

Ateneo de Manila University
Civil Procedure II

Provisional Remedies

Nature and purpose of provisional remedies

- Those which parties-litigant may resort for the preservation or protection of their rights or interest, and for no other purpose during the pendency of the action
- They are applied to a pending litigation, for the purpose of securing the judgment or preserving the status quo, and in some cases after judgment, for the purpose of preserving or disposing of the subject matter

Provisional remedies

1. Attachment (R57)
2. Preliminary Injunction (R58)
3. Receivership (R59)
4. Replevin (R60)
5. Support Pendente Lite (R61)

Notice of lis pendens

Section 19. *Notice of lis pendens.* — In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.

The notice of lis pendens hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded.

Nature and purpose

- A notice of lis pendens is an announcement to the whole world that a particular real property is in litigation, serving as a warning that one who acquires interest over said property does so at his own risk, or that he gambles on the result of the litigation over the said property.
- Such announcement is founded upon public policy and necessity, the purpose of which is to keep the properties in litigation within the power of the court until the litigation is terminated and to prevent the defeat of the judgment or decree by subsequent alienation (*Lu v. Lu Ym*)

When can you file a notice of lis pendens (NLP):

1. Action affecting title over real property
2. Action affecting right of possession of real property

As a *general rule*, the only instances in which a notice of lis pendens may be availed of are as follows:

- An action to recover possession of real estate;
- An action for partition; and

- Any other court proceedings that directly affect the title to the land or the building thereon or the use or the occupation thereof.
- NLP also applies to suits seeking to establish a right to, or an equitable estate or interest in, a specific real property; or to enforce a lien, a charge or an encumbrance against it (*Lu v. Lu Ym*).

Contents of NLP:

1. Names of the parties
2. Object of the action or defense
3. Description of the property in that province affected thereby

Who may file?

1. Plaintiff
2. Defendant (in answer)

*Note: Only original parties in the case may file an application for a notice of lis pendens. Hence, mere movants cannot (*Heirs of Lopez v. Enriquez*).*

Grounds for cancellation – *Only upon court order:*

1. That the NLP is for the purpose of molesting the adverse party
2. That it is not necessary to protect the rights of the party who caused it to be recorded

Section 76. *Notice of lis pendens.* No action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the buildings thereon, and no judgment, and no proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceeding and the court wherein the same is pending, as well as the date of the institution thereof, together with a reference to the number of the certificate of title, and an adequate description of the land affected and the registered owner thereof, shall have been filed and registered.

Actions covered under the Property Registration Decree

- Action to recover possession of real estate
- Action to quiet title
- Action for partition
- Other proceedings of any kind in court directly affecting the title to land or the use or occupation

Content of the memorandum or notice:

1. Institution of such action or proceeding
2. The court wherein the action is pending
3. Date of the institution thereof
4. Reference to the number of the certificate of title
5. Adequate description of the land affected
6. Adequate description of the registered owner

Rule 57
Preliminary Attachment

Section 1. *Grounds upon which attachment may issue.* — At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in

the following cases:

- a. In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;
- b. In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;
- c. In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;
- d. In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;
- e. In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or
- f. In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication.

Nature

- The attachment of the property of the defendant converts an ordinary action in personam into an action quasi in rem. In such a case, jurisdiction over the person of the defendant is not required as long as the court acquires jurisdiction over the res (*Biacco v. Countryside Rural Bank*).

Kinds of attachment

1. **Preliminary attachment** – This is R57.1
2. **Garnishment** – Plaintiff reaches a credit/s belonging to the defendant and owing to him from a third person who is a stranger to the litigation. It does not involve actual seizure of the property; it simply impounds the property in the garnishee's possession and maintains the status quo until the main action is finally decided (R39.9c).
3. **Levy on execution** – The writ issued by the court after judgment by which the property of the judgment obligor is taken into custody of the court before the sale of the property on execution (R39.9b).

When can a writ of preliminary injunction issue

1. At the commencement of the action (i.e., upon filing)
 - a. Consequently, the issuance of the writ of preliminary attachment may issue *ex parte*, even before acquisition of jurisdiction of the defendant's person by service of summons or his voluntary submission (*Davao Light v. CA*)
2. At any time before entry of judgment

Ex parte issuance

- The critical time which must be identified is, rather, when the trial court acquires authority under law to act coercively against the defendant or his property in a proceeding in attachment. The critical time is the time of the vesting of jurisdiction in the court over the person of the defendant in the main case (*Sievert v. CA*).
- The proper officer should have previously or simultaneously with the implementation of the writ of attachment, served a copy of the summons upon the respondents in order for the trial court to have acquired jurisdiction upon them and for the writ to have binding effect (*Torres v. Satsatin*).

Effectivity

- Jurisprudence dictates that the preliminary attachment continues until:
 - the debt is paid
 - the sale is had under execution issued on the judgment
 - the judgment is satisfied
 - the attachment discharged
 - vacated in the same manner provided by law (*Lim Jr. v. Sps. Lazaro*).

Custodia legis

- **General rule:** No court has the power to interfere by injunction with the judgments or decrees of a concurrent or coordinate jurisdiction having equal power to grant the injunctive relief sought by injunction.
 - **Exception:** If a third-party claimant is involved, an injunction may lie in order to prevent one court from nullifying the judgment or process of another court of the same rank or category, a power which devolves upon the proper appellate court (*TRB v. IAC*).

Grounds

Letter	Requisites
A	<ol style="list-style-type: none"> 1. Must be for a specified amount of money or damages (excluding moral/exemplary). 2. Must arise from law, contract, quasi-contract, delict, or quasi-delict 3. The defendant is about to depart from the Philippines 4. There must be an intent to defraud creditors
B	<ol style="list-style-type: none"> 1. The defendant must be a public officer, corporate officer, attorney, broker, agent, or someone in a fiduciary capacity. 2. Money or property was embezzled, fraudulently misapplied, or converted to personal use. 3. The act occurred in the course of employment or via a willful violation of duty.
C	<ol style="list-style-type: none"> 1. Must be to recover possession of property unjustly/fraudulently taken or detained

	<ol style="list-style-type: none"> 2. The property (or part of it) has been concealed, removed, or disposed of 3. The defendant's goal is to prevent the property from being found or taken by the applicant/court
D	<ol style="list-style-type: none"> 1. An action against a party who has been: <ol style="list-style-type: none"> a. guilty of a fraud in contracting the debt or b. incurring the obligation upon which the action is brought (dolo causante), or c. in the performance thereof (dolo incidente)
E	<ol style="list-style-type: none"> 1. An action against a party who has: <ol style="list-style-type: none"> a. removed or disposed of his property, or b. is about to do so 2. With intent to defraud his creditors
F	<ol style="list-style-type: none"> 1. In an action against a party who: <ol style="list-style-type: none"> a. does not reside in the Philippines and b. not found in the Philippines; or 2. Against whom summons may be served by publication

