PHILIPPINE CIVIL PROCEDURE IN TRANSBOUNDARY DISPUTES

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1. GENERAL CONTEXT

1.1. The Philippine Judicial System in Brief

The Philippine judicial system consists of one Supreme Court and such lower courts as are established by law. These courts were given judicial power, defined as “the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or redress of wrongs for violation of such rights”.¹ This includes the power “to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government”.²

One gathers, therefore, that the Philippine judiciary is unitary. Unlike the American system, after which that of the Philippines was patterned, there are no state and federal systems in the Philippines. Instead, there is just one Supreme Court. The Philippine judicial system is tiered: below the Supreme Court are such lower courts as are established by Congress and which exercise such jurisdiction as is conferred upon them by law.³

The Supreme Court is a collegial body composed of a Chief Justice and fourteen Associate Justices.⁴ It sits en banc when hearing cases involving the constitutionality of a treaty, international or executive agreement, or law;⁵ and the constitutionality, application or operation of presidential decrees, proclamations, orders, instructions, ordinances and other regulations;⁶ in which the required majority was not obtained when heard by division;⁷ where the Supreme Court modifies or reverses a doctrine or principle of law previously laid down either en banc or in division;⁸ of administrative nature involving

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¹ Lopez v. Roxas, 17 SCRA 756 (1966).

² Phil. Const., Art. VIII, Sec. 1.

³ Ibid., Sec. 2.

⁴ Ibid., Sec. 4(1).

⁵ Ibid., Sec. 4(2).

⁶ Ibid.

⁷ Ibid., Sec. 4(3).

⁸ Ibid.

judges, where the vote is for dismissal or the imposition of disciplinary sanction;⁹ concerning election contests involving the President and/or the Vice-President.¹⁰ In all other cases, the Supreme Court may, at its discretion, sit en banc or in division.

The powers of the Supreme Court are provided in the Constitution,¹¹ as follows:

- To exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

- To review, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts: (a) 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) involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto; (c) in which the jurisdiction of any lower court is at stake; (d) concerning criminal cases in which the penalty imposed is *reclusion perpetua* or higher; (e) in which only an error or question of law is involved.

- To temporarily assign judges of lower courts to other stations, as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.

- To order a change of venue or place of a trial to avoid a miscarriage of justice.

- 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. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

- To appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

The Constitution likewise vests in the Supreme Court the power of administrative supervision over all courts and the personnel thereof.¹²

Directly below the Supreme Court is the Court of Appeals, another collegial body of sixty-nine Justices sitting in twenty-three divisions. The Court of Appeals does not sit en banc except to discharge ceremonial and administrative functions. These twenty-three divisions are divided into three

⁹ Ibid., Sec. 11.

¹⁰ Ibid., Art. VII, Sec. 4.

¹¹ Ibid., Art. VII, Sec. 5.

¹² Ibid., Sec. 6.

groups and are stationed in three different cities of the country to address cases coming from Luzon, Visayas and Mindanao, respectively.¹³

The Court of Appeals has, among others, exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts, and exclusive appellate jurisdiction over all final orders, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions. In the exercise of its original and appellate jurisdiction, the Court of Appeals has the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve the factual and legal issues raised in cases before it.¹⁴

The *Sandiganbayan* ('Sandigan') is a Court co-equal to the Court of Appeals but essentially exercises trial functions and has limited jurisdiction. It is a special court of fifteen Justices, and was created especially for the purpose of hearing cases involving crimes committed by high-ranking public officers in relation to their office.¹⁵

At the lowest rung are the trial courts. Trial courts are single-judge courts, where the presiding judge is both a trier of facts and arbiter of law. Trial courts are courts of first instance. Judicial reliefs are initially sought either in a Regional Trial Court or a Municipal Trial Court.

Essentially, the jurisdictions of the Regional Trial Court and the Municipal Trial Court are similar. Both have jurisdiction to take cognizance of cases involving title to or possession of real property. Likewise, these courts are empowered to resolve admiralty and probate cases. The proper court in these cases is determined by the amount of the claim.¹⁶

Certain cases, however, are only cognizable by a particular court. For instance, where the subject matter of litigation does not lend itself for pecuniary estimation or pertains to a contract of marriage and marital relations or refers to juvenile and domestic matters, jurisdiction lies with the Regional Trial Court. The Municipal Trial Court, on the other hand, has exclusive jurisdiction over forcible entry and unlawful detainer cases.¹⁷

The procedure on appeal from final orders and judgments of trial courts has recently been clarified.¹⁸ From the Regional Trial Court, appeal may be taken to the Court of Appeals on issues of fact and law¹⁹ or to the Supreme Court on pure questions of law.²⁰ From the Municipal Trial Court, first an ordinary appeal must be taken to the Regional Trial Court before the appellant may go to

¹³ Rep. Act No. 8246, approved 30 December 1996.

¹⁴ BP Blg. 129, as amended by Rep. Act No. 7902, approved 23 February 1995.

¹⁵ Pres. Dec. No. 1606, as amended by Rep. Act No. 8249, approved 5 February 1997.

¹⁶ BP 129, as amended by Rep. Act No. 7691, approved 25 March 1994.

¹⁷ *Ibid.*

¹⁸ 1997 Rules of Civil Procedure, promulgated on 8 April 1997 and effective as from 1 July 1997.

¹⁹ *Ibid.*, Rule 41, Sec. 2(a) and (b).

²⁰ *Ibid.*, Sec. 20(c).

the Court of Appeals.²¹ Appeal from the Court of Appeals to the Supreme Court is strictly by petition for review.²²

Where appeal is not a plain, speedy and adequate remedy, or when there is no appeal, a party may invoke the *certiorari* jurisdiction of the Regional Trial Court, Court of Appeals or Supreme Court. *Certiorari* is to determine whether or not a tribunal, a quasi-judicial agency or an officer has acted without or in excess of jurisdiction or with grave abuse of discretion.²³

The time consumed by litigation varies from one month to ten years, according to the circumstances. The Philippine Constitution provides some insight into the reasons why, in many cases, litigation is protracted.²⁴

“Sec. 15(1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.”

