[SPECIAL PROCEEDINGS]

BENCHBOOK FOR TRIAL COURT JUDGES

1. INTRODUCTION

1. Definition of terms:

1. Special proceeding: A special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact.[1]

2. Probate: Probate is a special proceeding to establish the validity of a will. No will passes property unless it is probated by a court. Probate is mandatory. It is *in rem*. Hence, the court is also called a probate court. But a probate court also includes a court that presides over probate proceedings which can generally refer to the settlement of the estate of a deceased person with or without a will.

3. Reprobate: Reprobate is a special proceeding to establish the validity of a will proved in a foreign country.

4. Legacy: A legacy is a bequest of personal property in a will to a person called the legatee.[2]

5. Devise: A devise is a bequest of real property in a will to a person called the devisee. [3]

6. Testate Estate: Testate estate refers to an estate of a deceased person which is settled or to be settled with the last will and testament of that deceased person called the testator.[4]

7. Intestate Estate: Intestate estate refers to the estate of a deceased person without a will. The estate is settled by the laws of intestacy provided in the Civil Code.

8. Executor: An executor is the person named in the will who is entrusted to implement its provisions. But the executor needs to be issued letters testamentary after the court determines his or her qualifications. A female executor is called executrix.[5]

9. Administrator: An administrator is the person entrusted with the care, custody and management of the estate of a deceased person until the estate is partitioned and distributed to the heirs, legatees and devisees, if any. A female administrator is called

administratrix.[6]

9.1 The court issues letters of administration to a person after s/he qualifies in the sound discretion of the court.

9.2 It is possible that a will can be probated without a testator or with a testator who is disqualified to enter upon the trust. Hence, the court can issue letters of administration with the will annexed.

10. Escheat: Escheat, a term of French or Norman derivation meaning chance or accident, is the reversion of property to the State when the title thereto fails from defect of an heir. It is the falling of a decedent's estate into the general property of the State.

11. Guardians: A guardianship is a trust relation in which one person acts for another whom the law regards as incapable of managing his own affairs. The person who acts is called the guardian and the incompetent is called the ward.

12. Trustee: A trustee is a person appointed by a court to carry out the provisions of a will, as provided in Rule 98. As generally understood, a trust is the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property. The beneficiary of the trust is known as the *cestui que trust* or the *cestui que trustent* (the plural form).

13. Fideicommissary substitution: Fideicommissary substitution takes place where the testator designates a person as an heir charging him to deliver to another the whole or part of the inheritance under circumstances provided in Art. 863 of the Civil Code, formerly Art. 781 of the Spanish Civil Code. In the civil-law jurisdiction, this is the nearest equivalent of the concept of trust in the common-law jurisdiction.

14. *Habeas corpus*: The Latin term habeas corpus which literally means 'you have the body,' is a high prerogative writ, of ancient common-law origin, the great object of which is the liberalization of those who may be imprisoned without sufficient cause. Basically, it is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place, with the day and cause of his capture and detention, to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf.[7]

15. Adoption: Adoption is a juridical act which creates between two persons a relationship similar to that which results from legitimate paternity and filiation.[8]

16. Change of Name: Change of name is a judicial proceeding *in rem*, requiring publication, and may be ordered by the court if proper and reasonable cause exists to justify it.

17. Family Home: The Family Home is the dwelling house where a husband and wife, or an unmarried head of a family resides, and the land on which it is situated, which is now deemed constituted from the time it is occupied as a family residence, and is

exempt from execution, forced sale or attachment except as provided by law and to the extent of the value allowed by law.[9]

Note: Rule 106, which provides for the judicial constitution of a Family Home, is already extinct going by the Family Code which does not require a judicial constitution of the Family Home.

18. Absentees: An absentee is a person whose whereabouts and existence are not known in the sense of the law allowing a subsequent marriage and for purposes of administration of the estate of the absentee and of succession.

19. Civil Registry: The civil registry is the public record where acts, events and judicial decrees concerning the civil status of persons are entered.[10]

20. Multiple Appeals: Multiple appeals are appeals in special proceedings, as first provided in the Interim Rules of Court, where a number of appeals may be taken separately or simultaneously by different parties for different purposes. A record on appeal is necessary in order not to prejudice the proceedings that will have to continue and that may have to stop or be suspended if the entire record of the proceedings is elevated.

B. Rules That Govern Special Proceedings

1. The 1997 Rules of Civil Procedure shall govern the procedure to be observed in actions, civil or criminal, and special proceedings.[11]

2. In the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings.[12]

2.1 Rules regarding the preparation, filing and service of applications, motions and other papers, are the same in civil actions and in special proceedings. Provisions regarding the omnibus motion rule, subpoena, computation of time, motion for new trial, discovery, and trial before commissioners also apply in special proceedings. The procedure of appeal is generally the same in civil actions as in special proceedings.[13]

2.2 The rule on demurrer to evidence in civil cases, by virtue of which the defendant does not lose the right to offer evidence in the event that his motion is denied, is applicable in special proceedings.[14]

C. The Special Proceedings Provided In The Rules Of Court

1. Settlement of estate of deceased persons (Rules 73 to 90);
2. Escheat (Rule 91);
3. Guardianship and custody of children (Rules 92-97);
4. Trustees (Rule 98);
5. Adoption (Rule 99);

6. Rescission and revocation of adoption (Rule 100);
7. Hospitalization of insane persons (Rule 101);
8. Habeas corpus (Rule 102);
9. Change of name (Rule 103);

10. Voluntary dissolution of corporations (Rule 104) which under Presidential Decree No. 902-A, should be filed with the Securities and Exchange Commission and governed by specific rules;

11. Judicial approval of voluntary recognition of minor natural children (Rule 105);

12. Constitution of the Family Home (Rule 106), rendered inexistent by the Family Code which provides for an automatic constitution of the family home;

13. Declaration of absence and death (Rule 107); and

14. Cancellation or correction of entries in the civil registry (Rule 108).

D. Special Proceedings Under Various Laws

1. Summary Proceedings under the Family Code

2. Actions mentioned in the Family Courts Act of 1997 (Rep. Act No. 8369)

    2.1 Petitions on foster care and temporary custody

    2.2 Declaration of nullity of marriage under Article 36, Family Code

    2.3 Cases of domestic violence against women and children (special provisional remedies and temporary custody of children and support pendente lite)