- There must be a recitation of *clear and concrete* factual circumstances manifesting that the debtor practiced fraud upon the creditor at the time of the execution of their agreement in that said debtor had a preconceived plan or intention not to pay the creditor (*Equitable Bank v. Special Steel*).
- It is settled that *fraudulent intent cannot be inferred from the debtor's mere non-payment* of the debt or failure to comply with his obligation (*Security Bank v. Great Wall Commercial*).
- Insolvency *per se* is not a ground for the issuance of the writ of preliminary attachment, absent a showing of intent to defraud (*Aboitiz v. Cotabato Bus*).
- On Section 1 (d), a debt is fraudulently contracted if at the time of contracting it, the debtor has a preconceived plan or intention not to pay.
 - The mere fact of failure to pay after the obligation to do so has become due and despite several demands is not enough to warrant the issuance of a writ of preliminary attachment (*Banahaw Wood v. Naga Dynasty*)
- To justify a preliminary attachment, the removal or disposal must have been made with intent to defraud the defendant's creditors. Proof to defraud is mandated under the Rules.
 - The factual basis on defendant's intent to defraud must be clearly alleged in the affidavit in support of the prayer for the writ of attachment if not so specifically alleged in the verified complaint (*Adlawan v. Torres*).

Section 2. Issuance and contents of order. — An order of attachment may be issued either *ex parte* or upon motion with notice and hearing by the court in which the action is

pending, or by the Court of Appeals or the Supreme Court, and must require the sheriff of the court to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless such party makes deposit or gives a bond as hereinafter provided in an amount equal to that fixed in the order, which may be the amount sufficient to satisfy the applicant's demand or the value of the property to be attached as stated by the applicant, exclusive of costs. Several writs may be issued at the same time to the sheriffs of the courts of different judicial regions.

Section 3. Affidavit and bond required. — An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in section 1 hereof, that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. The affidavit, and the bond required by the next succeeding section, must be duly filed with the court before the order issues.

Mode of issue

1. Ex parte
2. Upon notice and hearing

Who issues

1. The court in which the action is pending
2. Court of Appeals
3. Supreme Court

Contents of the order

1. Require the sheriff to attach so much of the property in the Philippines of the defendant to satisfy the applicant's demand
2. Unless:
 - a. The party makes a deposit
 - b. Gives a bond in an amount equal to that fixed in the order

Note: Several writs may be issued at the same time to the sheriffs of the courts of different judicial regions.

An order of attachment shall be granted only when it appears that it is supported by an affidavit which contains:

1. A sufficient cause of action exists
2. The case is one of those mentioned in Section 1
3. There is no other sufficient security for the claim sought to be enforced by the action¹
4. The amount due to the applicant is as much as the sum for which the order is granted above all legal counterclaims

The affidavit may be made by:

1. The applicant of the writ of preliminary attachment
2. Some other person who personally knows the facts

¹ To sustain an order of attachment, it is incumbent upon the plaintiff to establish either of these two facts: (a) that the obligation had not been secured originally, or (b) that, if secured at its beginning, the security later became valueless. This is to prevent secured creditors from attaching further properties. (*Salgado v. CA*)

The writ may issue once the court is satisfied, on consideration *ex parte* of: the *application* and its supporting affidavits and documents, or after hearing, as the court may in its discretion consider proper, that any of the *grounds* specified by law exists, and an acceptable *bond* is given by the applicant (*Phil. Charter Insurance v. CA*).

- *Ex parte* grant of the writ is allowed because it is possible that during the course of the hearing, the part against whom the writ is sought may dispose of his property or abscond before the writ is issued (*Filinvest v. Relova*).

Bond

- The bond here refers to the *attachment bond*.
- It is to assure the return of defendant's personal property or the payment of damages to the defendant if the plaintiff's action to recover possession of the same property fails, in order to protect the plaintiff's right of possession of said property, or prevent the defendant from destroying the same during the pendency of the suit (*Fort Bonifacio Development Corp. v. Yllas Lending Corp.*)

Section 4. Condition of applicant's bond. — The party applying for the order must thereafter give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto.

- Following the issuance of the order, the applicant must thereafter give a bond executed to the adverse party in the amount fixed by the court
- The applicant will pay all the costs which may be adjudged to the adverse party *and* all damages he may sustain by reason of the attachment

Section 5. Manner of attaching property. — The sheriff enforcing the writ shall without delay and with all reasonable diligence attach, to await judgment and execution in the action, only so much of the property in the Philippines of the party against whom the writ is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless the former makes a deposit with the court from which the writ is issued, or gives a counter-bond executed to the applicant, in an amount equal to the bond fixed by the court in the order of attachment or to the value of the property to be attached, exclusive of costs. No levy on attachment pursuant to the writ issued under section 2 hereof shall be enforced unless it is preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint, the application for attachment the applicant's affidavit and bond, and the order and writ of attachment, on the defendant within the Philippines.

The requirement of prior or contemporaneous service of summons shall not apply where the summons could not be served personally or by substituted service despite diligent efforts, or the defendant is a resident of the Philippines temporarily absent therefrom, or the defendant is a non-resident of the Philippines, or the action is one in rem or quasi in rem.

Section 6. Sheriff's return. — After enforcing the writ, the sheriff must likewise without delay make a return thereon to the court from which the writ issued, with a full statement of his proceedings under the writ and a complete inventory of the property attached, together with any counter-bond given by the party against whom attachment is issued, and serve copies thereof on the applicant

Sheriff's duties

- Without delay and with all reasonable diligence, attach so much of the property in the Philippines of the party against whom the writ is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand.
- Unless:
 - The former makes a deposit with the court from which the writ is issued, or
 - Gives a counter-bond executed to the applicant, in an amount equal to the bond fixed by the court in the order of attachment or to the value of the property to be attached, exclusive of costs

Prior and contemporaneous service of summons

- No writ shall be implemented unless it is preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint, the application for attachment (affidavit, bond, and order) and the writ of attachment
- This rule does not apply when:
 - Summons could not be served
 - Defendant is a resident of the Philippines but temporarily absent
 - The defendant is a nonresident
 - The action is one *in rem* or *quasi in rem*

Sheriff's return; contents

1. Full statement of his proceedings
2. Complete inventory of the property attached, together with any counterbond given

Note: The sheriff's return must be served on the applicant.