In other cases, however, the proceedings are significantly abbreviated by the successful employment of various modes for amicable settlement. Among these modes is the conciliation proceeding before the *Lupong Tagapamayapa* (‘Lupon’) of the *Sangguniang Barangay*.²⁵ The Lupon has the authority to bring together for amicable settlement parties actually residing in the same city or municipality. Submission to conciliation proceedings is a pre-requisite for the filing of any complaint in court.²⁶

The pre-trial²⁷ presents another opportunity for amicable settlement. The possibilities to settle the dispute or submitting it to alternative modes of dispute resolution are carefully weighed during this stage.²⁸ The pre-trial also serves the purpose of simplifying the proceedings during trial. At this stage, the parties are allowed to agree on which matters are really in controversy. Stipulations and admissions may also be requested and given during pre-trial. And, together with the various modes of discovery (e.g. deposition, request for admission, production and inspection of documents and things),²⁹ the pre-trial may be utilized to show that judgment on the pleadings or summary judgment or dismissal of the action, is warranted.

Arbitration is also recognized³⁰ as a mode of settling disputes. Two or more persons may submit to arbitration any controversy existing between them. The

²¹ Ibid., Rule 40.

²² Ibid., Rule 45.

²³ Ibid., Rule 65, Sec. (1).

²⁴ Phil. Const., Art. VII, Sec. 15(1).

²⁵ Rep. Act No. 7160, Chap. 7, Sec. 410.

²⁶ Ibid. Sec. 412(a).

²⁷ 1997 Rules of Civil Procedure, Rule 18.

²⁸ Ibid., Sec. 2(a).

²⁹ Ibid., Rules 23 to 29.

³⁰ Rep. Act No. 876.

parties to a contract may agree to submit to arbitration any controversy that may arise from or in relation to the contract.

No special court is designated to resolve trans-boundary civil disputes. Such cases fall within the general jurisdiction of trial courts. In the exercise of jurisdiction over cases involving a foreign element, the trial court should apply the *lex fori*. A ruling recently enunciated by the Supreme Court clearly puts this as follows:

“It is settled that matters of remedy and procedure such as those relating to the service of process upon a defendant are governed by the *lex fori* or the internal law of the forum. In this case, it is the procedural law of Japan where the judgment was rendered that determines the validity of the extraterritorial service of process or SHARP.”³¹

This ruling reiterates an earlier Supreme Court decision.³²

“As a general rule, a foreign procedural law will not be applied in the forum. Procedural matters, such as service of process, joinder of actions, period and requisites for appeal and so forth, are governed by the laws of the forum. This is true even if the action is based upon a foreign substantive law.”

1.2. Sources

The sources of Philippine laws governing international civil procedure are both written and unwritten. Foremost among the written sources is the Constitution.³³ The Constitution defines who are Filipino citizens and prescribes their rights and obligations. It is also noteworthy that this fundamental document “adopts the generally accepted principles of international law as part of the law of the land”.³⁴ Another source of rules that govern international civil procedure is the Spanish Civil Code of 1888. This Code took effect in the Philippines in 1889 and remained in force even after the country was ceded by Spain to the United States. The Americans did not alter this Code and it was only on 30 August 1950 that it was superseded by a new Civil Code of the Philippines. The relevant provisions on conflict of laws in the Spanish Civil Code, however, were retained.

There are other special statutes which may also be referred to as sources of the law on international civil procedure. Among these are the Corporation Code,³⁵ the General Banking Act,³⁶ the Retail Trade Law,³⁷ the Anti-Dummy

³¹ Northwest Orient Airlines v. CA, 241 SCRA 192 (1995).

³² Cadalin v. POEA's Administrator, 238 SCRA 721 (1994).

³³ Adopted on 15 October 1986 and ratified on 2 February 1987.

³⁴ Phil. Const. Art. II, Sec. 2.

³⁵ Batas Pambansa Blg. 68 which took effect on 1 May 1980.

³⁶ Rep. Act No. 337, approved on 24 July 1948.

³⁷ Rep. Act. No. 1180, approved on 15 June 1955.

Law,³⁸ the Insurance Code,³⁹ the Intellectual Property Code,⁴⁰ Negotiable Instruments Law,⁴¹ the Patent Law,⁴² the Trademark Law,⁴³ the Salvage Act,⁴⁴ the Carriage of Goods by Sea Act,⁴⁵ the Civil Aeronautics Act,⁴⁶ the Philippine Overseas Shipping Act,⁴⁷ the Investment Incentives Act,⁴⁸ the Export Incentives Act,⁴⁹ the Bank Liberalization Act,⁵⁰ the Philippine Passport Act⁵¹ and the Omnibus Investments Code.⁵² These special laws contain rules which determine how cases involving a foreign element should be resolved.

Treaties and international conventions are also sources of law governing private international law. Among them are the Convention on International Civil Aviation,⁵³ the Convention for the Unification of Certain Rules Relating to the Warsaw Convention,⁵⁴ the Convention on Offenses Committed on Board Aircraft,⁵⁵ the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation,⁵⁶ the Convention on Carriage of Goods By Sea,⁵⁷ the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages,⁵⁸ the Convention on Traffic in Persons,⁵⁹ the Convention on the Elimination of All Forms of Discrimination Against Women,⁶⁰ the Convention on the Political Rights of Women,⁶¹ the International Convention for the Suppression of Traffic in Women and Children,⁶² the Convention Establishing the World Intellectual Property Organization,⁶³ the Convention on the International Recognition of Rights in Aircraft,⁶⁴ the Vienna

³⁸ Com. Act No. 108, approved on 30 October 1936.

³⁹ Pres. Decree No. 612, approved on 18 December 1974.

⁴⁰ Rep. Act No. 8293, approved on 6 June 1997.

⁴¹ Act 2031, enacted on 3 February 1911.

⁴² Rep. Act No. 165, approved on 20 June 1947.

⁴³ Rep. Act No. 166, approved on 5 June 1951.

⁴⁴ Act No. 2616, enacted on 7 February 1916.

⁴⁵ Com. Act 65, approved on 22 October 1936.

⁴⁶ Rep. Act No. 776, approved on 20 June 1952.

⁴⁷ Rep. Act No. 1407, as amended, approved on 9 September 1955.

⁴⁸ Rep. Act No. 5186.

⁴⁹ Rep. Act No. 6135.

⁵⁰ Rep. Act 7722, enacted on 18 May 1994.

