administrator, and the court may appoint a guardian *ad litem* for the minor heirs.
  - The action continues, unless the claim is extinguished.
- Death or separation of a party who is a public officer – The action may be continued by his successor, if within 30 days after taking office, it is shown that there is a substantial need to continuing the case.
  - The successor must be given reasonable notice for the application for substitution and accorded an opportunity to be heard.

- Incompetency or incapacity – The court may allow the action to continue, but with the incapacitated party assisted by his legal guardian or guardian *ad litem*.
- Transfer of interest – The action may be continued by or against the original party, unless the court, upon motion, directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.
- Action on money claim – If the defendant (debtor) dies before finality, it shall not be dismissed but allowed to be continued until finality. If the creditor obtains a favorable judgment, he must prosecute the claims against the deceased's estate.
- Non-compliance with the rule on substitution of a deceased party render proceedings and judgment of the trial court infirm because the court acquired no jurisdiction over the persons of legal representatives or of the heirs (*Brioso v. Rili-Mariano*).
  - Not jurisdictional, but a matter of due process.
- The following actions may be continued despite a party's death:
  - To recover real or personal property or an interest thereon
  - To enforce liens thereon
  - To recover damages for injury on a person or property (*Sarsaba v. Te*).
- Formal substitution of the heirs in place of the deceased is no longer necessary if the heirs continued to appear and participated in the proceedings of the case (*Sps. Berot v. Siapno*).
- The substitution of parties is improper when there are unresolved counterclaims against the original party (*State Investment House v. CA*).

#### *Alternative and unknown defendants*

- Alternative defendants – Where the plaintiff is uncertain against who of several persons he is entitled to relief, he may join any or all of them as defendants in the alternative.
- Unknown identity or name of defendant – He may be sued as the unknown owner, heir, devisee, or other such designation (e.g., John Does and Jane Roes).
  - When his identity or true name is discovered, the pleading must be amended accordingly.

#### *Indigent party*

- One proceeds as an indigent upon an *ex parte* application and hearing, and the court is satisfied that the party has no money or property sufficient for basic needs of him and his family.
  - An indigent is exempted from payment of docket fees and other lawful fees, and of TSNs. The fees shall be a lien on any judgment in favor of the indigent.
- If the court finds out that the person is *not* indigent, he shall pay the fees.
- See Rule 141, Sec. 18.

#### *Solicitor general*

- The OSG is required to appear if the action involves the validity of:
  - Treaty

- Law
- Ordinance
- Executive order
- Presidential decree
- Rules or regulations

### **New or additional parties**

#### *Third-party complaint (TPC)*

- A TPC is a claim that a defending party may, with leave of court, file against a person not a party to the action, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.
- When will the TPC be severed:
  - The TPC defendant cannot be located within 30 days from the grant of such leave
  - Matters extraneous to the issue in the principal case are raised
  - The effect would be to introduce a new and separate controversy into the action.
- A third-party complaint is available only if the defendant has a right to demand contribution, indemnity, subrogation or any other relief from the supposed third-party defendants in respect to the plaintiff's claim (*Balbastro v. CA*).
- While intended to avoid circuitry and multiplicity of suits, it cannot be employed as a vehicle for a collateral attack on a Torrens title, which demands a direct proceeding by the proper party (*Tayao v. Mendoza*).

#### **Intervention**

- Who may intervene – A person who has a legal interest:
  - in the matter in litigation
  - in the success of either of the parties
  - an interest against both
  - is so situated as to be adversely affected by a distribution or other distribution of property
- Test: The court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether the intervenor's rights may be fully protected in a separate proceeding.
  - An independent controversy cannot be injected into a suit by intervention, hence, such intervention will not be allowed where it would enlarge the issues in the action and expand the scope of the remedies (*MCIA v. Heirs of Mioza*).
- The motion to intervene may be filed at any time before rendition of judgment by the trial court.
  - Hence, intervention cannot be allowed when the trial court has already rendered its decision (*Learning Child v. Ayala Alabang*).
- Pleadings:
  - Complaint-in-intervention, if the intervenor asserts a claim
  - Answer-in-intervention, if the intervenor unites with the defending party
    - Answer to complaint-in-intervention – Filed 15 days from notice of the order

admitting the complaint-in-intervention.

• **Requisites for intervention:**

- Intervenor has legal interest
- The intervention must not unduly delay or prejudice the adjudication of the rights of the parties nor should the claim of the intervenor be capable of being properly decided in a separate proceeding (*Union Bank v. Concepcion*).
- The interest must involve the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment (*Union Bank, supra*).
- The allowance or disallowance of a motion for intervention rests on the sound discretion of the court after consideration of the appropriate circumstances (*Quinto v. COMELEC*).
- Jurisdiction over an intervention is governed by jurisdiction over the main action. Accordingly, an intervention presupposes the pendency of a suit in a court of competent jurisdiction.
  - Intervention is never an independent action, but is ancillary and supplemental to the existing litigation (*Pulgar v. RTC*).

*Interpleader* (a special civil action)

- Whenever conflicting claims upon the same subject matter are or may be made against a person who claims no interest whatever in the subject matter, or an interest which in whole or in part is not disputed by the claimants, he may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves (Rule 62, Sec. 1).
- An interpleader suit cannot prosper when the party filing the action had already been made independently liable in another case (*Wack Wack Golf v. Won*).
- For example, an action for interpleader is proper when the lessee does not know to whom payment for rentals should be made due to conflicting claims on the right to collect (*Parischa v. Don Luis; Ocampo v. Tirona*).
- Interpleader is proper when a party holding disputed property faces conflicting claims and seeks court help to avoid multiple liability (*Mesina v. IAC*).

**SUMMONS  
RULE 14**

**Issuance and content of summons**

- The court shall, within five calendar days from receipt of the initiatory pleading and proof of payment, direct the clerk of court to issue the summons to the defendants.
- The summons shall contain:
  - Name of the court and the names of the parties
  - When authorized by court, an authorization for the plaintiff to serve summons
  - A direction that the defendant answer within the time fixed
  - A notice that unless the defendant so answers, plaintiff will take judgment by

default and may be granted the relief applied for.

- The copy of the complaint (and order for appointment of guardian *ad litem*, if any) shall be attached to the original and each copy of the summons.
- Failure to serve summons will mean that the court failed to acquire jurisdiction over the person of the defendant (*De Pedro v. Romasan*).

*By whom issued*

- The clerk of court issues the summons, and remains valid until duly served, unless recalled by the court.
- In case of destruction or loss of summons, the court may, upon motion, issue an *alias* summons.
  - This is a non-litigious motion.
- Summons cannot be issued unless and until a complaint has been filed (*Wabe v. Bionson*).

*By whom served*

- General rule: Sheriff must serve
- *If sheriff served and failed*: The plaintiff
- *If the summons is to be served outside the judicial region*: The plaintiff
- *If the plaintiff is a juridical entity*: A representative of the plaintiff must serve, with authorization from the entity

*Failure to serve*

Situation	Effect
Plaintiff misrepresents that the defendant was served, and in fact no summons was served	Dismissed with prejudice, proceedings are nullified, sheriff will be sanctioned
Summons returned without being served on any or all defendant	Plaintiff will be ordered to serve
Failure to comply with the order to plaintiff to serve the summons	Dismissed without prejudice

- Exclusive service rule: Only the sheriff or a person authorized by the judge for exceptional reasons may serve summons. This rule is mandatory and restrictive (*Bello v. Ubo*).
  - Hence, a police cannot serve summons. If so, the service is invalid.
- Failure of the sheriff to speedily and efficiently serve summons may cause his disciplinary action (dismissal) (*Talion v. Ayupan*).

**Modes of service**

1. Personal service
2. Substituted service
3. Service of summons by publication
4. Extraterritorial service

Entity	To whom served
No juridical personality	Service upon any one of them, or upon the person in charge of their office (§ 7)
Prisoners	Upon him, by the warden.  The warden shall file a return within five calendar days from service of the summons (§ 8)
Minors and incompetent	Upon him <i>and</i> the guardian <i>ad litem</i> or legal guardian (§ 10)

Spouses	When sued jointly, summons should be made to each spouse, <i>individually</i> (§ 11)
Domestic private juridical entity	Service must be made to: <ol style="list-style-type: none"> <li>1. President</li> <li>2. Managing partner</li> <li>3. General manager</li> <li>4. Corporate secretary</li> <li>5. Treasurer</li> <li>6. In-house counsel</li> <li>7. In their absence, on their secretaries</li> <li>8. If still none, on the person who customarily receives the correspondence at its principal office (i.e., security guard)</li> </ol> <p>If under receivership – to the receiver or liquidator.</p> <p>If refused to receive for 3 attempts on 2 different dates, it may be made <i>electronically</i> (§ 12)</p>
Foreign private juridical entity (doing business)	Service must be made to: <ol style="list-style-type: none"> <li>1. Resident agent</li> <li>2. <i>If none</i>, to the government official designated, or on any of its officers, agents, directors or trustees within the country (§ 14)</li> </ol>
Foreign private juridical entity (no agent, but doing business)	Summons may be effected <i>outside the Philippines</i> through <i>any of the following</i> : <ol style="list-style-type: none"> <li>1. Personal service coursed through the appropriate court, with the assistance of the DFA</li> <li>2. By publication once in a newspaper of general circulation in the foreign country, and by serving such via registered mail to the last known address</li> <li>3. By facsimile</li> <li>4. By electronic means</li> <li>5. By such other means as the court may direct (§ 14)</li> </ol>
Republic	To the OSG (§ 15)
Public corporations (LGUs) or GOCCs	On its executive head, or on such other officer/s as the law/court may direct ( <i>id.</i> )

Defendant	How served
Unknown defendant or whereabouts are unknown	Summons by publication in a newspaper of general circulation  <i>Time to answer:</i> At least 60 days from notice (§ 16)
Nonresident and not found in Philippines	For <i>in rem/quasi in rem</i> : <ol style="list-style-type: none"> <li>1. Substituted service</li> <li>2. Extraterritorial service</li> <li>3. Service of summons by publication</li> </ol>

	4. Other manner ordered by the court  <i>Time to answer:</i> At least 60 days from notice (§ 17)
Residents temporarily out of the country	For <i>any action</i> : <ol style="list-style-type: none"> <li>1. Substituted service</li> <li>2. Extraterritorial service</li> <li>3. Service of summons by publication</li> <li>4. Other manner ordered by the court</li> </ol> <i>Time to answer:</i> At least 60 days from notice (§ 18)

#### Summarizing

	In personam	In rem/QIR
<b>Resident</b>	Personal Substituted Publication Extraterritorial	Personal Substituted Publication Extraterritorial
<b>Non-resident</b>	<i>If in country:</i>  Personal Substituted	<i>If in country:</i>  Personal Substituted Publication (§ 16)
	<i>If outside:</i>  Publication (FPJE, § 14; § 16)	<i>If outside:</i>  Extraterritorial

#### Personal service of summons

- By handing a copy thereof to the defendant in person and informing him that he is being served.
- *If the defendant refuses to receive it*, by leaving the summons within the view and in the presence of the defendant.