Section 7. Attachment of Real and Personal Property; Recording Thereof. — Real and personal property shall be attached by the sheriff executing the writ in the following manner:

- (a) Real property, or growing crops thereon, or any interest therein, standing upon the record of the registry of deeds of the province in the name of the party against whom attachment is issued, or not appearing at all upon such records, or belonging to the party against whom attachment is issued and held by any other person, or standing on the records of the registry of deeds in the name of any other person, by filing with the registry of deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, or that such real property and any interest therein held by or standing in the name of such other person are attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any, or with such other person or his agent if found within the province. Where the

property has been brought under the operation of either the Land Registration Act or the Property Registration Decree, the notice shall contain a reference to the number of the certificate of title, the volume and page in the registration book where the certificate is registered, and the registered owner or owners thereof.

The registrar of deeds must index attachments filed under this section in the names of the applicant, the adverse party, or the person by whom the property is held or in whose name it stands in the records. If the attachment is not claimed on the entire area of the land covered by the certificate of title, a description sufficiently accurate for the identification of the land or interest to be affected shall be included in the registration of such attachment;

- (b) Personal property capable of manual delivery, by taking and safely keeping it in his custody, after issuing the corresponding receipt therefor;
- (c) Stocks or shares, or an interest in stocks or shares, of any corporation or company, by leaving with the president or managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the party against whom the attachment is issued is attached in pursuance of such writ;
- (d) Debts and credits, including bank deposits, financial interest, royalties, commissions and other personal property not capable of manual delivery, by leaving with the person owing such debts, or having in his possession or under his control, such credits or other personal property, or with his agent, a copy of the writ, and notice that the debts owing by him to the party against whom attachment is issued, and the credits and other personal property in his possession, or under his control, belonging to said party, are attached in pursuance of such writ;
- (e) The interest of the party against whom attachment is issued in property belonging to the estate of the decedent, whether as heir, legatee, or devisee, by serving the executor or administrator or other personal representative of the decedent with a copy of the writ and notice that said interest is attached. A copy of said writ of attachment and of said notice shall also be filed in the office of the clerk of the court in which said estate is being settled and served upon the heir, legatee or devisee concerned.

If the property sought to be attached is in *custodia legis*, a copy of the writ of attachment shall be filed with the proper court or quasi-judicial agency, and notice of the attachment served upon the custodian of such property.

The order of attachment is (in exact order):

1. Real property and growing crops
2. Personal property capable of manual delivery
3. Stocks or shares
4. Debts, credits and other personal property
5. Interests in a decedent's estate

Section 8. Effect of Attachment of Debts, Credits and All Other Similar Personal Property. — All persons having in their possession or under their control any credits or other similar personal property belonging to the party against whom attachment is issued, or owing any debts to him, at the time of service upon them of the copy of the writ of attachment and notice as provided in the last preceding section, shall be liable to the applicant for the amount of such credits, debts or other similar personal property, until the attachment is discharged, or any judgment recovered by him is satisfied, unless such property is delivered or transferred, or such debts are paid, to the clerk, sheriff, or other proper officer of the court issuing the attachment.

Effects of attachment to the defendant's debtors

- They are liable to the applicant (plaintiff) for the amount owed to the defendant
 - Except: No effect to the debtors if:
 - Property is delivered or transferred
 - Debt is paid

Section 9. Effect of Attachment of Interest in Property Belonging to the Estate of a Decedent. — The attachment of the interest of an heir, legatee, or devisee in the property belonging to the estate of a decedent shall not impair the powers of the executor, administrator, or other personal representative of the decedent over such property for the purpose of administration. Such personal representative, however, shall report the attachment to the court when any petition for distribution is filed, and in the order made upon such petition, distribution may be awarded to such heir, legatee, or devisee, but the property attached shall be ordered delivered to the sheriff making the levy, subject to the claim of such heir, legatee, or devisee, or any person claiming under him.

Effects of the attachment to an heir, legatee or devisee

- It shall not impair the power of the executor or administrator
- However, the representative shall report the attachment to the court when any petition for distribution is filed
 - The property may be distributed but the property attached shall be delivered to the sheriff, subject to the claim of the heir

Section 10. Examination of Party Whose Property is Attached and Persons Indebted to Him or Controlling His Property, Delivery of Property to Sheriff. — Any person owing debts to the party whose property is attached or having in his possession or under his control any credit or other personal property belonging to such party, may be required to attend before the court in which the action is pending, or before a commissioner appointed by the court, and be examined on oath respecting the same. The party whose property is attached may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court may, after such examination, order personal property capable of manual delivery belonging to him, in the possession of the person so required to attend before the court, to be delivered to the clerk of the court or sheriff on such terms as may be just, having reference to any lien thereon or claim against the same, to await the judgment in the action.

- Essentially, the defendant's debtors may be brought in the court and be examined regarding his debts to the defendant (see § 8).
 - Such debtor may, then, be required by the court to deliver personal property in his possession.

Section 11. *When Attached Property May be Sold after Levy on Attachment and before Entry of Judgment.* — Whenever it shall be made to appear to the court in which the action is pending, upon hearing with notice to both parties, that the property attached is perishable, or that the interests of all the parties to the action will be subverted by the sale thereof, the court may order such property to be sold at public auction in such manner as it may direct, and the proceeds of such sale to be deposited in court to abide the judgment in the action.

Grounds for sale after levy and before entry of judgment

1. It appears to the court—upon hearing—that the property attached is perishable, or
2. The interests of all the parties will be subverted by the sale thereof

Court's resolution: To sell the property in a public auction.

Discharge of attachment

Section 12. *Discharge of attachment upon giving counter-bond.* — After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. But if the attachment is sought to be discharged with respect to a particular property, the counter-bond shall be equal to the value of that property as determined by the court. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason be found to be or become insufficient, and the party furnishing the same fails to file an additional counter-bond, the attaching party may apply for a new order of attachment. (12a)

Section 13. *Discharge of attachment on other grounds.* — The party whose property has been ordered attached may file a motion with the court in which the action is pending, before or after levy or even after the release of the attached property, for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient. If the attachment is excessive, the

discharge shall be limited to the excess. If the motion be made on affidavits on the part of the movant but not otherwise, the attaching party may oppose the motion by counter-affidavits or other evidence in addition to that on which the attachment was made. After due notice and hearing, the court shall order the setting aside or the corresponding discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith.