3. Proceedings under the Child and Youth Welfare Code (Pres. Decree No. 1083), the Child Abuse Act (Rep. Act No. 7610) and the Child Employment Act (Rep. Act No. 7658)

    3.1 Declaration of status as abandoned, dependent or neglected children

    3.2 Voluntary or involuntary commitment of children

    3.3 Suspension, termination, or restoration of parental authority

4. Inter-country adoption under Republic Act No. 8043

5. Jurisdiction of Family Courts

The newly constituted Family Courts shall have exclusive original jurisdiction over the following cases:

1. Criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age, or where one or more of the victims is a minor at the time of the commission of the offense; Provided, that if the minor is found guilty, the court shall promulgate the sentence and ascertain any civil liability which the accused may have incurred. The sentence, however, shall be suspended without need of application pursuant to Presidential Decree No. 603, otherwise known as the 'Child and Youth Welfare Code;'

2. Petitions for guardianship, custody of children, habeas corpus in relation to the latter;

3. Petitions for adoption of children and the revocation thereof;

4. Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements and petitions for dissolution of conjugal partnership of gains;

5. Petitions for support and/or acknowledgment;

6. Summary judicial proceedings brought under the provisions of Executive Order No. 209, otherwise known as the 'Family Code of the Philippines;'

7. Petitions for declaration of status of children as abandoned, dependent or neglected children, petitions for voluntary or involuntary commitment of children; the suspension, termination, or restoration of parental authority and other cases cognizable under Presidential Decree No. 603, Executive Order No. 56, (Series of 1986), and other related laws;

8. Petitions for the constitution of the family home (Note: This is no longer necessary);

9. Cases against minors cognizable under the Dangerous Drugs Act, as amended;

10. Violations of Republic Act No. 7610, otherwise known as the 'Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,' as amended by Republic Act No. 7658; and

11. Cases of domestic violence against:

11.1 Women --- which are acts of gender-based violence that result, or are likely to result in physical, sexual or psychological harm or suffering to women; and other forms of physical abuse such as battering or threats and coercion which violate a woman's personhood, integrity and freedom of movement; and

11.2 Children --- which include the commission of all forms of abuse, neglect, cruelty, exploitation, violence, and discrimination and all other conditions prejudicial to their development.

If an act constitutes a criminal offense, the accused or batterer shall be subject to

criminal proceedings and the corresponding penalties.

If any question involving any of the above matters should arise as an incident to any case pending in the regular courts, said incident shall be determined in that court.

II. SETTLEMENT OF ESTATE OF DECEASED PERSONS

1. In General

1. Jurisdiction and Venue

1.1 The settlement of the estate of deceased persons shall be in the court of the place of residence of the deceased at the time of his death, whether he is a citizen or an alien.

1.2 If the deceased is an inhabitant of a foreign country, then the settlement shall be in the court of any place in which he had estate.

Note: Sec. 1, Rule 73, Rules of Court which substantially contains the foregoing rules still remain unamended after the passage of Batas Blg. 129. Said Sec. 1 still speaks of 'Court of First Instance,' instead of 'Regional Trial Court' and 'province' which in other parts of the Rules had been changed to 'place.' But under Batas Blg. 129, the jurisdiction over settlement proceedings is not limited to Regional Trial Courts but include Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, where the value of the estate does not exceed Php 200,000 outside or in Metro Manila, Php 200,000.[15] Outside Metro Manila, the amount was at first fixed at Php 100,000 but this was increased to Php 200,000. After another five years, the jurisdictional amount will be Php 300,000 outside Metro Manila where the amount will become Php 400,000.[16]

1.3 The jurisdiction of a probate court is determined by the place of residence of the deceased person or of the location of his estate, but the matter really constitutes venue.[17]

1.4 Important rule

The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.[18] This is to preclude different courts from assuming jurisdiction.[19]

1.5 The term 'resides' refers to 'actual residence' as distinguished from 'legal residence' or domicile.'[20]

1.6 The liquidation of the conjugal or community property of a deceased husband or wife shall be made in his or her estate proceedings, but if both spouses are deceased,

then in the estate proceeding of either.[21]

1.7 Shari'a Courts have exclusive original jurisdiction in matters of settlement of the estate of deceased Muslims.[22]

2. Kinds of settlement

On the basis of the form of settlement, there are three kinds:

2.1 Extrajudicial settlement;
2.2 Summary settlement of estates of small value; and
2.3 Judicial settlement through letters testamentary or letters of administration with or without the will annexed.

3. Extrajudicial settlement

An extrajudicial settlement may be made by the heirs of a deceased person without having to secure letters of administration.[23]

3.1 The following requisites must be present or followed:

3.1.1 The decedent left no will and no debts.

Note: It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.[24]

3.1.2 A bond equivalent to the value of the personal property of the estate is posted with the Register of Deeds.

Note: The value must be certified to under oath by the parties concerned and the bond must be conditioned upon the payment of any just claim that may be filed. [25]

3.1.3 The fact of settlement is published in a newspaper of general circulation once a week for three (3) consecutive weeks.

Note: No extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.[26]

3.2 The extrajudicial settlement may follow any one of three (3) ways:

3.2.1 Public instrument.- A public instrument is executed by all the heirs to be filed with the Registry of Deeds.

3.2.2 Action for Partition.- If the heirs cannot agree on the division of the estate,

an ordinary action for partition may be filed.

3.2.3 Affidavit of self-adjudication.- If there is only one heir, then the heir may execute an affidavit adjudicating to himself or herself the entire estate, which affidavit shall be filed with the register of deeds.[27]

3.3 Minor heirs

If there are minor heirs, they may be represented by their "judicial or legal representatives duly authorized for the purpose."[28]

4. Summary settlement of estates of small value

4.1 When the gross value of the estate of a deceased person does not exceed Php 10,000.00,[29] upon a proper petition, the court having jurisdiction,[30] may proceed summarily to settle the estate, without the appointment of an executor or administrator, and without delay.

4.2 The petition may be filed by an interested person which should make such value appear to the court.

4.3 The hearing on the petition shall be held not less than one (1) month nor more than three (3) months from the date of the last publication of the notice.