**Substituted service of summons** – If, for justifiable causes, the defendant cannot be served personally after at least **three attempts on two different dates**:

- By leaving copies of the summons at the defendant's residence with some person of suitable age (18) and discretion then residing therein.
- By leaving copies of the summons at the defendant's office or regular place of business with some competent person in charge thereof.
- By leaving the summons, if refused entry upon making his authority and purpose known, with any of the officers of the homeowners' association or condominium corporation, or its chief security officer in charge of the community or building where the defendant is found.
- By sending an electronic mail to the defendant's e-mail address, if allowed by the court.

*Requisites to effect a valid substituted service:*

1. **Impossibility of prompt personal service** – The sheriff must first attempt personal service several times (at least three, on at least two different dates) within a reasonable period (about one month). Only after these diligent efforts fail can substituted service be allowed. The impossibility of prompt service must be established.
2. **Specific details in the return** – The sheriff's Return must narrate in detail the attempts to

serve personally, including dates, times, inquiries made, names of occupants encountered, and reasons for failure. The Return must justify why substituted service was resorted to.

3. **Person of suitable age and discretion** – If service is left at the defendant's residence, it must be with someone at least 18 years old, capable of understanding the significance of the summons, and in a position of trust to ensure the defendant is informed. The sheriff must state the person's age, relationship to defendant, and capacity.
4. **Competent person in charge** – If served at the defendant's office or place of business, it must be left with a responsible person managing the office (e.g., manager, president) who understands the importance of the summons and the need to inform the defendant. These details must also appear in the Return (*Manotoc v. CA*).

### Summons by publication

- By publishing the summons in a newspaper of general circulation in such places and for such time as the court may order, and by sending a copy of the summons and the order of the court by registered mail to the defendant's last known address.

### Extraterritorial service

- Personal service of summons under Sec. 5
- Service as provided for in international conventions
- Summons by publication
- Other manner the court may deem sufficient

### Jurisprudential guidelines on summonses

- Before substituted service of summons can be resorted to, there must have been efforts made to find the person personally and such efforts failed.
  - If substituted service was resorted to without such efforts shown, it would be considered invalid.
- Service of summons has a ministerial character and can be done during the day, night, Sunday, or holiday (*Sps. Laus v. CA*).
- The terms "dwelling house" or "residence" and "office" or "regular place of business" refer to where the person named in the summons may be living or working at the time service is made even though he may be temporarily out of the country at the time (*Keister v. Navarro*).
- The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service.
  - "Reasonable time" is so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any, to the other party (*Carson Realty v. Red Robin*).
- The requirement of due process has been met as shown by the fact that defendants actually received the summonses and copies of the complaint and as evidenced by the Registry Return Cards.

- In this case, extraterritorial service was effected without a publication—only by registered mail.
- However, the action in this case was *in rem/quasi in rem*—the purpose of summons is for due process only (*Cariaga v. Malaya*).
- In actions strictly *in personam*, personal service of summons within the forum—or voluntary appearance—is essential to confer jurisdiction over the defendant; summons by publication on resident defendants with known identities and ascertainable addresses does not satisfy due process and is therefore invalid.
  - The remedy is to convert the action into an *in rem* or *quasi in rem* action by attaching the defendants' property (*Magdalena Estate v. Nieto*).
- The word "office" or the phrase "regular place of business" refers to the office or place of business of the defendant at the time of service.
  - It does not necessarily follow that the regular place of business of a chairman of the board of directors is the same as the address of the corporation as it is possible for him to hold office elsewhere (*UCPB v. Ongpin*).
- It is not necessary that the person in charge of the defendant's regular place of business be specifically authorized to receive the summons. It is enough that they appear to be in charge (*Guanzon v. Arrazada*).
- The statutory requirements of substituted service must be strictly construed since it is an extraordinary method of service in derogation of personal service of summons, availed of only under certain conditions imposed by the Rules of Court (*GUCCI v. Torres*).
  - The procedure must be followed strictly, faithfully and fully in order not to deprive any person of his property by violating his constitutional right to due process.
- Hence, receipt of summons by an unauthorized third person is not a valid service and does not amount to voluntary appearance (*Potenciano v. Barnes*).
- If petitioner's whereabouts could not be ascertained after the sheriff had served the summons at her given address, then respondent could have immediately asked the court for service of summons by publication on petitioner.
  - For example, when the defendant has fled the country (*Mangila v. CA*).
- "Residence" is the place where the person named in the summons is living at the time the service is made, even though he may be temporarily out of the country.
  - A plaintiff is merely required to know the defendant's residence, office or regular business place. He need not know where the defendant actually is at the moment of filing the suit.
  - The law presumes that service left at such residence with a person of suitable age and discretion will reach the defendant (*Montefalcon v. Vasquez*).
- Extraterritorial service of summons applies only when the action is *in rem* or *quasi in rem*, but **not** if an action is *in personam*.

- Mere allegations of personal property located in the country does not convert the action *in rem* (*Perkin v. Dakila*).
- A defendant who is non-resident and cannot be found in the Philippines (i.e., a US citizen in the US) must be served summons via extraterritorial service (*Regner v. Logarta*).
- For defendants who are residents, but are temporarily out of the country, attachment may not always be needed. Substituted service may be effected instead (*PCIB v. Alejandro*).
- Without specifying the details of the attendant circumstances or of the efforts exerted to serve the summons, a general statement that such efforts were made will not suffice for purposes of complying with the rules of substituted service of summons (*Pascual v. Pascual*).
  - The pertinent facts and circumstances attendant to the service of summons must be stated in the proof of service or Officer's Return; otherwise, any substituted service made in lieu of personal service cannot be upheld.
- Summons sent to a corporation, but received by an unauthorized "legal assistant" not even employed by the company, is an improper service of summons (*Dole Philippines v. Quilala*).
- Extraterritorial service of summons apply only to actions *in rem*, and actions *quasi in rem*.
  - Hence, personal service in a collection suit upon a US citizen who was checked in a hotel was valid (*Velayo-Fong v. Sps. Velayo*).
- Service of summons by publication is valid **in any action**—whether *in personam*, *in rem*, or *quasi in rem*—when the **defendant's whereabouts are unknown and cannot be ascertained** by diligent inquiry, provided leave of court is obtained (*Santos v. PNOQ*).
- When the defendant instructed the security guards to prohibit anybody from proceeding to his residence, and summons was left with said guard, the said summons is deemed served (*Robinson v. Miralles*).
- The service of summons should be made to the residence of the defendant (who is out of the country), and not *where* the *res* is located.
  - Consequently, the summons by publication where the summons was mailed to the location of the parcel of the land was likewise defective (*Sarol v. Sps. Diaol*).
- A sheriff's single, generalized attempt, without detailed justification for the resort to substituted, is invalid (violative of the *Manotoc* rules).
- When a defendant files a motion to lift default and seeks affirmative relief, they are deemed to have voluntarily submitted to the jurisdiction of the court, thereby curing the defect in the service of summons.
  - However, jurisdiction over the person does not by itself cure the denial of the right to be heard. Due process requires not only notice but also hearing. Even if jurisdiction was acquired through voluntary appearance, a party wrongly prevented from participating due to an invalid default order is deprived of due process (*Belo v. Marcantonio*).

- While voluntary submission to the court (e.g., by filing a motion for new trial) cures a defective service of summons, the court must nonetheless allow the "hearing" aspect of due process—that is, to grant a new trial (see Rule 37, § 1 (a)) (*Solis v. Solis-Laynes*).

#### Return

- The service must be completed within 30 days from the issuance.
- Five days from the service/completion, the server shall file a return to the court and serve it to the plaintiff's counsel:
  - personally,
  - by registered mail, or
  - electronic means.

#### Content of the return for substituted service

- The impossibility of prompt personal service within the 30-day period
- The date and time of the three attempts on at least two different dates and the details of the inquiries made to locate the defendant residing thereat
- The name of the person who received the summons.
- If substituted service was resorted to, there must be a report indicating that the person who received the summons in the defendant's behalf was one with whom he had a relation of confidence that would ensure that the latter will receive or be notified of the summons issued in his name (*Ang Ping v. CA*).

#### Proof of service

- It shall be made in writing by the server.
- It shall contain the:
  - Manner
  - Place
  - Date of service
  - Any papers which have been served with the process
  - Name of the person who received the summons
  - The proof shall be sworn to when served by a person not the sheriff or his deputy
- If summons was served via e-mail, a printout of the e-mail, with a copy of the summons as served, and the affidavit of the person mailing shall constitute as proof of service.

#### Proof of service by publication

- Affidavit of the publisher, editor, business or advertising manager
- A copy of the publication be attached
- Affidavit showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the defendant by registered mail to his last known address

#### Voluntary appearance

- The defendant's voluntary appearance in the action shall be equivalent to service of summons.
- The inclusion in a motion to dismiss of other grounds **aside from lack of jurisdiction over the person of the defendant** shall be deemed a voluntary appearance.

- By filing a motion for additional time, petitioners voluntarily submitted to the jurisdiction of the court.
  - Consequently, whatever defect there was in the mode of service of summons was deemed waived (*Orosa v. CA*).
- A motion challenging the court's jurisdiction over a person, even if it includes other grounds, does not constitute a voluntary submission (this is the exception) (*UCPB v. Ang-Sy*).
  - However, when the motion to dismiss is coupled with a "voluntary special appearance," it is deemed voluntary appearance.
  - Defendant's counsel's appearances and timely pleadings amounted to voluntary submission to the court's jurisdiction, equivalent to valid service of summons (*Eastern Heights v. Tagumpay*).