Grounds for discharge

By making a cash deposit or a counter-bond

- Timing: After a writ of attachment has been issued
- Who may make: The party whose property has been attached, or the person appearing on his behalf
- **Requisites for discharge:**
 - The party must file a motion for the discharge of the attachment, wholly or in part
 - There must be due notice and hearing²
 - The movant must either:
 - Make a cash deposit
 - File a counter-bond executed to the attaching party with the clerk of the court
 - Specific amount:
 - In an amount equal to that fixed by the court in the order of attachment, exclusive of costs
 - *If discharge is sought for a particular property:* Equal to the value of that property as determined by the court
 - A notice of the deposit shall forthwith be served on the attaching party
- Effect: The deposit or counter-bond aforesaid stands in place of the property so released to secure the payment of any judgment

Discharge on other grounds

- Improper issuance
- Irregular issuance
- Improper/irregular enforcement
- Insufficient bond
- Excessive attachment
- **Requisites for discharge:**
 - Timing: Before or after levy or even after the release of the attached property
 - Form: If the motion be made on affidavits on the part of the movant but not otherwise, the attaching party may oppose the motion by counter-affidavits
 - After due notice and hearing
 - It must appear to the court that the grounds exist
 - The discharge is ordered if the defect is not cured forthwith

² Before a writ of preliminary attachment may be lifted, a prior hearing must be conducted by the judge to determine whether the writ was, in fact, improperly or irregularly issued. If the discharge of the writ violates the requirements of the law, the trial judge does not acquire jurisdiction to act thereon, and the writ could not have been deemed inefficacious (*Peroxide Philippines v. CA*).

Section 14. Proceedings where property claimed by third person. — If the property attached is claimed by any person other than the party against whom attachment had been issued or his agent, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds of such right or title, and serves such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment, unless the attaching party or his agent, on demand of the sheriff, shall file a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied upon. In case of disagreement as to such value, the same shall be decided by the court issuing the writ of attachment. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The sheriff shall not be liable for damages for the taking or keeping of such property to any such third-party claimant, if such bond shall be filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property, or prevent the attaching party from claiming damages against a third-party claimant who filed a frivolous or plainly spurious claim, in the same or a separate action.

When the writ of attachment is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff is sued for damages as a result of the attachment, he shall be represented by the Solicitor General, and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of the funds to be appropriated for the purpose.

Terceria – This allows a non-party to protect their interest in attached property.

Requisites for *terceria*

1. Claimant is a person other than the party against whom attachment had been issued or his agent (*i.e.*, not a party to the attachment case)
2. Such person makes an affidavit of his title thereto, or the right of possession thereof
3. The affidavit must state the grounds of such right or title
4. He must serve such affidavit upon the sheriff while the latter has possession of the attached property
5. He must serve a copy thereof upon the attaching party (*i.e.*, plaintiff)

Effect of the *terceria*

- The sheriff shall not be bound to keep the property under attachment.
 - In other words, the sheriff shall release the property attached.

Counter-bond; *terceria*

- The sheriff shall remain the property under attachment if:
 - The attaching party, upon demand of the sheriff
 - Files a bond approved by the court to indemnify the third-party claimant

- The bond shall not be less than the value of the property levied upon

Effects of an indemnity bond

1. No claim for damage from the taking or keeping of the property may be enforced against the bond, unless it is filed within 120 days from the filing of the bond
2. The sheriff shall not be liable for damages for the taking or keeping of the property to any third-party claimant

Other remedies available

1. For the *claimant or any third person* – To vindicate his claim to the property in the same or a separate action
2. For the *attaching party* – To claim damages against a third-party claimant who filed a frivolous or plainly spurious claim, in the same or a separate action

Rules when the Republic is the applicant

1. No bond is required
2. If the sheriff is sued, he shall be represented by the OSG
3. If the sheriff is held liable, the actual damages shall be paid by the national treasurer

Section 15. Satisfaction of judgment out of property attached, return of sheriff. — If judgment be recovered by the attaching party and execution issue thereon, the sheriff may cause the judgment to be satisfied out of the property attached, if it be sufficient for that purpose in the following manner:

- (a) By paying to the judgment obligee the proceeds of all sales of perishable or other property sold in pursuance of the order of the court, or so much as shall be necessary to satisfy the judgment;
- (b) If any balance remains due, by selling so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in the sheriff's hands, or in those the clerk of the court;
- (c) By collecting from all persons having in their possession credits belonging to the judgment obligor, or owing debts to the latter at the time of the attachment of such credits or debts, the amount of such credits and debts as determined by the court in the action, and stated in the judgment, and paying the proceeds of such collection over to the judgment obligee.

The sheriff shall forthwith make a return in writing to the court of his proceedings under this section and furnish the parties with copies thereof.

This situation occurs *after* final judgment has been handed down, and the attaching party prevails. Sec. 15 discusses the process of how to convert that attachment into satisfaction of judgment.

Requisites:

1. Judgment be recovered by the attaching party
2. An execution be issued thereon

Procedure:

1. The sheriff will pay to the judgment obligee the proceeds of all sales of perishable or other property

sold, or so much as shall be necessary to satisfy the judgment

2. If any balance remains, the sheriff shall sell property as may be necessary to satisfy the balance, if enough for that purpose remain in the sheriff's hands, or in those of the clerk
3. The sheriff shall collect from the creditors of the judgment obligee, or owing debts to the latter at the time of the attachment (as determined by the court), and pay the proceeds of such collection to the judgment obligee.

Section 16. *Balance due collected upon an execution; excess delivered to judgment obligor.* — If after realizing upon all the property attached, including the proceeds of any debts or credits collected, and applying the proceeds to the satisfaction of the judgment, less the expenses of the proceedings upon the judgment, any balance shall remain due, the sheriff must proceed to collect such balance as upon ordinary execution. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, must return to the judgment obligor the attached property remaining in his hands, and any proceeds of the sale of the property attached not applied to the judgment.

Section 16 gives the process if any balance remains after selling all the attached property and the credits and debts collected.

Thus:

- The sheriff must proceed to collect the remaining balance as upon *ordinary* execution (Rule 39)

After the judgment has been paid, the sheriff must return to the judgment obligor the:

- Attached property remaining in his hands, and
- Proceeds of the sale attached *not* applied to the judgment

Section 17. *Recovery upon the counter-bond.* — When the judgment has become executory, the surety or sureties on any counter-bond given pursuant to the provisions of this Rule to secure the payment of the judgment shall become charged on such counter-bond and bound to pay the judgment obligee upon demand the amount due under the judgment, which amount may be recovered from such surety or sureties after notice and summary hearing in the same action.

In this case, the prevailing party will execute on the counter-bond posted by the opposing party.

When this happens

- When the judgment has become executory

Procedure:

1. The surety/ies on the counter-bond shall become charged and bound to pay the judgment obligee
2. Upon demand of the amount due under the judgment
3. The amount from such surety/ies may be recovered after notice and summary hearing in the *same* action

Requisites for recovery from the surety on the counterbond

1. Execution be first issued against the principal debtor and that such execution was returned unsatisfied in

whole or in part

2. The creditor made a demand upon the surety for the satisfaction of the judgment
3. The surety be given notice and a summary hearing in the same action as to his liability for the judgment under his counterbond (*Leelin v. C&S*)

Section 18. *Disposition of money deposited.* — Where the party against whom attachment had been issued has deposited money instead of giving counter-bond, it shall be applied under the direction of the court to the satisfaction of any judgment rendered in favor of the attaching party, and after satisfying the judgment the balance shall be refunded to the depositor or his assignee. If the judgment is in favor of the party against whom attachment was issued, the whole sum deposited must be refunded to him or his assignee. (18a)

Sec. 18 covers the situation where the defendant, instead of posting a counter-bond, makes a (cash) deposit to the court.