4.4 The notice shall be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province. Notice shall also be given to all interested persons as the court may direct.

4.5 After hearing, the court may grant, if proper, allowance of the will, if any there be, determine the persons legally entitled to participate in the estate, and apportion and divide it among them after payment of the debts of the estate.

4.6 Those who are entitled to the estate, if they are of age and with legal capacity, or by their guardians and trustees legally appointed and qualified, shall be entitled to receive their share of the estate.

4.7 The court may issue an order respecting the costs of the proceedings.

4.8 All orders and judgments shall be recorded in the office of the clerk, and the order of partition or award, if it involves real estate, shall be recorded in the proper register's office.

No longer the Court of First Instance as provided in Sec. 2, Rule 74 but a Metropolitan or Municipal Court because the value of the property does not exceed Php 200,000 for both Metro Manila and outside Metro Manila (B.P. Blg. 129, Sec. 33[1]; R.A. No. 7691, Sec. 5.).

5. Judicial settlement with letters testamentary or with letters of administration

Settlement shall otherwise be in court in special proceedings through a full-blown procedure with either a testator or an executor managing the estate of the deceased until partition and distribution after the payment of debts, legacies and devises.

B. Probate of Wills

1. Will, explained

A will is an act whereby a person is permitted with all the formalities prescribed by law to control to a certain degree the disposition of his estate, to take effect after his death. [31] It is otherwise called a 'last will and testament.'

1.1 It may be a notarial will with certain important requisites.

1.1.1 Every will must be in writing and executed in a language or dialect known to the testator.[32]

1.1.2 Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three (3) or more credible witnesses in the presence of the testator and of one another.[33]

1.1.3 The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.[34]

1.1.4 Every will must be acknowledged before a notary public by the testator and the witnesses.[35]

1.1.5 If the will is not contested, only one (1) subscribing witness needs to testify; [36] if the will is contested, all subscribing witnesses and the notary must testify. [37]

1.2 It may be a holographic will if it is in the handwriting of the testator, but it must be entirely written, dated and signed by him.

1.2.1 It is subject to no other form, may be made in or out of the Philippines, and needs no witnesses.[38]

1.2.2 At least one witness should testify that the will and the signature thereon are in the handwriting of the testator.[39] If the holographic will is contested, at least three (3) witnesses who know the handwriting of the testator must testify but in the absence of any competent witness, if the court deems it necessary, expert testimony may be resorted to.[40]

2. Time to submit to the court

2.1 Reglementary periods

2.1.1 Within twenty (20) days from knowledge of the death of the testator, the custodian of a will shall deliver it to the court having jurisdiction or to the executor named in the will.[41]

2.1.2 On the other hand, the executor has twenty (20) days from knowledge of the death of the testator or knowledge of the fact that he is named executor to submit the will to the court unless the will has reached the court already. Within the same period, he shall signify to the court in writing whether he accepts or refuses the trust.[42]

2.2 Penalties

2.2.1 A person who neglects to comply with the foregoing two provisions, without excuse satisfactory to the court, shall be fined not exceeding Php 2,000.00.

2.2.2 The custodian who refuses to comply with the order of the court to deliver the will, when he is ordered to do so, may be committed to prison until he delivers the will.

3. Procedure In The Probate of A Will

3.1 The contents of a petition for the allowance of a will are:

3.1.1 The jurisdictional facts;

3.1.2 The names, ages, and residences of the heirs, legatees, and devisees of the testator or decedent;

3.1.3 The probable value and character of the property of the estate;

3.1.4 The name of the person for whom letters are prayed;

3.1.5 If the will has not been delivered to the court, the name of the person having custody of it.

Note: But no defect in the petition shall render void the allowance of the will, or the

issuance of letters testamentary or of administration with the will annexed.[43]

3.2 Time for proving the will

The court shall fix a time and place for proving the will when all concerned may appear to contest the allowance thereof.[44]

Note: However, the court need not go through the probate of a will that preterited a compulsory heir since preterition invalidates the will.[45]

3.3 Publication of notice

The court shall cause notice of such time and place to be published three (3) weeks successively, previous to the time appointed, in a newspaper of general circulation in the province.[46]

Note: Where the petition for probate has been filed by the testator himself, no newspaper publication shall be made.[47]

3.4 Persons entitled to notice[48]

3.4.1 Heirs, devisees, legatees, and executors should be notified by mail or personally.

3.4.2 The mail should be deposited in the post office with the postage thereon prepaid at least twenty (20) days before the hearing, if the places of residence be known.

3.4.3 Personal service of copies of the notice at least ten (10) days before the day of hearing shall be equivalent to mailing.

3.4.4 If the testator asks for the allowance of his own will, notice shall be sent only to his compulsory heirs.

3.5 Proof at hearing[49]

At the hearing, compliance with the provisions on notice and its publication must be shown before the introduction of testimony in support of the will. All testimony shall be taken under oath and reduced to writing.

3.6 Lost or destroyed will[50]

No will shall be proved as a lost or destroyed will unless:

3.6.1 the execution and validity of the same be established; and

3.6.2 the will is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently or accidentally destroyed during the lifetime of the testator without his knowledge; nor

3.6.3 unless its provisions are clearly and distinctly proved by at least two (2) credible witnesses.

3.7 Deposition[51]

If none of the subscribing witnesses resides in the province, the court may, on motion, direct a deposition to be taken, and may authorize a photographic copy of the will to be made and to be presented to the witness on his examination.

3.8 Unavailable witnesses[52]

If the subscribing witnesses are dead or insane, or none of them resides in the Philippines, the court may admit the testimony of other witnesses to prove the sanity of the testator; the due execution of the will; and proof of the handwriting of the testator and of the subscribing witnesses, or of any of them.

3.9 Contesting a will[53]

Anyone appearing to contest the will must state in writing his grounds for opposing its allowance, and serve a copy thereof on the petitioner and other parties interested in the estate.

3.10 Grounds for disallowing a will[54]

The will shall be disallowed in any of the following cases:

3.10.1 If not executed and attested as required by law;

3.10.2 If the testator was insane, or otherwise mentally incapable to make a will, at the time of its execution;

3.10.3 If it was executed under duress, or the influence of fear, or threats;

3.10.4 If it was procured by undue and improper pressure and influence, on the part of the beneficiary, or of some other person for his benefit;

3.10.5 If the signature of the testator was procured by fraud or trick, and he did not intend that the instrument should be his will at the time of fixing his signature thereto.