## PLEADINGS

### Pleadings in general

- Pleadings are the written statements of the respective claims and defenses of the parties submitted to the court for appropriate judgment (Rule 6, § 1).
- Types:
  - *Complaint* – Where the claims of a party (also, counterclaim, cross-claim, third-party complaint, complaint-in-intervention) are asserted
  - *Answer* – The defenses of a party are alleged.
  - *Reply* – An response to an answer, only if the defending party attaches an actionable document (Rule 6, § 2).
- Every pleading shall contain in a methodical and logical form, a plain, concise, and direct statement of the ultimate facts, including the evidence on which the party pleading relies for his claim or defense.
- If the cause of action or defense is based on law, the pertinent provisions and their applicability shall be clearly and concisely stated (Rule 8, § 1).

### Complaint

- The complaint is the pleading alleging the plaintiff's or claiming party's cause/causes of action.
  - The names and residences of the plaintiff and defendants must be stated in the complaint (Rule 6, § 3).
- Every ordinary civil action must be based on a cause of action (Rule 2, § 1).
  - Cause of action – The act or omission by which a party violates a right of another (Rule 2, § 2).
  - **In determining the jurisdictional threshold:** If there are several causes of actions, the amount of the demand shall be the totality of the claims in *all* the causes of action, irrespective of whether the causes of action arose out of the same or different transactions (BP 129, § 33 [1]).
- *Failure vs. lack:* Failure to state a cause of action refers to the insufficiency of the

allegations in the complaint. Lack of cause of action refers to a situation wherein the evidence does not prove the cause of action alleged in the complaint (*Lourdes Suites v. Binarao*).

### Requisites of cause of action:

1. A right in favor of the plaintiff
2. An obligation on the part of the defendant to respect or not to violate such right
3. An act or omission on the defendant violative of the right of the plaintiff constituting a breach of the obligation of the defendant to the plaintiff
  - a. It is only when the last element occurs that a cause of action arises (*China Banking Corp. v. CA*).

### Splitting and joinder of causes of action

- Only a single suit may be instituted for a single cause of action (Rule 2, § 3).
- If two or more suits are filed based on the same cause of action, the filing of one *or* a judgment on the merits in any one is a **ground for dismissal of the others** (*id.* § 4).
  - If two or more complaints are brought from different parts of a single cause of action, the filing of the first may be pleaded in abatement of the other or others, and a judgment upon the merits in anyone is available as a bar in the others (*De Luzuriaga v. Adil*).
- A party may in one pleading assert as many causes of action as he may have against the defendant, provided that:
  - The rules on joinder of parties have been complied with
  - The joinder must *not include special civil actions or special proceedings*
    - Hence, actions of partition and rescission cannot be joined in a single action
  - Where the causes of action are between the same parties but pertain to different venues and jurisdictions, the joinder may be allowed in the RTC, provided that at least one cause of action is with the RTC's jurisdiction and venue
  - Where the claims in all the causes of action are *principally* for recovery of money, the *aggregate amount claimed shall be the test of jurisdiction* (*id.* § 5).
- Misjoinder of causes of action is not a ground for dismissal.
  - A misjoined cause of action may, on motion or *motu proprio*, be severed (*id.* § 6).
- To know if you must file one single case or if you can file separate cases, ask: Do all the claims come from the same act or contract?
  - If yes → One cause of action
  - If no → Different causes of action (*BPI v. Coscolluela*).
- When a single delict or wrong is committed, there is but one single cause of action regardless of the number of rights violated. All such rights should be alleged in a single complaint as constituting one single cause of action.
  - Hence, an action for ejectment and damages must not be severed (*Progressive Dev't Corp. v. CA*).



- Splitting of causes of action may become forum shopping:
  - Filing multiple cases based on the same cause of action with the same prayer, and the previous case not having been resolved yet (*litis pendencia*)
  - Filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (*res judicata*)
  - Filing multiple cases based on the same cause of action but with different prayers (forum shopping) (*Dasmariñas Village Association v. CA*).
- One of the tests to ascertain whether two suits have the same cause of action is by asking **whether the cause of action in the second case existed at the time of the filing of the first** complaint (*Umale v. Canoga*).
- There can be joinder when it involves the same series of transactions over the same properties and involved common questions of fact and law (*Sps. Perez v. Hermano*).

#### Alternative causes of action

- A party may set forth **two or more statements of a claim or defense** alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses.
- When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements (Rule 8, § 2).

#### Answer

- An answer is a pleading in which a defending party sets forth his defenses.
- Defenses may either be negative or affirmative:
  - Negative – A **specific denial** of the material fact/s alleged in the pleading of the claimant essential to his cause/s of action.
  - **Affirmative** – An allegation of a new which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery.
  - Affirmative defenses:
    - Fraud
    - Statute of limitations
    - Release
    - Payment
    - Illegality
    - Statute of frauds
    - Estoppel
    - Former recovery
    - Discharge in bankruptcy
    - Other matter by way of confession and avoidance.
  - Affirmative defenses + grounds for dismissal:
    - No jurisdiction over the subject matter,
    - There is another action pending between the same parties for the same cause of action

- Action is barred by a prior judgment (Rule 6, § 5 (b)).

- A defendant may, for meritorious reasons, be granted an additional period of not more than 30 days to file an answer.
  - Only one motion for extension is allowed (Rule 11, § 11).

#### Specific denial, *kinds*

1. Absolute – The defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, set forth the substance of the matter that he relies upon to support his denial.
2. Qualified or partial – It is denial only in part of the averment and admitting the remainder. If he denies only a part of the averment, he specifies so much of it as it is true and denies the remainder.
3. Disavowal of knowledge – The pleader states that he has no knowledge or information sufficient to form a belief as to the truth thereof (Rule 8, § 10).

#### **Material averments in a pleading asserting a claim—other than those as to the amount of unliquidated damages—shall be deemed admitted when not specifically denied.**

- Where a fact is alleged with some qualifying or modifying language, and the denial is conjunctive, a “negative pregnant” exists, and only the qualification or modification is denied, while the fact itself is admitted.
- A denial in the form of a negative pregnant is an **ambiguous pleading**, since it cannot be ascertained whether it is the fact or only the qualification that is intended to be denied.
  - Hence, it is deemed admitted.
- Profession of ignorance about a fact which is patently and necessarily within the pleader's knowledge, or means of knowing as ineffectual, is no denial at all (*Venzon v. Rural Bank*).

**Affirmative defenses** – A defendant shall raise his affirmative defenses in his answer which must be limited to the grounds in Rule 6, Sec. 5 (b) and:

1. The court has no jurisdiction over the defendant
2. The venue is improperly laid
3. The plaintiff has no legal capacity to sue
4. The pleading asserting the claim states no cause of action
5. That a condition precedent for filing the claim has not been complied with.

#### **Failure to raise the affirmative defense at the earliest opportunity shall constitute a waiver thereof.**

*Procedure in resolving affirmative defenses:*

1. The court shall *motu proprio* resolve the affirmative defense within 30 days from the filing of the answer.
  - a. Except: Hearing may be conducted on the affirmative defenses in Rule 6, § 5 (b).
2. If denied, the denial shall not be the subject of a motion for reconsideration or Rule 65. The remedy is to raise it on appeal after a judgment on the merits.

#### **Effect of failure to plead**

- Defenses and objections not pleaded either in a motion to dismiss or in the answer are **deemed waived** (Rule 9, § 1).

### **'The Magic 4'**

However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause of action, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim (Rule 9, § 1).

- *Alvarado v. Ayala Land Inc.*: Apart from the exceptions recognized in Rule 9, Sec. 1, jurisprudence has also clarified that, despite the prior filing of an answer, *an action may still be dismissed on a ground which only became known subsequent to the filing of an answer*, e.g.:
  - Lack of cause of action *via* a demurrer to evidence (which is basically a motion to dismiss) may only be filed after the plaintiff has rested its case
    - For instance, if the plaintiff suddenly lost legal capacity to sue while the trial is pending.
- In other words, you can still file a motion to dismiss *after* an answer on the *magic 4* grounds and a *demurrer to evidence* (which is basically a motion to dismiss, see Rule 33).

### **Counterclaim and cross-claim**

- Counterclaim – Any claim which a defending party has against an opposing party (i.e., Defendant vs. Plaintiff).
  - Counter-counterclaim – Asserted against an original counter-claimant (i.e., Plaintiff vs. Defendant).
- Compulsory counterclaim – One which arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's (plaintiff) claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.
  - The counterclaim must be within the jurisdiction of the court both as to the amount and nature thereof.
  - In an original action with the RTC, the counterclaim may be considered compulsory regardless of the amount.
  - A compulsory counterclaim *not raised in the same action is barred*.
- Cross-claim – Any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter of either the original action *or* the counter-claim (i.e., Defendant 1 vs. Defendant 2).
  - Counter-cross-claims – A cross-claim filed against an original cross-claimant (i.e., Defendant 2 vs. Defendant 1).
  - A cross-claim cannot prosper unless the co-party (an indispensable party) is impleaded, since no final judgment can bind one who is not a party (*China Airlines v. Chiok*).
- A compulsory counterclaim or a cross-claim *not set up shall be barred* (Rule 9, § 2).
- If a party is required to grant complete relief in a counterclaim or cross-claim, the court shall order them to be brought in as *defendants*, if the jurisdiction over them can be obtained.

### *Periods to file counterclaim and cross-claims*

1. All existing counterclaims and cross-claims must be raised immediately in the Answer.
2. If your counterclaim or cross-claim didn't exist when you filed your Answer, you can still add it later with court approval, before judgment is rendered.
3. If you forgot to include your counterclaim or cross-claim, the court may still allow you to amend your Answer to include it before judgment is issued (Rule 11, §§ 8-10).

### *Effect of dismissal of the main action to counterclaims:*

1. If the plaintiff moves to dismiss his complaint:
  - a. The complaint may be dismissed, but the counterclaim survives. The defendant has two options:
    - i. Continue litigating the counterclaim in the *same case*
    - ii. File the counterclaim as a separate action within 15 days following the dismissal.
2. If the complaint is dismissed due to the plaintiff's fault, the same rules above applies (Rule 17, §§ 2-3).

If the main complaint is dismissed, the counterclaim must be adjudicated based on its independent merits rather than being tied to the fate of the main complaint (*Dio v. Subic Bay Marine Exploration*).