Procedure:

1. The deposit shall be applied to the satisfaction of the judgment in favor of the attaching party
2. After satisfying the judgment, balance, if any, shall be returned

If the attaching party loses

- The whole sum deposited must be refunded to him or his assignee.

Section 19. *Disposition of attached property where judgment is for party against whom attachment was issued.* — If judgment be rendered against the attaching party, all the proceeds of sales and money collected or received by the sheriff, under the order of attachment, and all property attached remaining in any such officer's hands, shall be delivered to the party against whom attachment was issued, and the order of attachment discharged. (19a)

Sec. 19 covers the situation where the attaching party loses.

Procedure:

1. All the proceeds of sales and money collected or received by the sheriff and all property attached shall be returned
2. The order of attachment shall be discharged

Section 20. *Claim for damages on account of improper, irregular or excessive attachment.* — An application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching party and his surety or sureties setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.

If the judgment of the appellate court be favorable to the party against whom the attachment was issued he must claim damages sustained during the pendency of the appeal by filing an application in the appellate court, with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the

appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court.

Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching party not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award. (20a)

Sec. 20 governs the recovery of damages caused by a wrongful attachment.

Grounds for the claim:

1. Improper attachment
2. Irregular attachment
3. Excessive attachment

Periods to file the application

In the trial court	In the appellate court
<ul style="list-style-type: none"> - Before the trial - Before appeal is perfected - Before the judgment becomes executory 	<ul style="list-style-type: none"> - Before the judgment of the appellate court becomes executory

Requisites for recovery of damages caused by a wrongful attachment:³

1. An application be filed, alleging the aforesaid grounds during the period mentioned
2. There must be due notice to the attaching party and his surety/ies
3. The application must set forth the facts showing his right to damages and the amount thereof
4. The damages may be awarded only after proper hearing and be included in the main case's judgment

Procedure in the appellate court

- This only occurs when the appellate court rules in favor of the party *against* whom the attachment was issued.
- *Where to file?* In the appellate court.
- *When to file?* During the pendency of the appeal, but before the judgment becomes executory.
- The appellate court may allow the application to be heard and decided by the trial court

What if the bond or deposit of the attaching party is insufficient to satisfy/fail to fully satisfy the award of damages?

- Then, the opposing party may, in the *same action*, recover from any property of the attaching party not exempt from execution.
- Like a "counter-attachment!"

**Rule 58
Preliminary Injunction**

³ These also apply for preliminary injunction and replevin, *mutatis mutandi*.

Section 1. Preliminary injunction defined; classes. – A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which it shall be known as a preliminary mandatory injunction.

- **Preliminary injunction** – An order requiring a party or a court, agency or a person to refrain from a particular act/s.
- **Preliminary mandatory injunction** – An order requiring a party or a court, agency or a person to perform a particular act/s.

A writ of preliminary injunction, whether mandatory or prohibitory, may be granted if the following requisites are met:

1. The applicant must have a clear and unmistakable right, that is a right in esse
2. There is a material and substantial invasion of such right
3. There is an urgent need to issue the writ to prevent irreparable injury to the applicant
4. No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury (*Sps. Ngo v. Allied Banking Corporation*)

General rule: Criminal prosecution may *not* be restrained or stayed by injunction, preliminary or final.

Exceptions:

1. To afford adequate protection to the constitutional rights of the accused
2. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions
3. When there is a prejudicial question which is sub judice
4. When the acts of the officer are without or in excess of authority
5. When the prosecution is under an invalid law, ordinance or regulation
6. When double jeopardy is clearly apparent
7. Where the court has no jurisdiction over the offense
8. Where it is a case of persecution rather than prosecution
9. Where the charges are manifestly false and motivated by the lust for vengeance
10. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied
11. A preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners (*Brocka v. Enrile*)

Tax cases

- While the NIRC provides that a court is prohibited from issuing injunctions against collections made by the BIR, there is no similar prohibition in the Local Tax Code against injunctions on local taxes.
 - Thus, tax collections made by the LGU may be the subject of an injunction (*Angeles City v. Angeles City Electric Corp.*)

Nature

- Since injunction is the strong arm of equity, he who must apply for it must come with equity or with clean hands. This is so because among the maxims of

equity are (1) *he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands (UP v. Catunga).*

- The grant or denial of a writ of preliminary injunction in a pending case rests in the sound discretion of the court taking cognizance of the case (*Bustamante v. CA*)
- An injunction duly issued must be obeyed, however erroneous the action of the court may be, until a higher court overrules such decision (*Rosario Textile v. CA*)
- A preliminary injunction should not determine the merits of a case, or decide controverted facts, for, being a preventive remedy, it only seeks to prevent threatened wrong, further injury, and irreparable harm or injustice until the rights of the parties can be settled (*BPI v. Hontanosas Jr.*)

Section 2. *Who may grant preliminary injunction.* – A preliminary injunction may be granted by the court where the action or proceeding is pending. If the action or proceeding is pending with the Court of Appeals or in the Supreme Court, it may be issued by said court or any member thereof.

General rule: The court where the action or proceeding is pending

- **Exception:** If pending in the CA or SC, the member may also grant it.

Under the present law, an inferior court has jurisdiction to grant provisional remedies in proper cases. These proper cases would be:

1. WPA under Rule 57, provided the principal action is within its jurisdiction
2. WPI under Rule 58, both forcible entry and unlawful detainer (*Day v. RTC Zamboanga*)

Section 3. *Grounds for issuance of preliminary injunction.* – A preliminary injunction may be granted when it is established:

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Grounds

Letter	Requisites
A	<ol style="list-style-type: none"> 1. The applicant is entitled to the relief 2. The whole or part of the relief consists

	in restraining the commission of the act/s, or requiring the performance of act/s
B	<ol style="list-style-type: none"> 1. There is commission, continuance or non-performance of the act/s complained of 2. It will probably work injustice to the applicant
C	<ol style="list-style-type: none"> 1. A party, court, agency or person is doing, threatening or attempting to do, or is procuring or suffering to be done 2. Act or acts probably in violation of the rights of the applicant on the matter of the action or proceeding 3. Such act/s tend to render the judgment ineffectual

- Parties seeking injunction must present evidence to demonstrate their justification for the relief pending final judgment. The evidence need not be complete and conclusive proof; prima facie evidence suffices (*Municipality of Famy v. Municipality of Siniloan*)
- Negative obligations (not to do) can be the subject of an injunction (*Ollendorff v. Abrahamson*)
- The possibility of irreparable damage without proof of actual existing right is not a ground for an injunction (*BP Phils v. Clark Trading*)

Section 4. *Verified application and bond for preliminary injunction or temporary restraining order.* – A preliminary injunction or temporary restraining order may be granted only when:

- (a) The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded; and
- (b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.
- (c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multi-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.