⁵¹ Rep. Act No. 8239.

⁵² Executive Order No. 226, issued April 1987.

⁵³ 15 UNTS 295.

⁵⁴ 137 UNTS 11.

⁵⁵ 704 UNTS 219.

⁵⁶ IX-1 DFATS 101.

⁵⁷ Signed by the Philippines on 14 June 1978.

⁵⁸ 521 UNTS 231.

⁵⁹ 96 UNTS 271.

⁶⁰ Signed by the Philippines on 15 July 1980.

⁶¹ 193 UNTS 135.

⁶² 53 UNTS 39.

⁶³ Entered into force for the Philippines on 14 July 1980.

⁶⁴ 310 UNTS 151.

Convention on Diplomatic Relations,⁶⁵ the Vienna Convention on Consular Relations,⁶⁶ the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons,⁶⁷ the Berne Convention for the Protection of Literary and Artistic Works,⁶⁸ the Paris Convention for the Protection of Industrial Property⁶⁹ and several Hague Conventions which deal with the validity of marriage contracts, the effect of marriage on property and status, divorce, judicial separation, minors and persons under civil interdiction and succession.⁷⁰

While there is an increasing tendency towards the codification of rules governing the conflict of laws, there is always a need for judicial decisions to fill the gaps in the existing statutes. Thus, in these times of globalization and increasing interface between nations and between individuals of different nationalities, judicial decisions play a most important role in the conflict of laws. More and more cases have now risen from which guidance may be sought in resolving disputes and controversy involving a foreign element.

2. JURISDICTION

2.1. The Concept of Jurisdiction

The concept of jurisdiction should not be confused with a state's right to exercise authority over persons and things within its territory. Rather, jurisdiction should be understood in the sense of the competence or authority of a court or tribunal to entertain, hear and decide certain controversies, ending in a binding judgment which is enforceable upon all parties.⁷¹ In this sense, we must consider four things: jurisdiction over the subject matter, jurisdiction over the person, jurisdiction over the *res*, and constraints on the exercise of jurisdiction.

⁶⁵ 500 UNTS 95.

⁶⁶ 596 UNTS 261.

⁶⁷ Signed by the Philippines on 7 June 1974.

⁶⁸ 331 UNTS 219; entered into force for the Philippines on 16 July 1980.

⁶⁹ The Philippine Instrument of Accession was deposited on 14 April 1980 and the Convention entered into force for the Philippines on 16 July 1980.

⁷⁰ Treatises, commentaries and statutes of learned societies also provide an interesting source of rules governing the conflict of laws. Among the foreign writers whose works carry persuasive weight in the Philippines are HUBER, MANRESA, SAVIGNY, WEISS, BEALE, CAVERS, CHEATHAM, CURRIE, KUHN, GOODRICH, GUSSBAUM, RABEL, STORY, WHARTON, CHESHIRE, WESTLAKE and REESE.

⁷¹ *People v. Mariano*, 71 SCRA 604 (1976).

Jurisdiction over the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong.⁷² It is conferred by law.⁷³ The power to define, prescribe and abolish the jurisdiction of the various courts, except the Supreme Court, is vested in Congress.⁷⁴ When a particular court, therefore, was by law granted jurisdiction to try a particular case, the parties may not waive, enlarge or diminish such jurisdiction by their agreement.⁷⁵ Where no jurisdiction was granted, the parties may likewise not agree to vest such jurisdiction upon any particular court.⁷⁶ Neither may jurisdiction be conferred by the mere acquiescence of the court. Jurisdiction over the subject matter exists as a matter of law and may not be denied except by another law duly enacted by Congress.

Jurisdiction over the subject matter is reckoned at the time of the commencement of the action and it is determined on the basis of the allegations made in the complaint.⁷⁷ Where, for instance, the complaint fails to allege jurisdictional facts, a court duly conferred with jurisdiction over the subject matter may not take cognizance thereof. Should the court persist, its action may be questioned either for the first time on appeal or by *certiorari* for having been done without jurisdiction. We note, however, that the Supreme Court, in a case noting the delay of twenty-eight years before a party raised the ground of lack of jurisdiction in a motion to dismiss, rejected the motion on the ground of equitable estoppel.⁷⁸

Jurisdiction over the person is the authority or competence to render judgment with binding effect upon the parties.⁷⁹ In the case of plaintiff, jurisdiction is acquired by the filing of the complaint, or the proper initiatory pleading.⁸⁰ In the case of defendant, it is acquired by his voluntary appearance and submission to the authority of the court, or by the service upon him of compulsory process served by the court.⁸¹ Jurisdiction over the defendant may be had by personal or substituted service of summons. Service of summons is governed by Rule 14 of the 1997 Rules of Civil Procedure:

“Sec. 6. Service in person on defendant.

Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.”

“Sec. 7. Substituted service.

⁷² Perkins v. Roxas, 72 Phil. 514 (1941).

⁷³ Lozon v. NLRC, 240 SCRA 1 (1995).

⁷⁴ Philippine Constitution, Art. VII, Sec. 2.

⁷⁵ Fortune Life and General Insurance Co. v. CA, 224 SCRA 829 (1993).

⁷⁶ Department of Health v. NLRC, 251 SCRA 700 (1995).

⁷⁷ Alleje v. CA., 240 SCRA 465 (1995); De Luna v. CA, 221 SCRA 703 (1992).

⁷⁸ Tijam v. Sibonghanoy, 23 SCRA 29 (1968).

⁷⁹ Banco Filipino-Español v. Palanca, 37 Phil. 921 (1918).

⁸⁰ Manila Railroad Co. v. Attorney General, 20 Phil. 523 (1911).

⁸¹ Munar v. CA, 238 SCRA 372 (1994); People v. Dulos, 37 SCRA 141 (1994).

If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof."

Objections to jurisdiction over the person of the defendant may be waived. Thus, a party who has not been properly served with summons may appear voluntarily and submit to the court's jurisdiction.⁸² If he does so, he cannot later question on appeal the court's jurisdiction over his person.⁸³

A defendant's objection to a court's jurisdiction over his person, however, is not deemed waived where he appears before the court and submits an answer wherein he specifically assails as improper the service of summons upon him and, at the same time, sets up special and affirmative defenses:⁸⁴

"Sec. 6. Pleading grounds as affirmative defense.