### *Effect of dismissal of the main action to cross-claims:*

1. A purely defensive cross-claim, which is auxiliary to and dependent upon the original complaint, is dismissed when the original complaint is dismissed, unlike one seeking affirmative relief.
  - a. A cross-claimant cannot claim more rights than the plaintiffs and that the dismissal of the complaint divested the cross-claimants of any appealable interest (*Ruiz Jr. v. CA*).

### **Permissive vs. compulsory counterclaim**

When filed	Effect
Compulsory counterclaim filed in a different case	Abated, on the ground of <i>litis pendentia</i>
Compulsory claim filed after the original case	Barred, on the ground of <i>res judicata</i>

### *Test to determine whether a counterclaim is compulsory or permissive:*

1. Are the issues of fact and law raised by the claim and by the counterclaim largely the same?
2. Would res judicata bar a subsequent suit on defendants' claims, absent the compulsory counterclaim rule?
3. Will substantially the same evidence support or refute plaintiffs' claim as well as the defendants' counterclaim?
4. Is there any logical relation between the claim and the counterclaim?

### If yes to all → it's a compulsory counterclaim.

- Consequently, it must be filed with the original action.
- There is no need to pay docket fees and to file a certification against forum shopping for the court to acquire jurisdiction over the said counterclaim (*Alba v. Malapajo*).

#### Permissive counterclaims

- They are the nature of independent actions.
- They require the payment of docket fees, and the court does not acquire jurisdiction over them unless such fees are paid.
- The court should give the party a reasonable time to pay docket fees for a permissive counterclaim, but never beyond the prescriptive or reglementary period.
  - Non-payment does not automatically dismiss the counterclaim if cured within that allowable time (*Alday v. FGU Insurance*).
- There must be a certification of non-forum shopping. The failure to include so is *fatal* (*Cruz-Agana v. Santiago-Lagman*).

#### Reply

- A pleading, the office or function of which is to deny, or allege facts in denial or avoidance of new matters alleged in an actionable document.
- The plaintiff *may* file a reply only if the defendant attaches an actionable document to his answer.
- All new matters alleged in the answer are deemed controverted.
  - If plaintiff wishes to interpose any claims arising out of the new matters so alleged, such claims shall be set forth in an amended or supplemental complaint (Rule 6, §10).
- The filing of a reply is merely optional as the new matters raised in the answer are deemed controverted even without a reply (*Veluz v. CA*).

#### Rejoinder

- In the event of an actionable document attached to the reply, the defendant may file a rejoinder if the same is based solely on an actionable document.

#### Parts and Contents of a Pleading Rule 7

Part	Content
Caption	Name of court Title of action <ul style="list-style-type: none"> <li>• Names of party</li> </ul> Docket number
Body	Paragraph (numbered) <ul style="list-style-type: none"> <li>• Each must contain a statement of a single set of circumstances.</li> </ul> Headings (i.e., First Cause of Action) Relief <ul style="list-style-type: none"> <li>• May include a general prayer for such further or other relief as may be deemed just or equitable</li> </ul> Date
Signature and address	Pleading must be signed either by the party <i>or</i> the counsel representing him.  When a lawyer signs, he certifies on the following: <ol style="list-style-type: none"> <li>1. The pleading is not being presented for any improper purposes (e.g., harass, delay)</li> <li>2. The claims, defenses and other legal contentions are warranted by existing law or</li> </ol>

	<p>jurisprudence, or a non-frivolous argument for modifying or reversing existing jurisprudence</p> <ol style="list-style-type: none"> <li>3. The factual contentions have evidentiary support or will likely have evidentiary support after discovery</li> <li>4. The denials of factual contentions are warranted on the evidence, or are reasonably based on belief (specific denials), or a lack of information</li> </ol> <p><i>Violating this rule will subject the lawyer to sanction or disciplinary action.</i></p>
Verification	<p>General rule: Pleadings need not be under oath.</p> <p>The verification must attest the following:</p> <ol style="list-style-type: none"> <li>1. The allegations are true and correct based on his personal knowledge or based on authentic documents</li> <li>2. The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation</li> <li>3. The factual contentions have evidentiary support or will likely have evidentiary support after discovery</li> <li>4. The signature will also serve as a certification of the truthfulness of the allegations in the pleading</li> </ol> <p><i>Defective verification</i> – A pleading required to be verified that contains a verification based on “information and belief” or upon “knowledge, information and belief,” or lacks a proper verification shall be <u>treated as an unsigned pleading</u>.</p> <ul style="list-style-type: none"> <li>• It is dismissible, but may be cured by filing an amended complaint (<i>Altres v. Empleo</i>).</li> </ul>
Certification against forum shopping	<p>The following must be certified under oath:</p> <ol style="list-style-type: none"> <li>1. That he has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein</li> <li>2. If there is such other pending action or claim, a complete statement of the present status thereof</li> <li>3. If he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five calendar days therefrom to the court wherein his aforesaid complaint has been filed</li> </ol>

	The authorization of the affiant to act on behalf of a party shall be attached.
Contents	<ol style="list-style-type: none"> <li>1. Name of witnesses</li> <li>2. Summary of the witnesses' intended testimonies <i>and</i> their judicial affidavits</li> <li>3. Documentary and object evidence</li> </ol>

- A counsel's signature is such an integral part of a pleading that failure to comply with this requirement reduces a pleading to a mere scrap of paper totally bereft of legal effect (*Intestate Estate of Uy v. Maghari*).
- Counsel's authority and duty to sign a pleading are personal to him. He may not delegate it to just any person (*Petelo v. Rivera*).
- The requirement on verification of a pleading is a formal and not a jurisdictional requisite.
  - Hence, when warranted, the court may simply order the correction of unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may thereby be served (*Vallacar v. Catubig*).
- The variance between the dates should not be considered fatal to the case when the variance does not necessarily lead to the conclusion that no verification was made, or that the verification was false.
  - Hence, it's fine to have the verification signed on Mar. 17, and the complaint filed on Mar. 30 (*Valmonte v. Alcala*).
- Noncompliance with the certification against forum shopping is a sufficient ground for dismissal (*Vda de. Formoso v. PNB*).
- The one signing the verification and certification against forum shopping on behalf of the petitioners has the authority to do the same. Failure to comply with such a rule will be grounds for dismissal (*Fuentebella v. Castro*).
- The certification against forum shopping is required only for complaints or initiatory pleadings asserting a claim.
  - Hence, an ex-parte motion for a writ of possession does not require a CNFS (*Metrobank v. Santos*).

#### Effect of a defect or non-compliance

Verification	CNFS
Non-compliance or a defect <b>does not necessarily render the pleading fatally defective</b> ; the court may order its submission or correction or act on the pleading	Non-compliance or a defect is <b>generally not curable</b> by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of <i>substantial compliance or presence of special circumstances or compelling reasons</i> .

**Forum shopping** – When one party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely, by some other court.

- Forum shopping exists where the elements of *litis pendentia* are present or where a final

judgment in one case will amount to *res judicata* in the other (*Coca-Cola v. SSC*).

#### How forum shopping may be committed:

1. Filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet
2. Filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved
3. Filing multiple cases based on the same cause of action but with different prayers

What is pivotal is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and, in the process, creates the possibility of conflicting decisions.

- Forum shopping is a ground for summary dismissal of both initiatory pleadings without prejudice to the taking of appropriate action against the counsel or party concerned (*Heirs of Mampo v. Morada*).

#### Detail in pleadings

- Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts, including the evidence on which the party pleading relies for his claim or defense (*ultimate facts + evidence*).
  - If the cause of action or defense is based on law, the provisions and their applicability shall be clearly and concisely stated.
  - Ultimate facts – Those essential to a party's cause of action or defense, or which are so essential that they cannot be stricken out without leaving the statement of the cause of action inadequate (*Bacolod-Murcia v. First Farmers*).
- A complaint is sufficient if it contains a plain, concise, and direct statement of the ultimate facts constituting the cause of action, even if the allegations are somewhat vague or indefinite.
  - The proper remedy for the defendant is to move for a bill of particulars, not outright dismissal (*Far East Marble v. CA*).
- Conditions precedent – Must be generally averred.
- Capacity to sue/be sued – Must be averred.
  - A party desiring to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued shall do so by specific denial.
    - See Rule 8, Sec. 12 (a) (3).
  - Facts showing the capacity of a party to sue or be sued as a representative must be averred. If the representative is also a real party-in-interest, then their standing may be grounded on the same (*Soriente v. Estate of Concepcion*).
- Fraud or mistake – Must be averred with particularity.
- Malice, intent, knowledge or other condition of the mind – May be averred generally.
  - Hence, a general averment that a case was filed to harass or pressure someone is enough (*Cometa v. CA*).

- Judgments – A judgment may be averred without setting forth the matter showing jurisdiction to render it (*see Rule 131, Sec. 3 (n)*).
  - An authenticated copy of the judgment shall be attached.
- Official document or act – It is sufficient to aver that the document was issued or the act was done in compliance with law.

#### Actionable document

- Whenever an action/defense is based on a written instrument/document, the substance of such shall be in the pleading, and the original or a copy be attached in the pleading as an exhibit.
  - While this provision is mandatory, it is a discovery procedure and must be reasonably construed to attain its purpose, and in a way as not to effect a denial of substantial justice (*Titan Construction v. David*).
- To be an actionable document, the specific right or obligation which is the basis of the action or defense must emanate therefrom or be evident therein (*supra*).
- *General rule*: The genuineness and due execution of an actionable document is deemed admitted.
- *Exception*: When the adverse party, under oath, specifically denies them.
- *Exceptions to the oath requirement*:
  - When the one denying is not a party to the instrument
  - When compliance with an order for an inspection of the original document is refused
  - When the instrument or document is not the basis but a mere evidence of the claim or defense (*Young Builders v. Benson*).

### Amended and supplemental pleadings Rule 10

Pleadings may be amended by:

- *Adding* or *striking out* an allegation or name
- Correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect

**Important: The commencement of an action against a newly impleaded party is reckoned from the date the amended pleading is filed, thus affecting the prescriptive period for claims against such new party** (*Wallem Philippines v. S.R. Farms*).

Purpose: So that the actual merits of the controversy may be determine without regard to technicalities and in the most expeditious and inexpensive manner.