C. Executors and Administrators

1. Requirements For The Issuance Of Letters Testamentary And Of Letters Of Administration[55]

Probate proceedings may be opened by a petition for the allowance of a will and the issuance of letters testamentary, as previously discussed or letters of administration.

1.1 The petition may be opposed and a petition may at the same time be filed for letters of administration with the will annexed.[56]

1.2 The contents of a petition for letters of administration are:

1.2.1 The jurisdictional facts;
1.2.2 The names, ages, and residences of the heirs, and the names and residences of the creditors, of the decedent;
1.2.3 The probable value and character of the property of the estate; and
1.2.4 The name of the person for whom letters of administration are prayed;

Note: But no defect in the petition shall render void the issuance of letters of administration.[57]

1.3 No person is competent to serve as executor or administrator who is (a) a minor; (b) not a resident of the Philippines; and (c) in the opinion of the court, unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude.[58]

2. Appointment of Executors (who may become executors)[59]

2.1 After a will is proved and allowed, the court shall issue letters testamentary thereon to the person named as executor therein, if he is competent, accepts the trust, and gives bond as required by the rules. It is clear that an executor is one who is named in a will.

2.2 There may be several executors named in the will. Letters testamentary may issue to such of them as are competent, accept and give bond. If no executor named qualifies, then an administrator is appointed.[60]

3. Appointment Of Administrators; Priorities[61]

Administration may be granted:

3.1 To the surviving spouse, or next of kin, or both, or to such person as such surviving spouse or next of kin, requests to be appointed, if competent and willing to serve.

3.2 To one or more of the principal creditors, if competent and willing to serve, in default of the foregoing or if the surviving spouse or next of kin neglects for thirty (30)

days after the death of the deceased to file a petition for administration or the request that administration be granted to some other person.

3.3 To such other person as the court may select, in default of the foregoing.

Note: The court may disregard the preference above enumerated in its sound discretion and its decision will not be interfered with on appeal unless it appears that it is in error. [62]

4. Appointment Of Special Administrators

A special administrator may be appointed '(w)hen there is delay in granting letters testamentary or of administration by any cause including an appeal from the allowance or disallowance of a will."[63] The special administrator shall take possession and charge of the estate of the deceased until questions causing the delay are decided and executors or administrators appointed.

4.1 While the qualifications of a special administrator are not spelled out in the rules, the appointment should be within the sound discretion of the court and such discretion should not be a whimsical one. There is no reason why the same fundamental and legal principles governing the choice of a regular administrator should not be taken into account in the appointment of a special administrator.[64] However, the court is not bound to follow the order of preference set up for the appointment of a general administrator.[65]

4.2 Only one special administrator at a time may be appointed, since the appointment is merely temporary.[66]

4.3 Powers and duties

The special administrator shall take possession and preserve the goods, chattels, rights, credits, and estate of the deceased and for that purpose may commence and maintain suits as administrator. He may sell only such perishable and other property as the court orders sold. He is not liable to pay any debts of the deceased unless so ordered by the court.[67]

4.4 The court has no power to order a special administrator to sell real property of the estate pending resolution of the issue of the appointment of the regular administrator. [68]

4.5 A special administrator does not have the power to close the estate because he normally does not pay the debts of the deceased. However, he can be sued. There is no express prohibition; otherwise, prescription may set in if the appointment of the regular administrator is delayed.[69]

4.6 Termination

The special administrator may be removed on grounds other than those mentioned in Rule 82.[70] When an executor or administrator is appointed, the powers of the special administrator cease. He shall immediately deliver the estate to the executor or administrator who may prosecute to final judgment suits commenced by the special administrator.[71]

5. Bond of Administrator or Executor [72]

5.1 Before an executor or administrator enters upon the execution of his trust, he shall give a bond, in such sum as the court directs, conditioned as follows:

5.1.1 To make and return within three (3) months, a true and complete inventory;

5.1.2 To administer the estate and pay and discharge all debts, legacies, and charges on the same, or dividends thereon;

5.1.3 To render a true and just account within one (1) year, and at any other time when required by the court; and

5.1.4 To perform all orders of the court.

5.2 Further bond

The executor may serve without bond if the testator so directs, or with only his individual bond, conditioned only to pay the debts of the testator; but the court may require a further bond in case of a change in his circumstances, or for other sufficient cause.[73]

6. General Powers and Duties of Executors and Administrators

An executor and administrator has the following powers and duties:

6.1 To maintain the estate in 'tenantable repair' and deliver the same in such repair to the heirs or devisees when directed by the court;[74]

6.2 To possess and manage the estate of the deceased for the payment of the debts and expenses of administration;[75]

6.3 To have access to partnership books and property where the deceased was a partner, under pain of contempt by the probate court;[76]

6.4 With the approval of the court, to compound or compromise with a debtor of the deceased.[77]

7. Inventory And Appraisal

Within three (3) months after his appointment, an executor or administrator shall file a true inventory and appraisal of all the real and personal estate of the deceased, with the assistance of one or more inheritance tax appraisers, as may be ordered by the court.

7.1 Exclusions from the inventory

The articles that should not be inventoried are: (a) the wearing apparel of the surviving spouse and minor children, (b) the marriage bed and bedding, and (c) such provisions and other articles as will necessarily be consumed in the subsistence of the family of the deceased. They shall not be considered as assets, nor administered as such.[78]

7.2 Allowance to widow and family

The widow and minor or incapacitated children of the deceased, during the settlement of the estate, shall receive such allowance as are provided by law.[79]

7.3 Questions of title

A probate court can resolve questions of title only provisionally. All that the court can do is to determine whether the properties should or should not be included in the inventory or list of properties to be administered by the administrator. If there is no dispute, well and good, but if there is, then the parties, the administrator and the opposing parties have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so.[80]

8. Sales And Mortgages

The need for approval by the probate court exists only where specific properties of the estate are sold and not when only ideal and indivisible shares of an heir are disposed of.[81] The sale or mortgage of specific estate property may be approved by the court under the following circumstances:

8.1 For the payment of debts

The sale or encumbrance of real property to pay the obligations of the estate, if beneficial, may be approved when personal property is not enough to pay for the obligations of the estate, or where its sale or mortgage may be injurious to those interested and where the testator has not otherwise provided.