If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer."

The same is true where the defendant submits a motion to dismiss which pleads other grounds together with the objection to jurisdiction.⁸⁵

"Sec. 20. 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 not be deemed a voluntary appearance."

Jurisdiction over the *res* refers to a court's jurisdiction over the property or thing in litigation.⁸⁶ It is acquired by actual or constructive seizure, by attachment or garnishment or by provisions of law, as in land registration proceedings or those involving the civil status of a non-resident defendant. In the case of the former, the property must be placed in *custodia legis*, actual or constructive. If this is not possible, for example when the property is beyond the territorial limits of the state, jurisdiction cannot be acquired and a judgment will not affect nor bind the property in any way.

⁸² *Aban v. Enage*, 120 SCRA 778 (1983).

⁸³ Rules of Civil Procedure, Rule 14, Sec 20; see also *La Naval Drug Corp. v. CA*, 236 SCRA 78 (1994).

⁸⁴ Rules of Civil Procedure, Rule 16, Sec. 6.

⁸⁵ *Ibid.*, Rule 14, Sec. 20; see also *La Naval Drug Corp. v. CA* 236 SCRA 78 (1994).

⁸⁶ *Perkins v. Dizon*, 66 Phil. 186 (1939).

Despite the fact that a court is qualified to entertain a case involving a foreign element, it may still refuse to take cognizance thereof in view of the existence of constraints. In some instances, a court declines to try a case where the controversy may be more conveniently tried in another state. This is the doctrine of *forum non-conveniens*. It is founded on the principle that the end of justice would be better served by the elimination of any unfair advantage which either party deliberately sought by bringing the trial to a particular forum. This is especially true where the plaintiff chose a forum with the intention of harassing the defendant by compelling him to incur unnecessary expenses and hardship in defending himself. The doctrine is also applied if the choice was made by the plaintiff, intending to shop for a forum where he may obtain a more favourable judgment.

But while the doctrine of *forum non-conveniens* is upheld in the Philippines, there is among its courts an inclination to exercise jurisdiction when the requirements for the exercise thereof are clearly present. This is sanctioned by Article 9 of the Civil Code which reads as follows: "No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws". In a recent case,⁸⁷ involving a Japanese and a Philippine corporation, the Supreme Court did not apply the doctrine of *forum non-conveniens*, "there being still numerous material facts to be established in order to arrive at a conclusion" and deemed it best "to allow the trial court to proceed ... and consider whatever defense may be raised by private respondent after they have filed their answer and evidence to support their conflicting claims has been presented".

The 'political question doctrine' poses another constraint on the exercise of jurisdiction. A 'political question' is defined as "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government".⁸⁸ Where the question is clearly political, Philippine courts will refuse to take cognizance thereof. The court's duty is not to determine whether or not a particular action of the legislative or executive branch is wise and proper under the circumstances, but to adjudicate whether or not the mandate of the Constitution is strictly followed. We observe, however, that the doctrine of 'political question' in many cases has succumbed to the expanded jurisdiction of Philippine courts. As stated earlier, judicial power now includes the duty to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

⁸⁷ *Keihin Narasaki Corp. v. Crystal Navigation SA*, 193 SCRA 484 (1991).

⁸⁸ *Tañada v. Cuenco*, 103 Phil. 1051 (1965).

2.2. Exercise of jurisdiction

2.2.1. Requirements for the Exercise of Jurisdiction

In conflict of laws cases specific requirements have to be complied with before a court may validly exercise jurisdiction. We first consider the requirements *ratione personae* and distinguish between natural and juridical persons. We further delimit ourselves by considering cases *in personam*, *in rem* and *quasi in rem*.

An action *in personam* is directed against a particular person on the basis of his/her personal liability. Judgment therein is binding only upon them or their successors-in-interest.⁸⁹ In cases such as these, involving natural persons, Filipinos or aliens who are residents of the Philippines, it is indispensable that summons be served upon them in accordance with the above-quoted provision. In the case of non-resident aliens, jurisdiction over their person may not be exercised unless they are first duly served with summons. The same is true in the case of a non-resident citizen.

The rule for juridical persons is entirely different. Where the juridical person is a private domestic entity, service of summons may be made on the president, managing partner, general manager, corporate secretary, treasurer or in-house counsel.⁹⁰ If service is to be made upon a foreign juridical person which is doing business in the Philippines, service may be made upon it through its resident agent designated in accordance with laws for that purpose, or upon the government officer in charge of regulating such corporation, or on any of its officers or agents who may be found within the Philippines.⁹¹ Where the juridical person involved is a foreign corporation not doing business in the Philippines, jurisdiction over its person may not be acquired.

A case *in rem* is an action directed against the whole world and its object is to bar all who might be minded to make any objection against the rights sought to be enforced.⁹² Here, when the defendant is not a resident and may not be found in the Philippines, service of summons may, by leave of court, be effected out of the Philippines by personal service or by publication in a newspaper of general circulation in which case a copy of the summons and order shall be sent by registered mail to the last known address of the defendant.⁹³ For instance, petitions for the registration of land should be furnished to all adjoining owners and the actual occupant of the land. In addition, they should be published in accordance with the rules. Accordingly, the court may acquire jurisdiction over the *res* and its judgment may be held valid and binding not only against actual parties but also against the whole world. In cases such as

⁸⁹ *Sandejas v. Robles*, 81 Phil. 421 (1948).

⁹⁰ 1997 Rules of Civil Procedure, Rule 14, Sec. 11.

⁹¹ *Ibid.*, Sec. 12.

⁹² *Sandejas v. Robles*, 81 Phil. 421 (1948).

⁹³ Rules of Procedure, Rule 14, Sec. 19.

these, where a court cannot acquire jurisdiction over the defendant, it nevertheless acquires competence to hear the case where jurisdiction over the *res* has been acquired.

A case *quasi in rem*, on the other hand, is directed against a particular person but the judgment therein is binding and valid against all who may possess an interest in the property under litigation.⁹⁴ An example of an action *quasi in rem* is an action to judicially foreclose a mortgage.