*Amendment as a matter of right – Once:*

1. Any time before a responsive pleading is filed, or
  - a. Prior to the filing of an answer of the defendant, the plaintiff has the absolute right to amend the complaint wherein he can introduce new cause of action or change his theory (*Remington Industries v. CA*).
2. At any time within 10 calendar days in case of a reply

**Amendment by leave of court – Substantial amendments** may only be made upon leave of court.

Substantial amendment	Formal amendment
Requires leave of court	May be corrected by the court <i>motu proprio</i> , or upon motion of a party

*Formal amendments* – A defect in the designation of the parties and other clearly or typographical errors.

*Grounds for refusal of a substantial amendment:*

1. The motion was made with intent to delay or confer jurisdiction on the court
2. The pleading stated no cause of action from the beginning which could be amended
  - a. Substantial amendments that alter the cause of action or defense are now allowed (*PPA v. William Gothong*).

*Amendment not necessary* – When the issues not raised in the pleadings are tried with the express or implied consent of the parties, they shall be treated as if they had been raised in the pleadings.

#### Supplemental pleadings

- May be filed upon motion and leave of court, following reasonable notice and upon terms as are just.
- It will set forth transactions, occurrences or events which have happened since the date of the pleadings sought to be supplemented.
- The adverse party may plead/respond thereto within 10 calendar days from notice of the order admitting the pleading.
- It is meant to supply deficiencies in aid of the original pleading and not to dispense with or substitute the latter:
  - It is not like an amended pleading which is a substitute for the original one.
  - It does not supersede the original, but assumes that the original pleading is to stand.
  - The issues joined under the original pleading remain as issues to be tried in the action (*APT v. CA*).
- The purpose of the supplemental pleading is to bring into the records new facts which will enlarge or change the kind of relief to which the plaintiff is entitled.
  - Any supplemental facts which further develop the original right of action, or extend to vary the relief, are available by way of supplemental complaint even though they themselves constitute a right of action (*Planters Development Bank v. LZK Holdings*).
- A supplemental pleading is meant only to aid and complete the original pleading, not replace it or introduce a new and independent cause of action.
  - It may cover facts that existed before the suit but were discovered only afterward.
  - Its allowance is discretionary on the court, which may deny it if there is undue delay, laches, or prejudice to the opposing party (*Sps. Lambino v. Hon. Presiding Judge*).

- *But see:* A supplemental pleading may raise a new cause of action as long as it has some relation to the original cause of action set forth in the original complaint (*Ada v. Sps. Baylon*).

#### Filing and effects of amended pleadings

- A new copy of the entire pleading, incorporating the amendments indicated by appropriate marks, shall be filed.
- An amended pleading supersedes the pleading that it amends.
  - *Caveat:* Admissions in superseded pleadings may be used against the pleader. Claims and defenses alleged therein and not incorporated in the amended pleading shall be deemed waived.
  - *In other words, you should reiterate your denials and defenses in the amended complaint.*
- When the causes of action are the same between an original and an amended complaint, with new matters brought up in the latter merely reinforcing, amplifying, or enlarging those brought up in the former, the admission of an amended complaint would be in furtherance of justice and would not prejudice the other party (*Keramik v. Guerrero*).
- An amendment to a complaint does not introduce a new cause of action if it does not require the defendant to answer for a liability or obligation completely different from that stated in the original complaint.
  - Test: Whether the amendment requires the defendant to meet a new and different cause of action (this may affect the jurisdiction of the court) (*Sps. Dionisio v. Linsangan*).
- If no responsive pleading has been filed, the plaintiff may amend the complaint once as a matter of right, and the trial court has the ministerial duty to admit such amendment (*Alpine Lending v. Corpuz*).
  - A motion to dismiss is not a responsive pleading!
- Even if an amendment substantially alters the cause of action or defense, such amendment could still be allowed when it is sought to prevent the higher interest of substantial justice (*Lisam Enterprises v. BDO*).
- Unless the plaintiff has a valid and subsisting cause of action at the time his action is commenced, the defect cannot be cured or remedied by the acquisition or accrual of one while the action is pending, and a supplemental complaint or an amendment setting up such after-acquired cause of action is not permissible (*Swagman Hotels v. CA*).

#### Periods for pleadings Rule 11

Answer to	Days	Reckoned from
Complaint	30 days	Service of summons
Complaint against a FPJE	60 days	Service of summons

Amended complaint as a matter of right	30 days	Service of the pleading
Amended complaint by leave of court	15 days	Notice of order admitting the pleading
Amended counter-claim, cross-claim, TPC, complaint-in-intervention	15 days <i>Optional</i>	Notice of order admitting the pleading
Counterclaim or cross-claim	20 days	Service of pleading
Third-party complaint	30 days	Service of summons
Answer (Reply)	15 days	Service of pleading
Supplemental complaint	20 days <i>Optional</i>	Notice of order admitting the pleading

#### Motion for extension of time to file an answer

- Allowed only once up to 30 additional days.
- A motion for extension to file any pleading—other than an answer—is prohibited, and will be considered a mere scrap of paper.
  - The court may allow other pleading to be filed after the time fixed by these rules.

#### Computation of time Rule 22

**General rule:** First day excluded, last day included.

- If last day falls on a Saturday, Sunday, or a holiday → last day is the *next working day*.
  - Hence, when the deadline to file a motion for reconsideration falls on a Saturday, you may file until the following Monday (*Alarilla v. Ocampo*).
  - Same goes when the deadline for a motion for reconsideration is on a Sunday—you have until Monday to do so. The underlying decision does not attain finality in the meantime (*Nactor v. IAC*).
- **Effect of extension:** When granted an extension, the last day for that extension will begin from the original deadline, even though it's a Saturday, Sunday or holiday (*Luz v. National Amnesty Commission*).
  - Example: Suppose your 15th day falls on a Sunday. *Normally*, you could file on Monday under Rule 22. But when granted an extension, the extension starts on that Sunday, *not Monday*.
  - Still, if the extended period expired on a holiday or weekend, proper application of the rule allowed the filing on the next working day.
    - Example: Suppose your extended period ends on a Saturday, you can still file up until Monday (*Reinier Pacific v. Neptune Ship*).
- **Effect of interruption:** When a period to do an act (like filing a pleading) is interrupted by some act or event recognized by the Rules, the period *pauses*.

- Once the cause of interruption ceases, the period starts running again on the next day after notice of cessation.
  - The day when the interrupting act occurred is not counted in the computation.
  - *Example:* You have 10 days left to file an answer. On Day 5, something happens that interrupts the period. When the interruption ends and you receive notice, the clock resumes on the next day, with 5 days still left.
- **Fresh period for appeals:** A party litigant may either file his notice of appeal within 15 days from receipt of the RTC's decision or file it within 15 days from receipt of the order (i.e., a final order) denying his motion for new trial or motion for reconsideration.
  - Hence, you count 15 days from the time you receive the final order (i.e., denying a motion for reconsideration)—that is the deadline to appeal (*Neypes v. CA*).

### Filing and Service of Pleadings, Judgments and Other Orders Rule 13

**Filing** – The act of submitting the pleading or other paper to the court.

Party → Court

**Service** – The act of providing a party with a copy of the pleading or any other court submission.

Party A (plaintiff) → Party B (defendant)

Rule 13 charts are [here](#).

- Between the registry return card and written note of petitioner's counsel, the former commands more weight.
  - The former is an official record of the court, it is presumed to be accurate unless proven otherwise, unlike a written note or record of a party, which is often self-serving and easily fabricated (*Dela Cruz v. Ramiscal*).
- When the existence of a pleading filed by registered mail is at issue, the party must present both the registry receipt and an affidavit of the person who mailed the pleading.
  - Else, the pleading will not be considered as filed (*Mariano v. G.V. Florida Transport*)
- [R] In the absence of a proper and adequate notice to the court of a change of address, the service of the order or resolution of a court upon the parties must be made at the last address of their counsel on record.
  - Notice to a party represented by counsel is a nullity. The service must be to the counsel (*Garrucho v. CA*).
- Service of court orders and pleadings must be made upon the counsel of record, not merely any lawyer associated with the party.
  - The period to appeal is reckoned from service upon the counsel of record, not upon any other lawyer of the party (*UP v. Dizon*).
- [R] Service by registered mail is deemed complete upon actual receipt by the addressee.
  - Exception: When an addressee does not claim his mail within five days from the date of first notice of the postmaster,

service takes effect at the expiration of such time (*Barrameda v. Castillo*).

- [R] In case of a petition for relief from judgment, it must be filed within 60 days *from* the service of judgment is deemed effective, and *not* when the party actually learns of it.
  - When sent by registered mail, service is complete upon actual receipt by the addressee. If the addressee does not claim the mail within five days from the first notice, service is deemed effective after that five-day period (*Quelnan v. VHF Philippines*).
- [R] As a general rule, formal service of the judgment is necessary.
  - Except: When the party is sufficiently informed of the judgment (*actual notice*). Actual notice can suffice in place of formal service (*Bracero v. Arcelo*).
- [R] Service upon the parties' counsels of record is tantamount to service upon the parties themselves, but service upon the parties themselves is not considered service upon their lawyers (*Delos Santos v. Elizalde*).
- Nonreceipt of pleadings or evidence is a violation of due process. The filing of a motion for reconsideration will not cure this defect if it was invoked to raise the violation of the right to due process (*Barroso v. COA*).
- A pleading's filing date sent via registered mail can be proved either by: (1) the post stamp on the envelope, which is considered part of the records; or (2) the registry receipt (*Republic v. Salinas*).
- The 2019 Rules on Civil Procedure gives the litigant the freedom to choose between personal service and service by mail without submitting any written explanation (*Sunway Builders v. COA*).

[R] – Repealed or inapplicable already, in light of Rule 13-A.

### Interim Rules on the Electronic Filing and Service of Pleadings, Judgments and Other Orders in Civil Cases Rule 13-A

Beginning December 1, 2024, all filing and service of pleadings, judgments, and other papers in civil cases in the trial courts must be done electronically through email, **except for initiatory pleadings**.

**General rule:** Service to counsel is service to party.

One lawyer, several parties	One copy is enough
Multiple lawyers, one party	One copy for the lead counsel/any of lawyers

*Manner of filing of complaints and other initiatory pleadings*

Manner	Date of filing
Submitting personally the original paper to the court	Upon endorsement of the clerk of court
Sending the paper by registered mail	Date of mailing and payment or deposits, as shown by the post office stamp on the envelope or the registry receipt
Sending the party by accredited courier	



\* After the filing, the digital file format shall likewise be sent to the court *within 24 hours* from the completeness of the filing. If no electronic transmission was done, the paper shall be deemed *not filed*.