However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof, the

requirement of prior or contemporaneous service of summons shall not apply.

- (d) The application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the branch selected by raffle and to which the records shall be transmitted immediately.

Conditions for grant of a WPI/TRO

1. A verified application showing facts entitling the applicant to the WPI/TRO
2. The *applicant's bond* executed to the party enjoined, in an amount fixed by the court⁴

Lifetime of a WPI:

An injunction or restraining order must be obeyed while it remains in full force and effect until the injunction or restraining order has been:

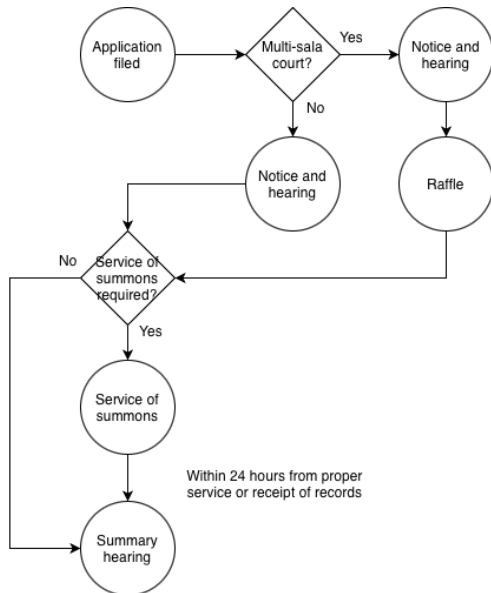
1. set aside
2. vacated
3. modified by the court which granted it
4. the order or decree awarding it has been reversed on appeal (*Pacific Ace Finance v. Yanagisawa*)

Termination of a WPI:

1. Dismissal of the main action
2. When its purpose has been outlived (*i.e.*, the act being complained of ceases/expires)
3. For a TRO, upon the end of the 20-day period

Status quo ante order

- A status quo ante order has the nature of a TRO
- It is an interlocutory order



Section 5. Preliminary injunction not granted without notice; exception. – No preliminary injunction shall be granted without hearing and prior notice to the party or

⁴ The applicant's bond shall answer for all the damages which the party enjoined may suffer by reason of the injunction or TRO, if the court should decide that the applicant is not entitled thereto.

persons sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the twenty-day period, the court must order said party or person to show cause at a specified time and place, why the injunction should not be granted. The court shall also determine, within the same period, whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multi-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective only for seventy-two hours (72) from issuance, but shall immediately comply with the provisions of the next preceding sections as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

General rule: A WPI can only be issued after notice and hearing to the party sought to be enjoined.⁵

- Exceptions:
 - 72-hour TRO
 - 20-day TRO

	20-day TRO	72-hour TRO
Ground	Great or irreparable injury	Extreme urgency and the applicant will suffer grave injustice and irreparable injury
Who issues	The court where the case is pending	The executive judge or presiding judge, as the case may be
Effectivity	20 days <u>from service</u>	72 hours <u>from issuance</u>
During the period	The court must order the other party to show cause why the injunction should	Party enjoined must be served summons Summary hearing

⁵ Thus, mere posting of a bond is insufficient. Sections 4(c) and 5, Rule 58 of the 1997 Rules of Civil Procedure is very explicit that the writ of preliminary injunction may issue only after prior notice and hearing upon the adverse party (*Gomos v. Adiong*).

relief affecting the execution insofar as the disputed property is concerned (*Suy v. CA*)

	not be granted	be conducted to determine whether the TRO shall be extended until the hearing for the WPI
	The court must determine whether the WPI should be granted	

- Rule 58 clearly lays the **burden** on the shoulders of the parties against whom the TRO was issued, to show cause why the application for the writ of preliminary injunction should not issue (*Butuan v. Consolidated Broadcasting*)

[cont'd] In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect, and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.

The trial court, the Court of Appeals, the Sandiganbayan or the Court of Tax Appeals that issued a writ of preliminary injunction against a lower court, board, officer, or quasi-judicial agency shall decide the main case or petition within six (6) months from the issuance of the writ.

Section 6. *Grounds for objection to, or for motion of dissolution of, injunction or restraining order.* – The application for injunction or restraining order may be denied, upon a showing of its insufficiency. The injunction may also be denied, or, if granted, may be dissolved, on other grounds upon affidavits of the party or person enjoined, which may be opposed by the applicant also by affidavits. It may further be denied, or, if granted, may be dissolved, if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the court conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of the preliminary injunction or restraining order granted is too great, it may be modified.

General rule: A TRO is effective only for 20 days, maximum and is nonextendible.⁶

- Exceptions:
 - If issued by CA or any member: 60 days
 - If issued by SC or any member: Indefinite

Effects of the issuance of a WPI against a lower court, board, officer, or quasi-judicial agency

- The issuing court shall decide the main action within 6 months from the issuance of the WPI

The nature of a **writ of injunction is that its period of efficacy is indefinite.**

- It may be properly assailed by way of the special civil action for *certiorari*, as it is interlocutory in nature (*Sps. Carpo v. Chua*).

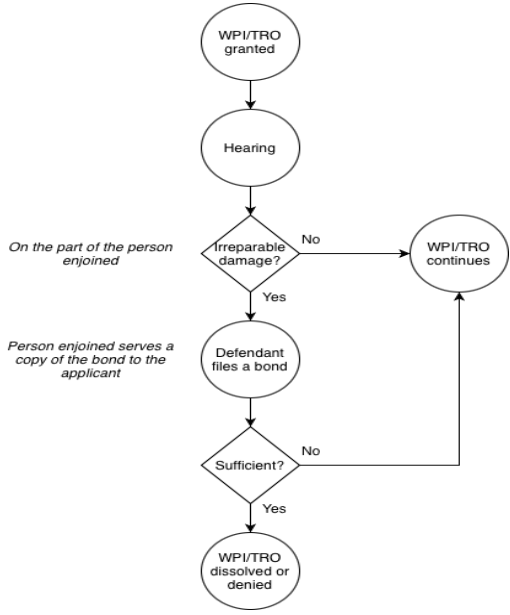
Enjoining a co-equal court

- **General rule:** Courts of coordinate jurisdiction cannot interfere with each other’s judgments generally prevents one RTC branch from restraining the execution of a judgment issued by another branch.
 - Exception: When a third-party claimant, or a person who was not a party to the original case, asserts ownership over property that has been levied upon or sold in execution. In such cases, the third party may file an independent action to vindicate his claim, and the court hearing that action may issue

Grounds for denial/dissolution:

1. Insufficiency of the application
2. Other grounds upon affidavits of the party enjoined
3. The issuance or continuance of the injunction would cause irreparable damage to the party enjoined *while* the applicant can be fully compensated for such damages
 - a. In such a case, the person enjoined shall file a bond, conditioned that he will pay all damages which the applicant may suffer⁷

In any case, the extent of the WPI can be modified if it’s “too great!”