Note: If a part of the real property cannot be sold, or otherwise encumbered without injury to those interested in the remainder, the disposition may be of the whole of the property, or so much as is necessary or beneficial under the circumstances.[82]

8.2 If beneficial

The court may authorize the sale of the whole or a part of said estate, although it is not necessary to pay the obligations of the estate so long as it is beneficial but such authority should not be inconsistent with the provisions of a will. The proceeds shall be given to the persons entitled to the estate in the proper proportions.[83]

8.3 Bond to prevent sale, etc.

Persons interested may prevent a sale, mortgage or encumbrance by giving a bond in a sum to be fixed by the court, conditioned to pay the obligations of the estate. Such bond shall be for the security of the creditors, as well as the executor or administrator.[84]

8.4 Regulations for granting authority to sell, mortgage, or otherwise encumber estate.

8.4.1 The executor or administrator shall file a written petition, setting forth (i) the debts due from the deceased, (ii) the expenses of administration, (iii) the legacies, (iv) the value of the personal estate, (v) the situation of the estate to be sold, mortgaged, or otherwise encumbered, and (vi) such other facts as will show that the sale, mortgage, or other encumbrance is necessary or beneficial.

8.4.2 The court shall then cause notice to the persons interested, stating the nature of the petition, the reason for the same, and the time and place of hearing. The court may cause further notice by publication or otherwise.

8.4.3 The court may direct the executor or administrator to give an additional bond to account for the proceeds of the sale, mortgage, or other encumbrance.

8.4.4 The court may then grant the petitions in proper cases, such part of the estate as is deemed necessary. The court may authorize the sale to be public or private, as would be most beneficial to all parties concerned.

8.4.5 If the property is to be sold at auction, the mode of giving notice of the time and place of the sale shall be governed by the provisions concerning notice of execution sale.[85]

8.4.6 The transaction and the court order shall be recorded in the registry of deeds.[86]

9. Actions By And Against Executors And Administrators

In general, executors and administrators may bring or defend actions that survive. Claims that do not survive are money claims that have to be filed in the estate proceedings.

9.1 Actions that survive are those actions to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover

damages for an injury to person or property, real or personal.[87]

9.2 Actions that do not survive are the money claims or (a) all claims for money arising from contract, express or implied, due, not due or contingent;[88] (b) all claims for funeral expenses; (c) expenses for the last sickness of the decedent; and (d) judgment for money against the decedent, which should be presented in the form of claims against the estate.[89]

9.3 Mortgage due estate may be foreclosed

If the deceased was a mortgagee or assignee of the right of a mortgagee, the mortgage may be foreclosed by the executor or administrator.[90]

9.4 Proceedings when property concealed, embezzled, or fraudulently conveyed

9.4.1 When a person is suspected of having concealed, embezzled, or conveyed away any of the money or chattels of the deceased, or such person possesses or knows of a document which contains evidence of or tends to disclose the right of the deceased to real or personal estate, or his last will and testament, the court may cite such suspected person to appear or to answer, and may examine him on oath[91]

9.4.2 If the person so cited refuses to appear and give rogatories, the court may punish him for contempt and may commit him to prison until he submits to the order of the court. The interrogatories, if any, and his answers thereto, shall be in writing and shall be filed in court.[92]

9.5 Rendition of account

A person entrusted by the executor or administrator with property of the deceased, may be compelled to render a full account on oath before the court.[93]

9.6 Embezzlement before letters issued

A person who embezzles or alienates property of the deceased before issuance of letters testamentary or of administration, is liable for double the value of the property embezzled. [94]

9.7 Remedy for fraudulent conveyance by the deceased during his lifetime

The remedy may be by action of the executor or administrator or by a creditor under the following circumstances.

9.7.1 Action by executor or administrator

When there is a deficiency of assets to pay its debts, but the deceased during his lifetime conveyed property with intent to defraud his creditors, the conveyance would by law be void as against his creditors, and the subject of the attempted conveyance would be subject to attachment in his lifetime. The executor or administrator may file an action to recover such property but is not be bound to do so, unless the creditors pay for the costs and expenses thereof or give security as the court deems equitable.[95]

9.7.2 Action by the creditor

On the other hand, a creditor may file such an action in the name of the executor or administrator upon the filing by the creditor of a bond approved by the court to indemnify the executor or administrator. The creditor shall have a lien on the judgment recovered for costs and expenses as the court deems equitable.[96]

Note: Where the conveyance or attempted conveyance was made by the deceased in his lifetime in favor of the executor or administrator, the action of the creditor shall be filed in the name of all the creditors without need of court permission or the court and the filing of a bond.[97]

10. Money Claims Against The Estate; Notice To Creditors

Immediately after granting letters testamentary or of administration, the court shall issue a notice requiring all persons having money claims against the decedent to file them in the office of the clerk of court.[98]

10.1 Time within which claims shall be filed

In said notice, the court shall state the time for the filing of claims against the estate, which shall not be more than twelve (12) nor less than six (6) months after the date of the first publication of the notice. However, before an order of distribution is issued, the court may, for cause shown and on such terms as are equitable, allow a claim to be filed within a time not exceeding one (1) month.[99]

10.2 Publication of notice to creditors

The executor or administrator shall immediately cause the notice to be published three (3) weeks successively in a newspaper of general circulation in the province, and to be posted for the same period in four (4) public places in the province and in two (2) public places in the municipality where the decedent last resided.[100]

10.3 Filing copy of printed notice

Within ten (10) days after the publication and the posting, the executor or administrator shall file in court a printed copy of the notice, accompanied with an affidavit of publication setting forth the dates of the first and last publication thereof and the name

of the newspaper in which the same was printed.[101]

10.4 Filing of claims

The claims which must be filed under the notice are:

10.4.1 all claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent;

10.4.2 all claims for funeral expenses and expenses for the last sickness of the decedent; and

10.4.3 Judgment for money against the decedent.[102]

Note: Under the 1997 Rules of Civil Procedure, an action for a contractual money claim against a defendant who dies before entry of final judgment, must proceed until entry of final judgment. A favorable judgment obtained by the plaintiff shall be enforced as a money claim against the estate of the defendant which shall be filed in the estate proceeding.[103]

10.5 Time bar

Claims that are not filed within the time limited in the notice, are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants.