*Manner of filing and service of pleadings subsequent to the initiatory pleading* – Only by transmitting them in digital file format through email.

- The date of emailing is the date of filing and service.

*Presumptive service* – If such notice appears on the records to have been successfully emailed to the party.

*Service of judgments, final orders, or resolution* – Served electronically by emailing digital copies to the email addresses of record of the parties and their counsels.

- The date and time of delivery appearing in the internet message header of the email sent by the court is the date and time of receipt.

*Conventional service or filing* (i.e., when the requirement of electronic transmittal may be waived):

1. Annexes, appendices, exhibits, or other accompanying documents to pleading or other court submissions not amenable to digitization in the prescribed digital file format
2. Sealed and confidential documents or records.
  - a. These objects may be sent either personally, via registered mail, or accredited courier.
  - b. The rules on service under Rule 13, Sec. 6-7 apply!

*Completeness of service* – Service is completed at the time of electronic transmission of the document.

- It Is not effective or complete if the party serving the document *learns* that it did not reach the addressee or person to be served.
- If the court waived the requirement of electronic transmittal, the rules on completeness of Service under Rule 13, Sec. 15 apply!

*Proof of filing* – By its existence in the electronic case record of *rollo*.

- See Rule 13, Sec. 14 (a-c). The rules remain applicable.

*Proof of service* – It shall consist of the metadata in the email header showing the date of sending and receipt of the email in digital filing.

- When necessary, the court may require the filing of an affidavit of service and a printed proof of transmittal.
- If electronic transmission is waived, proof of personal service shall consist of:
  - a written admission of the party served,
  - the official return of the server,
  - affidavit of the party serving, containing a statement of the date, place, and manner of service.

#### Notice of *lis pendens*

- Applies to actions affecting title or right of possession of real property.
- May be recorded by:
  - Plaintiff in the complaint, or
  - Defendant, but only if they claim affirmative relief
- It will be recorded in the office of registry of deeds where the property is situated.

- The notice of *lis pendens* must contain:
  - Names of the parties
  - Object of the action or defense
  - A description of the property in the affective province
- Only from the time of filing of such notice for record shall a third party be deemed to have constructive notice of the pendency of the action and only if its pendency against the parties designated by their real names
- Only the court can cancel the notice of *lis pendens* after showing that:
  - The notice is for the purpose of molesting the adverse party, or
  - It is not necessary to protect the rights of the party that recorded it
- A notice of *lis pendens* may be annotated only where there is an action or proceeding in court which affects title to or possession of real property (*AFPMBAI v. CA*).
- Posting of a bond is not a lawful substitute for a notice of *lis pendens* because it is grounded on public policy to keep the property within the court's control until final judgment and to prevent defeat of the judgment by transfer or alienation (*Sps. Lim v. Vera Cruz*).
- Only the original parties, not mere movants, in a land registration case have the legal personality to file a notice of *lis pendens* (*Heirs of Lopez Sr. v. Enriquez*).

### MOTIONS Rule 15

*Motion* – An application for relief other than by a pleading (§ 1).

- General rule: Motions must be in writing.
  - *Exception*: Motions made in open court or in the course of a hearing or trial. In such a case, the court should immediately resolve the motion in open court, after the adverse party is given the opportunity to argue his opposition thereto (§ 2).
- Motions must be served, else the court cannot act on them (§ 6).

Motion	Pleading
Does not initiate new litigation; deals with an incidental or collateral matter within a pending case	Initiates a new action or proceeding to enforce a right or remedy
Not an independent remedy; dependent on the principal action	Independent pleading that stands on its own
Seeks relief that is interlocutory or incidental to the main case	Seeks definitive adjudication of rights

*Metrobank v. Abad Santos*

#### Contents of a motion:

1. The *relief* sought to be obtained
2. The *grounds* upon which it is based
3. *If required*, the *supporting affidavits or other papers* to prove the facts alleged (§ 3)

#### Three types of motions:



1. Litigious (§ 5)
2. Non-litigious (§ 4)
3. Prohibited (§ 12)

*Non-litigious motions* – Motions which the court may act upon without prejudicing the rights of adverse parties.

- Hence, these motions shall not be set for hearing and shall be resolved by the court within 5 calendar days from receipt.

The following are non-litigious motions:

1. Motion for the issuance of an *alias* summons
2. Motion for extension to file an answer
3. Motion for postponement
4. Motion for the issuance of a writ of execution
5. Motion for the issuance of an *alias* writ of execution
6. Motion for the issuance of an *alias* writ of possession
7. Motion for the issuance of an order directing the sheriff to execute the final certificate of sale
8. Other similar motions

*Litigious motions* – Hearing on a litigious motion is discretionary on the part of the court (§ 6).

*Procedure for litigious motions:*

1. The motion shall be served via electronic mail (Rule 13-A) to the other party.
2. The opposing party shall file his opposition within 5 days from receipt.
3. The motion shall be resolved by the court within 15 calendar days from its receipt of the opposition, or upon expiration of the period to file such opposition (automatically).

The following are litigious motions:

1. Motion for bill of particulars
2. Motion to dismiss
3. Motion for new trial
4. Motion for reconsideration
5. Motion for execution pending appeal
6. Motion to amend after a responsive pleading has been filed
7. Motion to cancel statutory lien
8. Motion for an order to break in or for a writ of demolition
9. Motion for intervention
10. Motion for judgment on the pleadings
11. Motion for summary judgment
12. Demurrer to evidence
13. Motion to declare defendant in default
14. Other similar motions

*Prohibited motions* – These motions are not allowed:

1. Motion to dismiss, except on the following grounds:
  - a. Lack of subject matter jurisdiction
  - b. Litis pendencia
  - c. Res judicata
  - d. Statute of limitations (these cannot be waived)
2. Motion to hear affirmative defenses (the court *motu proprio* resolves these [see Rule 8, § 12 (c)])
3. Motion for reconsideration of the court's action on the affirmative defenses (the remedy is to go to trial [see Rule 8, § 12 (e)])
4. Motion to suspend proceedings without a TRO or injunction issued by a higher court

5. Motion for extension to file pleadings, affidavits or any papers, except a motion for extension to file an answer in Rule 11, § 11 (only once).
6. Motion for postponement intended for delayed, except if based on:
  - a. acts of God,
  - b. force majeure or
  - c. physical inability of a witness to appear and testify.

*No motion for postponement will be accepted unless accompanied by an official receipt evidencing payment of the postponement fee.*

The following bases of dismissal are with prejudice:

1. Res judicata
2. The action has prescribed
3. The claim or demand has been paid, waived, abandoned or extinguished
4. The claim is unenforceable under the Statute of Frauds (§ 13)

*Motion day* – The afternoon of Friday (Rule 15 § 8, BP 129, § 16).

*Omnibus motion rule* – A motion attacking a pleading, order, judgment or proceeding shall include all objections then available, and all objections not so included shall be deemed waived (§ 9).

*Motion for leave* – A motion for leave to file a pleading or motion shall be accompanied by the pleading or motion sought to be admitted.

- Proof of service is mandatory. Without such proof of service to the adverse party, a motion is nothing but an empty formality deserving no judicial cognizance (*Cruz v. CA*).
- A motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended.
  - The court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court powerless to entertain or grant it (*PNB v. Deang Marketing Corp*).
- Two categories of motions to dismiss:
  - Those that must be filed *before* an answer
  - Those that may be entertained even after an answer has been filed
    - Case law also recognizes lack of cause of action and other grounds that may only be made known after the answer was filed (*Alvarado v. Ayala*).

## **OBJECTIONS TO PLEADINGS**

### **Affirmative defense in the answer or motion to dismiss**

*Motion to dismiss; procedure*

- The requirement that a motion to dismiss (MTD) should be filed within the time for filing the answer is *not* absolute. Even after an answer has been filed, a defendant can still file a MTD on the following grounds:
  - Lack of subject matter jurisdiction
  - Litis pendencia
  - Lack of cause of action

- Discovery during trial of evidence that would constitute a ground for dismissal (*Panganiban v. Pilipinas Shell Corp.*).
- Issues raised in a motion to dismiss have to be determined in accordance with the evidence and facts presented, not on the basis of unsubstantiated allegations and that the courts could not afford to dismiss a litigant's complaint on the basis of half-baked conclusions with no evidence to show for it (*Capiral v. Robles*).
- Four grounds survive *anterior* (after) the filing of an answer:
  - Lack of jurisdiction over the subject matter
  - Litis pendentia*
  - Res judicata*
  - Prescription (Rule 9, § 1; *Alvarado, supra* – The grounds not falling under these four exceptions may be considered as waived in the event that they are not timely invoked).
- Denial of motion to dismiss cannot be challenged through a certiorari under Rule 65 as it is remedy solely to correct errors of jurisdiction, not errors of judgment (*Malicdem v. Flores*).
- An order dismissing an action without prejudice, such as one based on improper venue, is not subject to appeal, but reviewable (misnomer) by a Rule 65 certiorari petition. However, for this remedy to succeed, the trial court's application of venue rules must amount to grave abuse of discretion (*Pillars Property Corp. v. Century Communities Corp.*)
  - If the court has granted the MTD with prejudice, the remedy is to appeal.

#### Grounds:

- Want of jurisdiction
- Improper venue
- Want of legal capacity to sue
- Litis pendentia*
- Res judicata*
- Statute of limitations
- Insufficient allegations
- Payment, waiver, abandonment or extinction (*cf. laches*)
- Statute of frauds
- Noncompliance with a condition precedent for filing
- Lack of certification against forum shopping

#### Lack of jurisdiction

- Lack of jurisdiction over the subject matter may be the subject of an MTD or affirmative answer. It is a basis for dismissal *motu proprio*.
- Lack of jurisdiction over the defendant can only be raised as an affirmative defense.
- Affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance.
  - Affirmative defenses may also include grounds for the dismissal of the complaint (Rule 6, § 5).
- Grounds for affirmative defenses:
  - Lack of jurisdiction over the defendant
  - Improper venue
  - Plaintiff has no legal capacity to sue
  - No cause of action

- A condition precedent for filing the claim has not been complied with (Rule 8, § 12).
- Failure to raise the affirmative defenses at the earliest opportunity shall constitute a waiver thereof (*for exceptions, see Alvarado, supra*).
- Affirmative defenses, if denied, are not subject to appeal. A Rule 65 certiorari may be availed of.
- If the court has no jurisdiction over the subject matter, the only thing it may do is to dismiss the complaint (*Bilag v. Ay-ay*).