A hearing is indispensable to dissolve a WPI (*PPA v. Nasipit*).

⁶ And it expires *ipso jure* upon the expiration of the period.

⁷ Elements: (1) The court finds that the continuance of the injunction would cause great damage to the defendant, while the plaintiff can be fully compensated for the damages he may suffer; and (2) The defendant files a counter-bond (*Sps. Yap v. IEB*).

Section 7. Service of Copies of Bonds; Effect of Disapproval of Same. — The party filing a bond in accordance with the provisions of this Rule shall forthwith serve a copy of such bond on the other party, who may except to the sufficiency of the bond, or of the surety or sureties thereon. If the applicant's bond is found to be insufficient in amount, or if the surety or sureties thereon fail to justify, and a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the injunction shall be dissolved. If the bond of the adverse party is found to be insufficient in amount, or the surety or sureties thereon fail to justify a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the injunction shall be granted or restored, as the case may be.

Service of bonds

- The filing of a bond shall be forthwith be served (a copy of such bond) to the other party
 - The other party can except (assail) the sufficiency of the bond or the surety/ies

Applicant's bond found insufficient	Other party's bond found insufficient
The injunction shall be dissolved	The injunction shall be granted or restored

- In either case, the party filing the bond is given a chance to justify a sufficient bond.

Section 8. Judgment to Include Damages against Party and Sureties. — At the trial, the amount of damages to be awarded to either party, upon the bond of the adverse party, shall be claimed, ascertained, and awarded under the same procedure prescribed in Section 20 of Rule 57.

Recovery on injunction bond

- The principal purpose of an injunction bond is to provide security for damages in case it is finally decided that the injunction ought not to have been granted.
- Malice is not a prerequisite for recovery; the dissolution of the injunction is sufficient to establish that it was wrongfully obtained.
- To recover, the claimant must demonstrate that the damages were sustained specifically by reason of the injunction and not merely as a result of the litigation expenses of the main case (*Limitless Potentials v. CA*)

Section 9. When Final Injunction Granted. — If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the court shall grant a final injunction perpetually restraining the party or person enjoined from the commission or continuance of the act or acts or confirming the preliminary mandatory injunction.

- Upon the decision on the merits, the court may make permanent the injunction (i.e., a "final injunction").

Original action for injunction

- The RTC has exclusive and original jurisdiction.

**Rule 60
Replevin**

Section 1. Application. — A party praying for the recovery of possession of personal property may, at the commencement of the action or at any time before answer, apply for an order for the delivery of such property to him, in the manner hereinafter provided.

Relief sought	Recovery of possession of personal property ⁸
When available	<ul style="list-style-type: none"> - At the commencement of the action (filing) - At any time <u>before answer</u>

In relation to Recto Law

- The mere filing of a *replevin* action does not bar a creditor from later seeking a money judgment.
- What triggers the Recto Law prohibition against cumulative remedies is the actual seizure and deprivation of the debtor's possession of the mortgaged chattel (*Agner v. BPI*)

Section 2. Affidavit and bond. — The applicant must show by his own affidavit or that of some other person who personally knows the facts:

- (a) That the applicant is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof;
- (b) That the property is wrongfully detained by the adverse party, alleging the cause of detention thereof according to the best of his knowledge, information, and belief;
- (c) That the property has not been distrained or taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under *custodia legis*, or if so seized, that it is exempt from such seizure or custody; and
- (d) The actual market value of the property.

The applicant must also give a bond, executed to the adverse party in double the value of the property as stated in the affidavit aforementioned, for the return of the property to the adverse party if such return be adjudged, and for the payment to the adverse party of such sum as

⁸ **Article 416.** The following things are deemed to be personal property: (1) Those movables susceptible of appropriation which are not included in the preceding article; (2) Real property which by any special provision of law is considered as personalty; (3) Forces of nature which are brought under control by science; and (4) In general, all things which can be transported from place to place without impairment of the real property to which they are fixed. **Article 417.** The following are also considered as personal property: (1) Obligations and actions which have for their object movables or demandable sums; and (2) Shares of stock of agricultural, commercial and industrial entities, although they may have real estate (*New Civil Code*).

he may recover from the applicant in the action.

Section 3. Order. – Upon the filing of such affidavit and approval of the bond, the court shall issue an order and the corresponding writ of *replevin* describing the personal property alleged to be wrongfully detained and requiring the sheriff forthwith to take such property into his custody.

Requisites for a writ of replevin:

1. Affidavit
2. Bond

Contents of/averments in the affidavit:

1. The applicant is the owner of the property, or is entitled to the possession thereof⁹
 - a. The property must be particularly described
2. The property is wrongfully detained by the defendant
 - a. The applicant must allege the cause of detention to the best of his knowledge, information and belief¹⁰
3. The property has not been distrained, seized, or placed under *custodia legis*¹¹
 - a. If so seized, applicant must aver that the property is exempt from execution
4. The actual market value of the property
 - a. This will be the basis of the bond and is a jurisdictional fact
 - b. Actual value means market price (*Citibank v. CA*)

Bond requirement

1. Double the value of the property
2. Executed to the adverse party

Rationale:

- The applicant's bond will be used to return the property to the defendant (if so ordered)
- It will also be used to pay the adverse party of such sum as he may recover (e.g., damages)

Section 4. Duty of the Sheriff. – Upon receiving such order, the sheriff must serve a copy thereof on the adverse party, together with a copy of the application, affidavit and

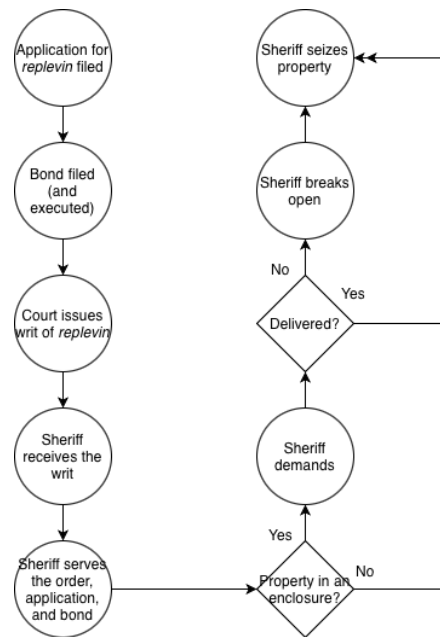
⁹ When a replevin action is used to aid in the judicial foreclosure under a chattel mortgage, it is essential to prove that there was default by the mortgagor (*Servicewide Specialists v. CA*). In all other cases, demand is *not* required to be done by the plaintiff—he must just show the requisites in § 2 (*Navarro v. Escobido*).