10.6 Set off

Where an executor or administrator commences an action, or prosecutes an action already commenced by the deceased in his lifetime.- A debtor may set forth in an action by the executor or administrator against him, by answer the claims he has against the decedent, instead of presenting them independently as a claim against the estate, and mutual claims may be set off against each other in such action. Claims not yet due, or contingent, may be approved at their present value.[104]

10.7 How to file a claim[105]

A claim may be filed with the clerk of court with the necessary vouchers and supporting affidavits, serving a copy thereof on the executor or administrator.

10.7.1 If the claim is not due, or is contingent, it must also be supported by affidavit stating the particulars thereof. When the affidavit is made by a person other than the claimant, he must set forth therein the reason why it is not made by the claimant.[106]

10.7.2 The court, in its discretion, and as a matter of convenience, may order all the claims to be collected in a separate folder.[107]

10.8 Disposition of admitted claim

Any claim admitted by the executor or administrator shall immediately be submitted by the clerk to the court who may approve the same without hearing; but the court may order that known heirs, legatees, or devisees be notified and heard.[108]

10.9 Trial of contested claim

If an heir, legatee, or devisee opposes the claim, the court may allow him fifteen (15) days to answer the claim. Upon the filing of an answer or upon the expiration of the time for such filing, the clerk of court shall set the claim for trial with notice to both parties. The court may refer the claim to a commissioner.[109]

10.10 Judgment appealable

The judgment of the court approving or disapproving a claim, is appealable. A judgment against the executor or administrator that he pay shall not create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.[110]

11. Payment Of Debts

If there are sufficient assets to pay the debts, the executor or administrator shall pay the same within the time limited for that purpose.[111]

11.1 Source of payment as designated by the testator

The debts of the testator, expenses or administration, or family expenses, shall be paid according to the provisions of the will; but if the provisions are not sufficient, such part of the estate not disposed of by will, if any, shall be appropriated for that purpose.[112]

11.2 Personalty first chargeable for debts, then realty

The personal property of the deceased shall first be chargeable with the payment of debts and expenses; but if it is not sufficient, or its sale would be detrimental to the participants of the estate, the whole of the real estate not disposed of by will, or so much thereof as is necessary, may be sold, mortgaged, or otherwise encumbered by the executor or administrator, after obtaining the authority of the court therefor.[113]

11.3 Preference of payment if estate insolvent

If the assets are not sufficient for the payment of debts, they shall be paid in accordance

with the provisions of Articles 1059 and 2239 to 2251 of the Civil Code on concurrence and preference of credits.[114]

11.4 When and how claim proved outside the Philippines against insolvent resident's estate paid

If claims have been duly proven in another country against the estate of an insolvent who was at the time of his death an inhabitant of the Philippines, and that the local executor or administrator knew of such claims and an opportunity to contest their allowance, the court shall add a certified list of such claims to the list of claims proved in the Philippines so that a just distribution of the whole estate may be made, but the benefit of this and the preceding sections shall not be extended to the creditors in another country if the property of the deceased there found is not equally apportioned to the creditors residing in the Philippines and the other creditors, according to their respective claims.[115]

11.5 Time for paying debts and legacies

The executor or administrator shall pay the debts and legacies of the deceased within a period of time fixed by the court, which shall not exceed one (1) year, but the court may, on motion of the executor or administrator and after hearing, extend the time as the circumstances of the estate require not exceeding six (6) months for a single extension, but the whole period allowed to the original executor or administrator shall not exceed two (2) years.[116]

12. Accountability And Compensation Of Executors And Administrators

Except as otherwise expressly provided in the following sections, every executor or administrator is chargeable (a) with the whole of the estate of the deceased which has come into his possession, at the value of the appraisement contained in the inventory; (b) with all the interest, profit, and income of such estate; and (c) with the proceeds of so much of the estate as is sold by him, at the price at which it was sold.[117]

12.1 Increase or decrease in value

No executor or administrator shall profit by the increase, or suffer loss by the decrease or destruction, without his fault, of any part of the estate.

12.1.1 He must account for the excess when he sells any part of the estate for more than the appraised value, and if any is sold for less than the appraisement, he is not responsible for the loss, if the sale has been justly made.

12.1.2 If he settles any claim against the estate for less than its nominal value, he is entitled to charge in his account only the amount he actually paid on the settlement.[118]

12.2 Accountable for income from realty used by him

If the executor or administrator uses or occupies any part of the real estate himself, he shall account for it as may be agreed upon between him and the parties interested, or adjusted by the court with their assent. If the parties do not agree, the amount may be ascertained by the court, whose determination shall be final.[119]

12.3 Accountable for delay

When an executor or administrator unreasonably delays to collect the debts, sell estate of the deceased, or neglects to pay over the money he has in his hands, and the value of the estate is thereby lessened or unnecessary cost or interest accrues, or the persons interested suffer loss, the damage sustained may be charged against him, and he shall be liable therefor on his bond.[120]

12.4 Expenses and fees allowed executor or administrator[121]

An executor or administrator shall be allowed the necessary expenses in the care, management, and settlement of the estate, and for his services, four pesos per day for the time actually and necessarily employed, or a commission upon the value of so much of the estate as comes into his possession and is finally disposed of by him in the payment of debts, expenses, legacies, or distributive shares, or by delivery to heirs or devisees, of :

12.4.12% of the first Php 5,000;
12.4.21% of more than Php 5,000 but less than Php 30,000;
12.4.31/2% of more than Php 30,000, but less than Php 100,000; and
12.4.41/4% of more than Php 100,000.

Note: But in any special case, where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed. If objection to the fees allowed to be taken, the allowance may be re-examined on appeal.