#### Improper venue

- You raise this as an affirmative defense.
- Improper venue is not a ground for dismissal *motu proprio*. It is only the parties who may raise objection on improperly laid venue—without which, the court cannot dismiss the action (*Radiowealth Finance Company Inc. v. Nolasco*).
- Improper venue is a matter of defense that must be timely raised by the defendant in a motion to dismiss or in the answer; otherwise, it is deemed waived (*Universal Robina v. Lim*).

#### Want of legal capacity to sue

- You raise this as an affirmative defense.
- Failure to allege in the complaint and prove that a person has the representative capacity to sue can be grounds for dismissal. Hence, an unauthorized complaint does not produce any legal effect.
  - More so, a deceased person nor their estate can be a plaintiff (*Galindo v. Heirs of Roxas*).

<b>Lack of legal capacity to sue</b>	<b>Lack of legal personality to sue</b>
Refers to the plaintiff's general disability to sue, i.e., the party cannot bring an action at all.	Refers to the fact that the plaintiff is <i>not</i> the real party-in-interest in the case.
Minority, insanity, incompetence, lack of juridical personality.	A person suing to enforce a right that belongs to another; an entity without interest in the case suing in its own name.
<u>Lack of legal capacity to sue</u>	<u>Failure to state a cause of action</u>

#### Litis pendentia

- You can raise this either in an affirmative defense or an MTD. It is a basis for dismissal *motu proprio*.
- Requisites of *litis pendentia*:**
  - Identity of parties, or at least such as represent the same interest in both actions;
  - Identity of rights asserted and relief prayed for, based on the same facts
  - The identity in both cases is such that the judgment in the first action would amount to *res judicata* in the second (*Arceo v. Oliveros*).
- The rules on *litis pendentia* do not require that the case filed later should yield to the one filed earlier. The case with the broader scope of inquiry may be preferred. The location of the

subject matter (i.e., property) may also be considered (*Ramos v. Peralta*).

- If there is *litis pendentia*, then one of the actions will be dismissed. But once there is willful forum-shopping, both actions will be dismissed (twin dismissals) (*Buan v. Lopez Jr.*).
  - Hence, the filing of a petition for review *after* a petition for certiorari (both alleging lack of jurisdiction) constitutes *forum shopping* (*Villamor v. Victorero*).
- Under this established jurisprudence on *litis pendentia*, the following considerations predominate in the ascending order of importance in determining which action should prevail:
  - the date of filing, with preference generally given to the first action filed to be retained;
  - whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and
  - whether the action is the appropriate vehicle for litigating the issues between the parties
  - Hence, the “priority-in-time” rule isn’t always applicable.
- The test to determine identity of causes of action is to ascertain whether the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the forms or the nature of the two actions are different from each other.
  - If the same facts or evidence sustain both, the two actions are considered *the same* (*Benedicto v. Lacson*).

#### Res judicata

- You can raise this either in an affirmative defense or an MTD. It is a basis for dismissal *motu proprio*.
- Dismissal based on *res judicata* is with prejudice.
- Two aspects of *res judicata*:
  - Bar by prior judgment
  - Conclusiveness of judgment
- It is essentially estoppel (*GSIS v. Group Management Corp.*).

#### **Requisites of res judicata:**

1. The judgment sought to bar the new action must be final
2. The decision must have been rendered by a court having jurisdiction over the subject matter and the parties
3. The disposition of the case must be a judgment on the merits
4. There must be as between the first and second action, identity of parties, subject matter, and causes of action\*

\* For *res judicata* by conclusiveness of judgment, the identity of causes of action is not required.

Bar by prior judgment	Conclusiveness of judgment
Rule 39, § 47 (b)	Rule 39, § 47 (c)
1. Identity of parties	1. Identity of parties
2. Identity of subject matter	

3. Identity of cause of action	2. Identity of subject matter
Judgment in the first case constitutes an absolute bar to the second action	Judgment in the first case is conclusive only as to matters actually and directly adjudicated or necessarily involved
Entire cause of action is barred; the case cannot be relitigated	Only specific facts or issues already settled are binding in the subsequent case

*Oropeza v. Allied Banking Corp.*, 393 SCRA 278

*Under Rule 39, § 47 (effects of final judgment):*

Kind of judgment	Effects
Judgment <i>in rem</i>	Conclusive upon the title to the thing, the will or administration, or the condition status, or relationship of the person. But probate of a will or granting of letters of administration is only prima facie evidence of the testator’s or intestate’s death
Judgment <i>in personam</i> (bar by prior judgment)	Conclusive between the parties and their successors-in-interest by title subsequent to the commencement of the action, with respect to the matter directly adjudged or any matter that could have been raised in relation thereto, provided they litigate for the same thing, under the same title, and in the same capacity
Judgment <i>in personam</i> (conclusiveness of judgment)	In any other litigation between the same parties or their successors-in-interest, the judgment is conclusive only as to matters actually and necessarily adjudged, or those which appear on the face of the judgment as having been adjudged.

#### *Conclusiveness of judgment*

- A prior judgment is conclusive in a subsequent suit between the same parties on the same subject matter, and on the same cause of action, not only as to matters which were decided in the first action, but also as to every other matter which the parties could have properly set up in the prior suit (*Arreza v. Diaz*).
- Conclusiveness of judgment may operate to bar the second case even if there is no identity of causes of action. The judgment is conclusive in the second case, only as to those matters actually and directly controverted and determined, and not as to matters merely involved therein (*Francisco v. Co*).
- The principle of *res judicata* may not be evaded by the mere expedient of including an additional party to the first and second action.

Only substantial identity is necessary to warrant the application of *res judicata*.

- There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case albeit the latter was not impleaded in the first case (*Cruz v. CA*).
- If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit (*Landbank v. Abellana*).

*Test for identity of cause of action:* Would the same evidence support and establish both the present and former cause of action?

- If so, the former recovery is a bar.
- If otherwise, it does not stand in the way of the former action (*GSIS, supra*).

*Res judicata in rem* – A final and executory judgment concluding an *in rem* proceeding becomes part of the legal attributes of the thing being litigated in which all persons dealing with it are bound to respect (*Denila v. Republic*).

#### *v. Law of the case*

<b>Res judicata</b>	<b>Law of the case</b>
A rule that a final judgment or decision on the merits by a court of competent jurisdiction is conclusive between the same parties or their privies in another action on the same cause	A rule that whatever is once irrevocably established as the controlling legal rule of decision in a case continues to be binding in subsequent proceedings of the same case
Applies to separate or independent cases involving the same parties and subject matter	Applies only to the same case in its subsequent stages or appeals
Issues of facts (generally)	Only questions of law
Has the finality of judgment	Does not have finality of <i>res judicata</i>
Prevents multiplicity of suits and inconsistent judgments between different cases	Ensures stability and efficiency in appellate review by preventing re-litigation of the same legal question in the same case

*PNCC v. Superlines*, G.R. No. 216569, June 3, 2019; *Sps. Sy v. Young*, G.R. No. 169214, June 19, 2013.

#### Statute of limitations

- You can raise this either in an affirmative defense or an MTD. It is a basis for dismissal *motu proprio*.
- The dismissal is with prejudice.
- If an extension of the prescriptive period is alleged in the complaint and not specifically denied, it is deemed admitted and binding, dispensing with further proof.
  - So, while courts may *motu proprio* dismiss actions for prescription if apparent on the record, a respondent's

admission of extension makes the action timely (*Cua v. Wallem*).

- In order for the Court to *motu proprio* dismiss a complaint based on prescription, the complaint must clearly show on its face a prescribed action.
  - However, if determining prescription requires the determination of facts, then this must be done in trial and cannot be raised for the first time on appeal (*PNB v. Tad-y*).

#### Insufficient allegations

- May be raised as an affirmative defense.
  - Specifically, that the pleading asserting the claim states no cause of action.
- This is failure to state a cause of action.
- Test: Whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of the complaint (*Flour Daniel Inc. v. E.B. Villarosa & Partners Co.*).
- The complaint may be dismissed for lack of cause of action if it is obvious from the complaint and its annexes that the plaintiff is not entitled to any relief.

<b>Failure to state a cause of action</b>	<b>Lack of cause of action</b>
Rule 8, § 12 (a) (4)	Rule 33 (Demurrer)
When the complaint does not allege a sufficient cause of action, it may be raised as an <b>affirmative defense</b> in an answer.	Where the evidence does not sustain the cause of action alleged, it may be raised in a <b>demurrer to evidence</b> under Rule 33 <b>after the plaintiff has rested his case</b> .
Determined simply on the <b>basis of the allegations in the complaint of the plaintiff</b> .	Based on the <b>appreciation of the evidence for the plaintiff</b> .
Does not concern itself with the truth and falsity of the allegations.	Arises because the judge has determined the proof of the allegations and has found the evidence wanting.
Raised as an <b>affirmative defense in the answer</b> of the defendant and <b>raised at the earliest possible opportunity</b> .	Filed as a <b>demurrer to evidence</b> by the <b>defendant after the plaintiff has rested its case</b> .
Curable by amendment of the pleading by leave of court (Rule 10, § 3)	When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated as if they are in the pleadings, and no amendment is necessary to conform to the evidence (Rule 10, § 5)
If denied, no motion for reconsideration or Rule 65 petition may be filed. Remedy is to raise the matter on appeal after judgment on the merit (Rule 8, § 12).	If denied, the defendant shall have the right to present evidence (Rule 33, § 1). The denial is not subject to an appeal or a Rule 65 petition (Rule 33, § 2).
If granted, the dismissal is without prejudice to	If granted, dismissal is <i>with prejudice</i> and is

the refiling of the action (Rule 15, § 13).	considered a judgment on the merits of the case. Hence, the remedy of the plaintiff is to appeal. If the granting of the demurrer is <i>reversed</i> on appeal, the defendant will be deemed to have waived the right to present evidence (Rule 33, § 1).
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*Domondon v. Lopez; Vitangcol v. New Vista Properties Inc.; Unicapital v. Consing Jr.; Dabuco v. CA; Colmenar v. Colmenar.*

#### Payment, waiver, abandonment or extinction

- You can raise this in an affirmative defense.
- A summary hearing is required.
- If granted, the dismissal is with prejudice.
- The language of the rule, particularly on the relation of the words "abandoned" and "otherwise extinguished" to the phrase "claim or demand deemed set forth in the plaintiff's pleading" is **broad enough to include within its ambit the defense of bar by laches**.
  - Thus, being factual in nature, the elements of laches must be proved or disproved through the presentation of evidence by the parties (*Pineda v. Heirs of Guevarra*).