¹⁰ Wrongful detention by the defendant of the properties sought in an action for replevin must be satisfactorily established. If only a mechanistic averment thereof is offered, the writ should not be issued (*Twin Ace v. Rufina*).

¹¹ The Bureau of Customs exercises exclusive jurisdiction over all seizure and forfeiture of imported goods. RTCs are precluded from interfering with this power, even through a petition for replevin (*Asian Terminals v. Bautista-Ricafort*). Likewise, a writ of replevin cannot be issued against a mechanic possessing property of the applicant under a mechanic's lien for unpaid obligations (*AIFI v. CA*).

bond,¹² and must forthwith take the property, if it be in the possession of the adverse party, or his agent, and retain it in his custody. If the property or any part thereof be concealed in a building or enclosure, the sheriff must demand its delivery, and if it be not delivered, he must cause the building or enclosure to be broken open and take the property into his possession. After the sheriff has taken possession of the property as herein provided, he must keep it in a secure place and shall be responsible for its delivery to the party entitled thereto upon receiving his fees and necessary expenses for taking and keeping the same.

- The writ is enforceable anywhere in the Philippines (*Fernandez v. ICB*)



Section 5. Return of property. – If the adverse party objects to the sufficiency of the applicant's bond, or of the surety or sureties thereon, he cannot immediately require the return of the property, but if he does not so object, he may, at any time before the delivery of the property to the applicant, require the return thereof, by filing with the court where the action is pending a bond executed to the applicant, in double the value of the property as stated in the applicant's affidavit for the delivery thereof to the applicant, if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the adverse party, and by serving a copy of such bond on the applicant.

Adverse party's remedies

1. To **object** to the sufficiency of the applicant's bond or of the surety/ies
2. To file a bond executed to the applicant (**counterbond** or redelivery bond) in double the value of the property
 - a. The furnishing of a copy of the

¹² If the writ was not served upon the adverse party but was instead merely handed to a person who is neither an agent of the adverse party nor a person authorized to receive court processes on his behalf, the service thereof is erroneous and is, therefore, invalid, running afoul of the statutory and constitutional requirements (*Rivera v. Vargas*).

counterbond has to be accomplished within the prescribed 5-day period if the plaintiff is to have an opportunity to contest the redelivery of the property sought by the defendant (*Nantz v. Jugo*)

Rationale:

- The counterbond bond will be used to deliver the property to the applicant (if so ordered)
- It will also be used to pay the applicant party of such sum as he may recover (e.g., damages)

Section 6. Disposition of Property by Sheriff. — If within five (5) days after the taking of the property by the sheriff, the adverse party does not object to the sufficiency of the bond, or of the surety or sureties thereon; or if the adverse party so objects and the court affirms its approval of the applicant's bond or approves a new bond, or if the adverse party requires the return of the property but his bond is objected to and found sufficient and he does not forthwith file an approved bond, the property shall be delivered to the applicant. If for any reason the property is not delivered to the applicant, the sheriff must return it to the adverse party.

The remedies in § 5 must be **done within 5 days from the seizure.**

- **Otherwise:** Sheriff shall deliver the property seized to the applicant.
- If sheriff cannot deliver the property to the applicant within the five-day period, the sheriff must return it to the adverse party.

Terceria

Section 7. Proceedings Where Property Claimed by Third Person. — If the property taken is claimed by any person other than the party against whom the writ of *replevin* had been issued or his agent, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds therefor, and serves such affidavit upon the sheriff while the latter has possession of the property and a copy thereof upon the applicant, the sheriff shall not be bound to keep the property under *replevin* or deliver it to the applicant unless the applicant or his agent, on demand of said sheriff, shall file a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property under *replevin* as provided in Section 2 hereof. In case of disagreement as to such value, the court shall determine the same. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The sheriff shall not be liable for damages, for the taking or keeping of such property, to any such third-party claimant if such bond shall be filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property, or prevent the applicant from claiming damages against a third-party claimant who filed a frivolous or plainly spurious claim, in the same or a separate action.

When the writ of *replevin* is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff is sued for damages as a result of the *replevin*, he

shall be represented by the Solicitor General, and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of the funds to be appropriated for the purpose.

Requisites for *terceria*:

1. An affidavit of his title or right to the possession thereof (grounds must be mentioned)
2. Service of the affidavit upon the sheriff and a copy to the applicant

Remedy of an applicant against a *terceria*:

- To file a bond equivalent to the value of the property (not 2x!)
 - In such a case, the sheriff shall remain bound in keeping the property or the applicant shall remain entitled to its possession¹³

Alternative remedies:

1. *For the third-party claimant:* To vindicate his claim to the property in the same or separate action
2. *For the applicant:* To claim damages from the third-party claimant on the grounds of frivolous or plainly spurious claim in the same or separate action

Special rule for the Republic

- A bond is not required to be filed, if the Republic is the applicant
- If the sheriff is sued for damages, the OSG shall represent him
- Damages, if awarded, shall be paid out of the National Treasury

Section 8. Return of Papers. — The sheriff must file the order, with his proceedings indorsed thereon, with the court within ten (10) days after taking the property mentioned therein.

- A return to the court must be filed by the sheriff within 10 days from the taking.

Section 9. Judgment. — After trial of the issues, the court shall determine who has the right of possession to and the value of the property and shall render judgment in the alternative for the delivery thereof to the party entitled to the same, or for its value in case delivery cannot be made, and also for such damages as either party may prove, with costs.

Section 10. Judgment to Include Recovery against Sureties. — The amount, if any, to be awarded to any party upon any bond filed in accordance with the provisions of this Rule, shall be claimed, ascertained, and granted under the same procedure as prescribed in Section 20 of Rule 57.

Judgments

- The court shall determine ownership of the personal property and order its delivery to the prevailing party
 - If delivery cannot be made, the value of the property plus damages, if proven, shall be paid to the prevailing party

¹³ The bond shall be liable for any damages, but such a claim must be filed within 120 days from the filing of the bond.

- The amount awarded to any party upon any bond (e.g., applicant's bond, counter-bond, *terceria* bond) shall be claimed, ascertained, and granted as per § 20, Rule 57.

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