Special jurisdictional rules *ratione materiae* are likewise prescribed for different categories of legal relationships. To illustrate:

– The principle of territoriality provides that Philippine penal laws and laws of public security and safety are obligatory upon all who live or sojourn in Philippine territory, subject to the principle of public international law and to treaty stipulations.⁹⁵

– The nationality theory sanctions the application of Philippine laws relating to family rights and duties or to the status, condition and legal capacity of persons upon all citizens of the Philippines even though living abroad. Implicitly, the theory provides that aliens are governed by their national law with respect to the above-enumerated matters.⁹⁶

– The *situs* of real property as well as personal property determines the applicable law.⁹⁷

– In intestate and testamentary successions, the national law of the decedent prescribes the order of succession, the amount of successional rights, the validity of testamentary provisions⁹⁸ and the capacity to succeed of an heir.⁹⁹

– The forms and solemnities of contracts, wills and other public instruments are subject to the *lex loci celebrationis*.¹⁰⁰

– Prohibitive laws concerning persons, their acts or property and those which have as object such things as order, public policy and good customs are not rendered ineffective by laws or judgments promulgated or by treaties or conventions agreed upon in a foreign country.¹⁰¹

– In marriages involving aliens, to be celebrated in the Philippines, the capacity of each party to contract marriage is determined by their national law and the parties are required to submit a certificate of legal capacity to contract marriage to be issued by their respective diplomatic or consular officials.¹⁰²

– Marriages solemnized outside the Philippines between Filipinos in accordance with the law of the country where they were solemnized are valid and as such are also valid in the Philippines, except those which are considered void

⁹⁴ Sandejas v. Robles, *supra*.

⁹⁵ Civil Code, Art. 14.

⁹⁶ *Ibid.*, Art. 15.

⁹⁷ *Ibid.*, Art. 16(1).

⁹⁸ *Ibid.*, Art. 16(2).

⁹⁹ *Ibid.*, Art. 1039.

¹⁰⁰ *Ibid.*, Art. 17(1).

¹⁰¹ *Ibid.*, Art. 17(3).

¹⁰² Family Code, Art. 26(1).

by reason of public policy, incestuous marriages and those that do not comply with the essential and formal requisites of marriage.¹⁰³ This rule is modified by another conflict rule which gives effect to a divorce validly obtained by an alien spouse abroad and which capacitates the Filipino spouse to remarry under Philippine laws.¹⁰⁴

– The property relations of spouses are governed by Philippine law regardless of the place of celebration of the marriage. The rule does not apply: where both spouses are aliens; with respect to the extrinsic validity of contracts affecting property not situated in the Philippines and executed in the country where the property is located; and with respect to the extrinsic validity of contracts entered into in the Philippines but affecting property situated in a foreign country whose laws require different formalities for their extrinsic validity.¹⁰⁵

– A Filipino who is in a foreign country may execute a will in accordance with the formalities established by the law of the country where he is. Such a will may be probated in the Philippines.¹⁰⁶

– A will executed by an alien who is abroad, produces effect in the Philippines if made in accordance with the law of the place of his residence, or the law of his country, or in conformity with Philippine laws.¹⁰⁷

– A will executed in the Philippines by a citizen of another country in accordance with his national law, which might be proved and allowed by the law of his country, shall have the same effect as if executed according to Philippine laws.¹⁰⁸

– Joint wills executed by Filipinos in a foreign country are not valid in the Philippines.¹⁰⁹

– The revocation of a will may be effected by a person who is not a domiciliary of the Philippines in accordance with the law of the place where the will was made or according to the law of the place in which the testator had his domicile at the time or in accordance with Philippine laws if the revocation takes place in this country.¹¹⁰

– The law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration.¹¹¹

¹⁰³ *Ibid.*, Art. 26(2).

¹⁰⁴ *Ibid.*, Art. 80.

¹⁰⁵ Civil Code, Art. 815.

¹⁰⁶ *Ibid.*, Art. 816.

¹⁰⁷ *Ibid.*, Art. 817.

¹⁰⁸ *Ibid.*, Art. 818.

¹⁰⁹ *Ibid.*, Art. 829.

¹¹⁰ *Ibid.*, Art. 1753.

¹¹¹ *Antam Consolidated, Inc. v. CA*, 143 SCRA 288 (1985), reiterated in *National Sugar Trading Corp. v. CA*, 246 SCRA 465 (1995).

2.2.2. *Exercise in case of non-fulfilment of requirements*

Notwithstanding the non-fulfilment of the general requirements for its exercise, jurisdiction may still be exercised in exceptional cases. The voluntary appearance of a non-resident citizen or alien to answer a complaint against him effectively confers jurisdiction upon the court. It should also be pointed out that while a foreign corporation “not doing business in the Philippines” cannot ordinarily be sued in this country, because Philippine courts cannot acquire jurisdiction over it, jurisdiction may nonetheless be acquired by its voluntary submission to Philippine courts. There is no bar against these foreign corporations’ voluntary appearance before Philippine courts and availing of judicial remedies for violations of its rights in isolated transactions.¹¹²

“The doctrine of lack of capacity to sue based on failure to first acquire a local license is based on considerations of sound public policy. It was never intended to favor domestic corporations who enter into solitary transactions with unwary foreign firms and then repudiate their obligations simply because the latter are not licensed to do business in this country.”

This right in favor of foreign corporations not doing business in the Philippines is also recognized in statutes subject to the principle of reciprocity. For example: foreign corporations “not doing business in the Philippines” may maintain actions in the Philippines for infringement of trademark and/or unfair competition.¹¹³

Parenthetically, a definition of the phrase “doing business in the Philippines” is in order. A description of the effects of “doing business in the Philippines without a license” is also now called for. The phrase “doing business in the Philippines” is expressly defined in Article 44 of the Omnibus Investments Code, as follows:

“Definition of Terms.

As used in this Book, the term ‘investment’ shall mean equity participation in any enterprise formed, organized or existing under the laws of the Philippines, and the phrase ‘doing business’ shall include soliciting orders, purchases, service contracts; opening offices, whether called ‘liaison’ offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines, and any other act or acts that imply a continuity of commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object, of the business corporation.”

¹¹² Trademark Law, Rep. Act No. 166, as amended, Sec. 21-A.

¹¹³ Philippine Columbian Enterprises Co. v. Lantin, 39 SCRA 376 (1971).

The determination of whether or not a foreign corporation is doing business in the Philippines is, therefore, essentially a question of fact.