#### Statute of frauds

- You can raise this in an affirmative defense.
- A summary hearing is required.
- If granted, the dismissal is with prejudice.
- The Statute of Frauds does not deprive the parties of the right to contract with respect to the matters therein involved, but merely regulates the formalities of the contract necessary to render it enforceable.
  - The effect of non-compliance with the requirement of the Statute is simply that no action can be enforced unless the requirement is complied with (*Swedish Match v. CA*).

#### Noncompliance with a condition precedent for filing

- You can raise this in an affirmative defense.
- A general averment of the performance or occurrence of all conditions precedent shall be sufficient (Rule 8, § 3).
- The failure to raise this in the affirmative action, the defense is deemed waived. This is because this is not jurisdictional (*Heris of Favis v. Gonzales*).
- The defense of noncompliance with a condition precedent must be invoked by the party-litigant at the earliest opportunity. Otherwise, such grounds are deemed waived (*Lansangan v. Caisip*).
- Example: The filing of the action for legal redemption coupled with the consignment of the redemption price, which is equivalent to a formal offer to redeem, is a condition precedent to the valid exercise of the right of legal redemption.
  - What constitutes a condition precedent is either a formal offer to redeem or the filing of an action in court together with the consignment of the redemption

price within the reglementary period (*Baltazar v. Miguel*).

#### Lack of certification against forum shopping

Situation	Effects
Failure to comply with requirements on CAFS	Ground for dismissal <u>without prejudice</u> , upon motion and hearing
Submission of a false CAFS or non-compliance with the undertakings in the CAFS	Constitutes indirect contempt of court, without prejudice to corresponding administrative and criminal actions
Willful and deliberate forum shopping by party or counsel	Ground for summary dismissal <u>with prejudice</u> , constitutes direct contempt, and a cause for administrative sanctions

#### **Motion to suspend proceedings**

- Generally, a motion to suspend proceedings is a prohibited motion, unless the a higher court has issued a TRO or injunction (Rule 15, § 12 (d)).
- The suspension of actions shall be governed by the provisions of the Civil Code and other laws (Rule 30, § 8).

#### **Motion for bill of particulars**

- *Before responding to a pleading*, a party may move for a definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him to prepare his responsive pleading (Rule 12, § 1).
- This is a litigious motion. Hence, the procedure on Rule 15, § 5 applies.
  - In its discretion, the court may also conduct a hearing to resolve the motion.
  - The court may grant or deny it outright, or set a hearing (Rule 12, § 2).
- When parties seek a bill of particulars, they in effect admit that the complaint bears the ultimate facts comprising a valid cause of action.
  - What they ask for though is simply a specification of these ultimate facts to enable them to properly prepare their responsive pleading or to prepare for trial.
- The filing of said motion negates the defense of failure to state a cause of action.
  - This is because the party moving is recognizing that there exists a cause of action.
- It is not the office of a bill of particulars to:
  - Supply material allegations necessary to the validity of a pleading
  - Change a cause of action or defense stated in the pleading
  - State a cause of action or defense other than the one stated.
  - Set forth the pleader's theory of his cause of action or a rule of evidence on which he intends to rely or to furnish evidential information whether such information consists of evidence which

the pleader proposes to introduce or of facts which constitute a defense (*Roa v. Sps. Sy*).

- If granted, the other party must file for an amended pleading.
- If not complied, the court may strike out the pleading or portions not clarified.

#### **Motion to drop or add parties**

- Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just (Rule 3, § 11).
- It may be filed because of *misjoinder* or *nonjoinder* of parties.
- Failure to comply with an order may lead to the case's dismissal (*see* Rule 17, § 3).

#### **Motion to sever cause of action**

- A misjoined cause of action may, on motion of a party or on initiative of the court, be severed and proceeded with separately (Rule 2, § 6).
- It is not a ground for dismissal.

#### **Motion to strike out**

- The court may order any pleading to be stricken out ("deleted") or that any sham, false, redundant, immaterial, impertinent, or scandalous matter be stricken out therefrom (Rule 8, § 13). This may be filed:
  - Upon motion by a party before responding to a pleading
  - Upon motion made by a party within 20 days after service of the pleading (if no responsive pleading is permitted)
  - Upon the court's own initiative at any time
- If a party refuses to comply with the modes of discovery, an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party may be made by the court (Rule 29, § 3 (c)).

#### **Motion for judgment on the pleadings**

- The court may direct judgment on the pleading if:
  - The answer fails to tender an issue
  - A party admits the material allegations of the adverse party's pleading
  - There is a motion for judgment on the pleadings
- The court may *motu proprio* or on motion render judgment on the pleadings if it is apparent that the answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleadings.
  - Otherwise, the motion shall be subject to Rule 15.
- There cannot be a judgment on the pleadings in the following actions:
  - Declaration of nullity of marriage
  - Annulment of marriage
  - Legal separation
- Any action of the court on a motion for judgment on the pleadings cannot be appealed, nor be the subject of a Rule 65 petition (Rule 34).

- Following pretrial, should there be no more controverted facts, or no more genuine issue as to any material fact, or an absence of any issue, or should the answer fail to tender an issue, the court shall *motu proprio* include in the pretrial order that the case be submitted for judgment on the pleadings (Rule 18, § 10).
- An answer fails to tender an issue if it does not comply with the requirements of a specific denial (*see* Rule 8, § 10), resulting in the admission of the material allegations from the complaint (*GSIS v. Prudential Guarantee and Assurance*).
- Judgment on the pleadings cannot be properly rendered when it appears that not all the material allegations of the complaint were admitted in the answer for some of them were either denied or disputed, and the defendant has set up certain special defenses (*Municipality of Tiwi v. Betito*).
  - Hence, a partial judgment on the pleadings is *not* allowed.
- Where a motion for judgment of pleadings is filed, the essential question is whether there are issues generated by the pleadings.
  - In a proper case for judgment on the pleadings, there is no ostensible issue at all because of the failure of the defending party's answer to raise an issue.
  - If an answer does in fact specifically deny the material averment of the Complaint and/or asserts affirmative defenses, a judgment on the pleadings would naturally be improper (*Tan v. Dela Vega*).
- In determining whether the answer tenders an issue or otherwise admits the allegations of the complaint, the denials contained in the answer must be scrutinized in the light of Rule 8 (*Abad v. Heirs of Gallardo*).

#### **Motion for summary judgment**

- Summary judgment or accelerated judgment is a device for weeding out sham claims or defenses at an early stage of the litigation, thereby avoiding the expense and loss of time involved in a trial (*Estrada v. Consolacion*).
- Summary judgment is generally based on the facts proven summarily by affidavits, depositions, pleadings, or admissions of the parties (*Nocom v. Camerino*).
- For a summary judgment to be proper, the movant must establish **two requisites**:
  - There must be no genuine issue as to any material fact, except for the amount of damages; and
  - The party presenting the motion for summary judgment must be entitled to a judgment as a matter of law.
- "Genuine issue" is defined as an issue of fact that calls for the presentation of evidence as distinguished from an issue that is sham, fictitious, contrived, set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial (*Sps. Pascual v. First Consolidated Rural Bank*).
- Due process rights are violated by a *motu proprio* rendition of a summary judgment (*Calubaquib v. Republic*).

- Hence, the court cannot render summary judgment hastily, instead, they must exercise caution in disposing a case through summary judgment as this could deprive the parties the chance to have a day in court and present their evidence (*YKR Corp. v. PABC*).
- A court cannot render summary judgment *motu proprio* without a motion for summary judgment being filed by any of the parties (*Central Realty and Development Corporation v. Solar Resources*).
  - *But see* Rule 18, Sec. 10, which gives the court the power to direct summary judgment or judgment on the pleadings.

Summary judgment for claimant (§ 1)	Summary judgment for defending party (§ 2)
Filed by a claimant (plaintiff, counter-claimant, cross-claimant)	Filed by a defending party (defendant, counter-defendant, cross-defendant)
Filed any time <u>after</u> the answer has been filed	Filed at <u>any time</u>

Judgment on the pleadings	Summary judgment
No issue at all is raised because the answer fails to tender an issue	Issues appear to exist in the pleadings, but they are sham, fictitious or not genuine
Answer admits material allegations, fails to deny them, or does not deal with them <u>at all</u>	Answer specifically denies or sets up defenses, but the supposed issues are shown to be without merit or genuine
No specific denials	Has specific denial/s
Test: Did the pleadings generate an issue?	Test: Are the issues raised genuine or sham?
Determined solely from the pleadings	Determined through supporting affidavits, depositions, or admissions
Improper: When the answer specifically denies material allegations and/or asserts affirmative defenses	Improper: When there is a genuine factual issue requiring trial

*Adolfo v. Adolfo, G.R. No. 201427, March 18, 2015*

#### *Motion and proceedings thereon*

- The motion must cite the supporting affidavits, depositions or admission, and the specific law relied upon.
- The adverse party *may* file a comment and serve opposing affidavits, depositions, or admissions within 5 days from receipt of motion.
- Judgment sought shall be rendered forthwith if it is shown that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.
  - The court may conduct a hearing.

*End of midterm coverage.*

#### *Remedy*

- The order submitting the case to summary judgment is unappealable, nor subject to a Rule 65 petition (Rule 18, § 10).
- The order, however, *following* the summary judgment is subject to post-judgment reliefs (e.g., appeal, reconsideration, etc.).
- A partial summary judgment cannot be appealed separately until a full judgment is rendered on the entire case.
  - However, an aggrieved party is not precluded from filing a petition for *certiorari* (Rule 65) (*BCDA v. Callangan Jr.*).

#### *Partial summary judgment*

- When a motion for summary judgment is filed but:
  - Judgment cannot cover the whole case, or
  - Judgment cannot grant all the reliefs sought
    - Then, **a trial is still necessary for the rest.**
- Court's role:
  - Order further proceedings that are just and proper
  - Declare certain facts as established (no need to prove them at trial)
- The trial will only cover the **controverted facts!**