12.5 Two or more executors or administrators

If there are two or more executors or administrators, the compensation shall be apportioned among them by the court according to the services actually rendered by them respectively.[122]

12.6 Attorney's fees prohibited

When the executor or administrator is an attorney, he shall not charge against the estate any professional fees for legal services rendered by him,[123] but he may employ counsel.[124]

12.7 Compensation provided in the will

When the deceased by will makes some other provision for the compensation of his executor, it shall be a full satisfaction for his services unless by a written instrument filed in the court he renounces all claim to the compensation provided by the will.[125]

12.8 When executor or administrator to render account

Every executor or administrator shall render an account of his administration within one (1) year from the time of receiving letters testamentary or of administration, unless the court otherwise directs because of extensions of time for presenting claims against, or paying the debts of, the estate, or for disposing of the estate. He shall render such further accounts as the court may require until the estate is wholly settled.[126]

12.9 Examinations on oath with respect to account

The heirs, legatees, distributees, and creditors of the estate and the executor or administrator may be examined on oath on any matter relating to an administration account.[127]

12.10 Notice to examine the account of the executor or administrator

Before the account of an executor or administrator is allowed, notice shall be given to persons interested of the time and place of examining and allowing the same; and such notice may be given personally or by advertisement in a newspaper or newspapers, or both, as the court directs.[128] A person liable as surety in respect to such account may, upon application, be admitted as party to such accounting.[129]

D. Distribution and Partition[130]

The distribution of the estate can only be made after strict compliance with the provisions in Rule 90, Rules of Court.

1. When Distribution Is Made

1.1 Payment of obligations required

The estate may be distributed only if the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, have been paid. (Note: What is provided in the law is only an estate tax payable by the heir has already been abrogated.)

> 1.1.1 The court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or

parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession.

1.1.2 If there is a controversy as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.[131]

1.2 Advance distribution

No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.[132]

2. Partial distribution, without paying estate taxes

A judge commits a grave abuse of discretion when he orders a partial distribution of the estate without the payment of estate taxes.[133]

3. Expenses of partition

Expenses of partition may be paid by the executor or administrator when it appears equitable to the court and not inconsistent with the intention of the testator; otherwise, they shall be paid by the parties in proportion to their respective shares or interest in the premises, and the apportionment shall be settled and allowed by the court, enforceable by execution.[134]

4. Project of Partition

The practice in this jurisdiction is to prepare and present a project of partition to the court. It is merely a proposal for the distribution of the hereditary estate and determine the persons entitled thereto.[135]

5. Final order of partition; recording the order of partition of the estate

Certified copies of final orders and judgments of the court relating to the real estate or partition thereof shall be recorded in the registry of deeds.[136]

III. GUARDIANS

A. Necessity For Guardianship

A court will have no jurisdiction to render judgment against one adjudged physically and mentally incompetent to manage her affairs where no guardian was appointed upon

whom summons and notice of the proceedings might be served.[137]

1. The 'incompetent' as the subject of guardianship.- The incompetent includes (1) persons suffering from the penalty of civil interdiction; (2) hospitalized lepers; (3) prodigals; (4) deaf and dumb who are unable to read and write; (5) those who are of unsound mind even though they may have lucid intervals; and (6) those who are not of unsound mind, but by reason of age, disease, weak mind, and other similar causes, cannot without outside aid, take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation.[138]

2. Parents as guardians

When the property of the child under parental authority is worth Php 2,000.00 or less, the father or the mother, without the necessity of court appointment, shall be his legal guardian. When the property of the child is worth more than Php 2,000.00, the father or the mother shall be considered guardian of the child's property, with the duties and obligations of guardians under these rules, and shall file the petition required by the rules. For good reasons the court may, however, appoint another suitable person.[139]

B. Jurisdiction and Venue

1. Where to file petition for guardianship

Any relative, friend, or other person on behalf of a resident minor or incompetent who has no parent or lawful guardian, or the minor himself if fourteen years of age or over, may petition for the appointment of a general guardian for the person or estate, or both, of such minor or incompetent.[140]

2. Transfer of venue

If the ward transfers his bona fide residence, the court may transfer the guardianship case to the court of the place of his residence wherein he has acquired real property, and additional court fees are not required.[141]

C. Petition For Guardianship

1. Who may file

Any relative, friend or other person on behalf of a resident minor or incompetent who has no parent or lawful guardian, or the minor himself if fourteen years of age or over, may petition for the appointment of a general guardian for the person or estate, or both, of such minor or incompetent.[142]

2. Contents of petition

The petition shall allege:

(1) The jurisdictional facts;
(2) The minority or incompetency;
(3) The names, ages and residences of the relatives of the minor or incompetent, and of the persons having him in their care;
(4) The probable value and character of his estate; and
(5) The names of the person for whom letters of guardianship are prayed.[143]

3. Notice of hearing

Reasonable notice of the hearing of the petition shall be given to the persons mentioned in the petition residing in the province, including the minor if above 14 years of age or the incompetent himself. The court may direct other general or special notice to be given.[144]

4. Grounds for opposition

The petition may be opposed on the grounds of (a) majority of the alleged minor; (b) competency of the alleged incompetent; or (c) unsuitability of the proposed guardian. [145]

5. Order

At the hearing, the alleged incompetent must be present as much as possible. Evidence will be heard and if it be proved that the person in question is a minor or incompetent, the court shall appoint a suitable guardian of his person or estate, or both.[146]

6. Guardian for the estate of a nonresident

On notice, by publication or otherwise, and after the hearing, a guardian may be appointed for the estate in the Philippines of a nonresident minor or incompetent.[147]

D. Guardian's Bond

The guardian shall give a bond conditioned: (a) to make a true and complete inventory within three months; (b) to manage and dispose of the estate, and to provide for the proper care, custody and education of the ward; (c) to render a true and just account; and (d) to perform all orders of the court.[148]

1. New bond

A new bond may be required and the old sureties discharged whenever it is deemed necessary, after due notice to interested persons, when no injury can result therefrom to those interested in the estate.[149]

2. Bond to be filed; actions thereon

Every bond of a guardian shall be filed in the office of the clerk of the court. In case of the breach of a condition thereof, it may be prosecuted in the same proceeding or in a separate action.[150]

E. General Powers and Duties

The guardian has the care and custody of the person of the ward and/or the management of his estate. The guardian should pay the ward's just debts from his personal property and income of his real estate; if insufficient, out of the sale or encumbrance of real estate as authorized by the court. The estate should be managed frugally.[151]