The fatal consequence of doing business in the Philippines without a license is laid down in Section 133 of the Corporation Code:

“Doing business without a license.

No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.”

Therefore, while a foreign corporation doing business in the Philippines without a license cannot sue before Philippine courts, it may still be sued and a counterclaim filed against a foreign corporation is not an admission of its legal capacity to sue before Philippine courts.¹¹⁴

It is also noteworthy that a party to a contract who is not subject to a Philippine court's jurisdiction may voluntarily surrender to the jurisdiction of such court where the contract itself provides that disputes arising therefrom are subject to the Philippines' jurisdiction.

2.2.3. *Jurisdiction to enjoin or to arrest*

Where a Philippine court is properly vested with jurisdiction, it is empowered to issue a writ of injunction to enjoin the performance of an act or to compel its performance. This injunction may be an ancillary remedy or the main action itself. It will be issued only after strict compliance with the provisions of Rule 58 of the Rules of Court.

The power to order arrest is also possessed by Philippine courts¹¹⁵ and is governed strictly by the Bill of Rights¹¹⁶ and other pertinent laws.¹¹⁷ It should be observed, however, that the powers to enjoin and order arrest may be exercised only within the territories of the Philippines. An act may be enjoined only where it is sought to be performed within the Philippines and the person who seeks to commit the same has been subjected to the jurisdiction of the court. The same is true with respect to the power to order arrest. In certain cases, however, the power to order arrest is constructively extended with the execution of bilateral agreements for extradition.

¹¹⁴ Rules on Civil Procedure, Rule 113.

¹¹⁵ Phil. Const., Art. III.

¹¹⁶ Rep. Act. No. 7438, approved on 27 April 1992, 88 OG 3880 No. 25.

¹¹⁷ Rules on Civil Procedure, Rule 4, Sec. 2.

2.3. Forum selection

Forum selection is sanctioned by written and unwritten rules. The written rules which allow forum selection have already been stated earlier in this paper. In addition, the Rules of Civil Procedure give the plaintiff, in personal actions, the right to choose in which court his action will be tried:

“Sec. 2. Venue of personal actions.

All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.”

Likewise, the Supreme Court recently enunciated a rule concerning forum selection as follows:¹¹⁸

“The parties to a contract may select the law by which it is to be governed. (CHESHIRE, *Private International Law*, 7th ed., 187). In such a case, the foreign law is adopted as a ‘system’ to regulate the relations of the parties, including questions of their capacity to enter into the contract, the formalities to be observed by them, matters of performance, and so forth (16 Am Jur 2d, 150-61).

Instead of adopting the entire mass of the foreign law, the parties may just agree that specific provisions of a foreign statute shall be deemed incorporated into their contracts as a set of terms. By such reference to the provisions of a foreign law, the contract does not become a foreign contract to be governed by the foreign law. The said law does not operate as a statute but as a set of contractual terms deemed written in the contract (ANTON, *Private International Law*, 1967, 197; DICEY and MORRIS, *The Conflict of Laws*, 8th ed., 702-703).”

It is basic, however, that the forum must bear some relationship to the party or their transaction.

Further, the application of Philippine law should be insisted on in the following cases:

1. Where the law itself provides for the application of Philippine law. This is illustrated in Article 124, paragraph 1(1) of the Civil Code which provides:

“If the husband is a citizen of the Philippines and the wife is a foreigner, the provisions of this Code shall govern their property relations;”

2. Where the application of foreign law is specifically proscribed. The rule is stated in Article 17, paragraph 3 of the Civil Code which states:

“Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.”

¹¹⁸ Northwest Orient Airlines v. CA, *supra* n. 31.

3. Where the applicable foreign law was not properly pleaded and proved. As a norm, Philippine courts do not take judicial notice of foreign laws. This must be proven as a fact and shown to be applicable under the circumstances of the case. If not pleaded and proven, Philippine courts engage in the processual presumption that the foreign law is the same as the corresponding Philippine law and will proceed to apply the latter. The Supreme Court explains this as follows:

“Alternatively, in the light of the absence of proof regarding Japanese law, the presumption of identity or similarity or the so-called processual presumption may be invoked. Applying it, the Japanese law on the matter is presumed to be similar with the Philippine law on service of summons on a private foreign corporation doing business in the Philippines. Section 14, Rule 14 of the Rules of Court provides that if the defendant is a foreign corporation doing business in the Philippines, service may be made: (1) on its resident agent designated in accordance with law for that purpose, or, (2) if there is no such resident agent, on the government official designated by law to that effect, or (3) on any of its officers and agents within the Philippines.”

On the other hand, the application of foreign law is justified where Philippine law mandates the application of such law. Specific examples are Articles 16(1), 17(1), 124(2) of the Civil Code. These rules are obligatory when properly applicable and the parties do not enjoy any discretion to derogate from them. Where the application of any of these is clearly warranted, a court which does otherwise, acts without or in excess of jurisdiction.

2.4. *Lis Pendens*

Lis Pendens is also referred to in the Philippines as *auter action pendant* or *litis pendentia*. There is *litis pendentia* where the parties to the action are the same, there is substantial identity in the causes of action and the relief sought, and the result of the first action is determinative of the second in any event.¹¹⁹ When there is *litis pendentia*, the subsistence of one action may be pleaded to abate the other.¹²⁰

Litis pendentia is intimately related¹²¹ to the concept of forum selection or forum shopping, a proscribed practice¹²² in the Philippines of seeking recourse in two or more fora to increase the chances of obtaining a favourable decision.¹²³ Forum shopping is penalized as a contumacious act. The counsel is held liable for disciplinary action and his client for criminal prosecution. The rule was recently incorporated into the new Rules of Civil Procedure.¹²⁴ How-

¹¹⁹ Northcott & Co. v. Villa-Abrille, 41 Phil. 462 (1921).

¹²⁰ 1997 Rules of Civil Procedure Rule 16, Sec. 1(e).

¹²¹ First Philippine International Bank v. CA, 252 SCRA 2259 (1996).

¹²² Supreme Court Administrative Circular 04-94, 8 February 1994.

¹²³ International Container Terminal Services, Inc. v. CA, 249 SCRA 389 (1995).

¹²⁴ 1997 Rules of Civil Procedure, Rule 7, Sec. 5.

ever, *litis pendentia* as a ground to dismiss an action is limited in application to forum shopping in Philippine courts only. It does not comprehend a situation where the courts involved belong to different jurisdictions. Moreover, Philippine courts cannot take judicial notice of the pendency of a similar action in another state. Thus, this further limits the application of the rule against forum shopping in the above situation. Despite the absence of a rule, however, it is submitted that filing an identical action in two or more courts of different jurisdictions is provable in the proper case as forum shopping and may be struck down as unethical and in abuse of the processes of the courts. The doctrine of *forum non-conveniens* likewise exists as a deterrent against this pernicious practice.

2.5. Immunities

The granting of immunities in favor of a foreign state, international organizations and diplomatic officials is contained in several treaties, conventions and agreements. Among them is the 1961 Vienna Convention on Diplomatic Relations¹²⁵ which grants criminal as well as civil and administrative immunity to diplomatic representatives of a foreign country. Similarly, complete immunity is given to specialized agencies of the United Nations under the relevant Convention.¹²⁶ Other, regional international organizations created by multilateral and bilateral agreements such as the Southeast Asia Fisheries Development Center¹²⁷ are also given immunity from the jurisdiction of the host state in order to allow them to work effectively towards the attainment of the purposes for which they are created. These treaties and agreements were given express recognition by Congress, which enacted Republic Act No. 75, penalizing acts which impair the Philippines' proper observance of the immunity rights and privileges of accredited diplomatic representatives.

These immunities notwithstanding, there are instances where our courts may still acquire jurisdiction over a foreign state or an international organization or over diplomatic representatives. An envoy himself may waive his immunity by instituting an action against another person in a Philippine court. Or he may voluntarily appear in an action against him, in which case, in the absence of an express reservation, he may be deemed to have shed his immunity. A foreign state's immunity is also set aside where it has descended to the level of an individual and has entered into business contracts or transactions not related to the exercise of its sovereign functions.¹²⁸

¹²⁵ *Supra* 1.2.

¹²⁶ 327 UNTS 326.

¹²⁷ Entered into force for the Philippines on 16 January 1968.

¹²⁸ *National Development Corp. v. Tobias*, 117 Phil. 703 (1963); *National Development Corp. v. NDC Employees and Workers Union*, 66 SCRA 18 (1975).

3. SERVICE OF PROCESS

In a 1939 decision the Philippine Supreme Court, citing American authorities, held that:

"The process of a court has no extraterritorial effect, and no jurisdiction is acquired over the person of the defendant by serving him beyond the boundaries of the state. Nor has a judgment of a court of a foreign country against a resident of this country having no property in such foreign country based on process served here, any effect here against either the defendant personally or his property situated here."¹²⁹

The *Boudard* ruling was relied upon by the Court of Appeals in a recent case where it said:

"In its decision, the Court of Appeals sustained the trial court. It agreed with the latter in its reliance upon *Boudard v. Tait* (67 Phil., 1939, 170) wherein it was held that "the process of the court has no extraterritorial effect and no jurisdiction is acquired over the person of the defendant by serving him beyond the boundaries of the state". To support its position, the Court of Appeals further stated:

"In an action strictly *in personam*, such as the instant case, personal service of summons within the forum is required for the court to acquire jurisdiction over the defendant. To confer jurisdiction on the court, personal or substituted service of summons on the defendant not extraterritorial service is necessary.

...

It is a general rule that processes of the court cannot lawfully be served outside the territorial limits of the jurisdiction of the court from within which it issues and this is regardless of the residence or citizenship of the party thus served. There must be actual service within the proper territorial limits on defendant or someone authorized to accept service for him. Thus, a defendant, whether a resident or not in the forum where the action is filed, must be served with summons within that forum."¹³⁰

However, in reversing the Court of Appeals, the Supreme Court held in *Northwest* that our rules on service of process are inapplicable because "matters of remedy and procedure are governed by the *lex fori*."¹³¹ The *Northwest* case deserves closer scrutiny. Northwest, an American airline, entered into an International Passenger Sales Agency Agreement with Sharp (a Filipino corporation) whereby Northwest authorized Sharp to sell its airline tickets through the latter's Japanese branch. Sharp failed to remit the proceeds of the ticket sales, so Northwest sued Sharp in Tokyo, Japan for collection of the unremitted amounts. The Tokyo District Court issued writs of summons against

¹²⁹ *Boudard v. Tait*, 67 Phil. 170 (1939).

¹³⁰ *Northwest Orient. v. CA et al.*, *supra* n. 31.

¹³¹ *Ibid.*, p. 199.

Sharp in Japan but failed twice. Finally, the Tokyo court had the summons served at the head office of Sharp in Manila. It requested the Supreme Court of Japan to serve the summons through diplomatic channels. It delivered the summons to the Japanese Ministry of Foreign Affairs which passed it on to its Philippine counterpart. The Ministry (now Department) of Foreign Affairs of the Philippines delivered the court processes to the Executive Judge of the Court of First Instance of Manila (now Regional Trial Court) and the latter forthwith ordered the sheriff to serve the same on Sharp in Manila. Despite receiving the summons, Sharp failed to appear at the hearings in Tokyo. The Tokyo court proceeded to hear the case and rendered judgment, ordering Sharp to pay Northwest the unremitted amounts.

Northwest was unable to execute the decision in Japan, hence a suit for enforcement of the judgment was filed by Northwest before the Regional Trial Court of Manila. Unable to settle the case amicably, the case was tried on the merits. After the plaintiff rested its case, the defendant on 21 April 1989 filed a Motion for Judgment on a Demurrer to Evidence based on two grounds: (1) the foreign judgment sought to be enforced is null and void for want of jurisdiction, and (2) the said judgment is contrary to Philippine law and public policy and rendered without due process of law. The trial court and the Court of Appeals found for plaintiff Northwest following the *Boudard* ruling. On the question of jurisdiction, the Supreme Court laid down its main premise that procedural rules are governed by *lex fori*. Then it proceeded to rule that, since defendant Sharp failed to plead and prove the relevant Japanese rules, they are presumed to be the same as Philippine rules. Under Philippine rules, the procedure adopted by the Japanese court in serving court processes was sufficient to acquire jurisdiction over defendant. From this case, it would appear that the service of foreign court processes will be given effect in the Philippines as long as it is in accordance with the law of the forum.

4. TAKING OF EVIDENCE

4.1. Taking of evidence abroad for a litigation in the Philippines

The Philippine Rules of Civil Procedure governing the taking of evidence abroad for use in cases pending in the Philippines are fairly well-defined. A person, whether a party or not, may be asked to testify in connection with a pending action in the Philippines despite the fact that (s)he is outside the country. Such testimony may be taken by deposition upon oral examination before the person enumerated in Rule 23, Section 11 which reads:

“Sec. 11. Persons before whom depositions may be taken in foreign countries. In a foreign state or country, depositions may be taken (a) on notice before a secretary of embassy or legation, consul-general, consul, vice-consul, or consular agent of the Republic of the Philippines; (b) before such person or officer

as may be appointed by commission or under letters rogatory; or (c) the person referred to in section 14 hereof.”

In cases where deposition is not practicable or inconvenient, it may still be taken before the proper judicial authority in the foreign country where the proposed deponent may be found through the use of a commission or letters rogatory. The rule in respect to this, as contained in section 12, is as follows:¹³²

“Sec. 12. Commission or letters rogatory.

A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such direction as are just and appropriate. Officers may be designated in notices or commissions either, or name or descriptive title and letters rogatory may be addressed to the appropriate judicial authority in the foreign country.”

In brief, the request should state that certain named persons are subject to a foreign court's jurisdiction and are material witnesses in a case pending before the requesting court. The letter asks that said persons be brought before the foreign court or persons appointed by it to answer to interrogatories and cross-interrogatories annexed to the letter and that the answers be transmitted to the requesting court. The taking of evidence in the foreign court is subject to its rules.

The issuance of letters derogatory is generally founded on the principle of reciprocity. In the absence of treaties or customary law, the requesting court offers reciprocity to that foreign court as a gesture for the latter to grant the request.

4.2. Taking of evidence in the Philippines in connection with litigation abroad

The same principle of reciprocity allows the taking of evidence in the Philippines in connection with litigation abroad. There is, however, no Philippine rule on this matter and it is submitted that it is governed by the law of the forum, being procedural in character.

5. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

5.1. Philippine rule on recognition and enforcement of foreign judgments

The rule on the recognition and enforcement of foreign judgments in the Philippines is laid down in Rule 39, Section 48 of the Rules of Civil Procedure which provides:

¹³² Rules of Civil Procedure, Rule 23, Sec. 12.

“The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:

In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title of the thing.

In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.”

This rule is based on the theory of comity and reciprocity. A forum will accord recognition to a final judgment or order of another forum provided its own final judgments or order are similarly recognized in the other forum.¹³³ The rule also gets support from the vested rights theory¹³⁴ which provides that adjudication by a competent court as to the liability of one person to another creates a legal obligation which may be enforced in another country by an action for collection of a sum of money.

Finally, the principle of *res judicata* bars a second litigation between the same parties over matters that have already been tried and decided with finality in a first one. Public policy requires that litigation comes to a definite end, so that the parties who have litigated the issues therein are bound by the judgment rendered and the matters resolved are forever settled between them.¹³⁵

We distinguish between recognition and enforcement. Recognition is the passive act of giving legal effect to a foreign judgment, while enforcement requires a separate action or proceeding to actually realize a foreign judgment. The Philippines, as shown by the above-quoted provision and by jurisprudence, favors enforcement over recognition.¹³⁶ This means that a foreign judgment cannot be given effect by mere execution. Rather, a separate action for enforcement must be instituted. This procedure harmonizes the principles of territoriality of courts with *res judicata*.

5.2. Requisites for recognition and enforcement

The judgment must have been rendered by a court of competent jurisdiction. Otherwise, the judgment is null and void and it is as if there is nothing to be recognized or enforced. The *Northwest* case illustrates this point. If the service of summons upon Sharp were held improper, the Tokyo court had not

¹³³ CHESHIRE, *Private International Law* (1947) 628.

¹³⁴ *Esperanza v. Avila*, 20 SCRA 59 (1967).

¹³⁵ Paraphrasing COQUIA, ‘Enforcement and Recognition of Foreign Judgment’, 241 SCRA 40 (1995).

¹³⁶ *Perkins v. Benguet Consolidated Mining Co.*, 93 Phil. 1034 (1954).

thereby acquired jurisdiction over Sharp and the judgment in favor of Northwest would be unenforceable in the Philippines for being null and void.

The judgment must be valid under the laws of the court that rendered it. The requisite is simple: a judgment which is invalid under the laws of the court that rendered it cannot be given effect in a court of another country. This is so because the second court merely recognizes or enforces the judgment in the manner that it would operate if enforced where the first court is sitting.

The judgment must be final and executory. In an early case the Supreme Court ruled that a decree awarding custody of a child granted by a US court could not be implemented in the Philippines because it was merely interlocutory. It did not finally settle and adjudge the rights of the parties and thus it was unenforceable in the Philippines.¹³⁷

There must be reciprocity between the Philippines and the State where the foreign judgment was obtained. This is a reiteration of the principles of comity and reciprocity.

The judgment must be for the delivery of a specific thing or the declaration of status or right. This is evident from the above-quoted rule. Unless the judgment calls for the delivery of a particular thing or the performance of specific acts in the country, there is no reason for that judgment to be enforced in the Philippines.

The foreign judgment must not contravene the law, public policy, morals and good customs of the country where it is to be enforced. This is supported by Article 17 paragraph 6 of the Civil Code quoted earlier. The case of *Gonzales v. Gonzales*¹³⁸ is on all fours. Defendant here obtained a decree of divorce in Nevada which he asked the trial court of Manila to confirm. Plaintiff joined defendant in his efforts to convince the trial court to recognize and enforce the decree of divorce. In disposing of the case, the Supreme Court held that such a decree cannot be given effect in the Philippines as it violates Philippine law, public policy, morals and good customs.

Lastly, the judgment must not have been obtained by fraud, collusion, mistake of law or fact. During the proceedings on the action for enforcement, a party may show that the judgment was attended by any of the above defects. In the event he is successful the judgment will not be enforced by Philippine courts.

¹³⁷ *Querubin v. Querubin*, 87 Phil. 124 (1950).

¹³⁸ 58 Phil. 67 (1933).