1. A person suspected of embezzling or concealing property of the ward may be asked to appear for examination.[152]

2. After making an inventory after three (3) months, the guardian is required to file an inventory and accounting annually.[153]

3. Compensation and expenses

The guardian is allowed reasonable expenses and such compensation as the court deems just, not exceeding 15% of the net income of the ward.[154]

4. Grounds for removal

A guardian may be removed when (a) he becomes insane, (2) is otherwise incapable of discharging his trust, (3) is unsuitable therefor, (4) has wasted or mismanaged the estate, or (5) has failed for thirty (30) days to render an account or make a return.[155]

5. Advanced age

The conclusion by the trial court that the guardian of advanced age is not fit to continue, is not to be disturbed, particularly with his delay in making an accounting and filing an inventory. While age alone is not a controlling criterion, it may be a factor for consideration.[156]

F. Sale or encumbrance:

1. Real property of the ward may be sold or encumbered by authority of the court upon a verified petition when the income is not sufficient to maintain the ward and his family or to educate him, or when it is for his benefit that the property be sold, mortgaged or otherwise encumbered and the proceeds put out at interest or invested in some productive security, or in the improvement or security of other real estate of the ward.

[157]

2. Bond for the sale

The original bond of the guardian shall answer for the proceeds of the sale, but the court may require an additional bond.[158] The order to sell is valid for one (1) year.[159]

3. A court order authorizing the sale of a ward's property, is subject to appeal, not *certiorari* and *mandamus*.[160]

G. Petition for termination of Guardianship

1. A person who has been declared incompetent for any reason, or his guardian, relative, or friend, may file a verified petition to have his present competency judicially determined. If it be found after hearing that the person is no longer incompetent, his competency shall be adjudged and the guardianship shall cease.[161]

2. Grounds for removal

A guardian may be removed when (a) he becomes insane, (b) is otherwise incapable of discharging his trust, (c) is unsuitable therefor, (d) has wasted or mismanaged the estate, or (e) has failed for thirty (30) days to render an account or make a return.[162]

3. Other termination

Marriage or voluntary emancipation of a minor ward terminates the guardianship of the person of the ward, and shall enable the minor to administer his property as though he were of age, but he cannot borrow money or alienate or encumber real property without the consent of his father or mother, or guardian. He can sue and be sued in court only with the assistance of his father, mother or guardian. Upon the application of the ward or otherwise, the guardians may be discharged if the guardianship is no longer necessary.[163]

4. Advanced age

The conclusion by the trial court that the guardian of advanced age is not fit to continue, is not to be disturbed, particularly with his delay in making an accounting and filing an inventory. While age alone is not a controlling criterion, it may be a factor for consideration.[164]

5. Guardianship court

The guardianship court cannot adjudicate title.[165]

IV. ADOPTION

1. Governing Laws

1. The basic governing law on domestic adoption is found in Republic Act No. 8552, which is "An Act Establishing the Rules and Policies on the Domestic Adoption of Filipino Children." It was approved on February 25, 1998. It took effect fifteen (15) days after its complete publication in a newspaper of general circulation in the *Official Gazette*.

2. On December 2, 1998, Rules and Regulations to Implement the Domestic Adoption Act of 1998 were promulgated to govern the adoption of Filipino children within the Philippines.

3. Foreign adoptions are governed by Republic Act No. 8043, which is "An Act Establishing the Rules to Govern Inter-Country Adoption of Filipino Children," approved on June 2, 1995.

4. Prior laws on adoption include provisions in the Child and Youth Welfare Code (Presidential Decree No. 603), the Family Code, and Executive Order No. 91.

5. The Family Code expressly repealed Articles 17-19, 27-31, 39-42 of the Civil Code and Articles 27-29, 31, 33 and 35 of Presidential Decree No. 603.

6. The Civil Code provisions, however, were expressly repealed by the provisions of P.D. No. 603, which took effect in 1975, or six months after its approval on December 10, 1974.

7. About six months before the Family Code was signed by President Corazon C. Aquino as Executive Order No. 209 on July 6, 1987, she promulgated Executive Order No. 91 on December 23, 1986. It was published in the *Official Gazette* on January 12, 1987. It should have taken effect fifteen (15) days thereafter or on January 27, 1987.

8. Republic Act No. 8552 provides that any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule, or regulation contrary to, or inconsistent with its provisions is repealed, modified or amended accordingly. [166] The provisions of Rules 99 and 100 in the Rules of Court should thus be considered amended.

2. Petition for Adoption

1. Who may adopt

Those who may adopt are enumerated in Sec. 7 of Rep. Act No. 8552, *viz*:

(a) Any Filipino citizen of legal age, in possession of full civil capacity and legal rights, of good moral character, has not been convicted of any crime involving moral turpitude, emotionally and psychologically capable of caring for children, at least sixteen (16) years older than the adoptee, and who is in a position to support and care for his/her children in keeping with the means of the family.

Note: The requirement of sixteen (16) year difference between the age of the adopter and adoptee may be waived when the adopter is the biological parent of the adoptee, or is the spouse of the adoptee's parent.

(b) Any alien possessing the same qualifications as above stated for Filipino nationals: *Provided*, That his/her country has diplomatic relations with the Republic of the Philippines, that he/she has been living in the Philippines for at least three (3) continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered, that he/she has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country, and that his/her government allows the adoptee to enter his/her country as his/her adopted son/daughter: *Provided, Further*, That the requirements on residency and certification of the alien's qualification to adopt in his/her country may be waived for the following:

(i) a former Filipino citizen who seeks to adopt a relative within the fourth (4th) degree of consanguinity or affinity; or
(ii) one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse; or
(iii) one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth (4th) degree of consanguinity or affinity of the Filipino spouse; or
(iv) the guardian with respect to the ward after the termination of the guardianship and clearance of his/her financial accountabilities.

(c) Husband and wife shall jointly adopt, except in the following cases:

(i) if one spouse seeks to adopt the legitimate son/daughter of the other; or
(ii) if one spouse seeks to adopt his/her own illegitimate son/daughter: P*rovided, However*, that the other spouse has signified his/her consent thereto; or
(iii) if the spouses are legally separated from each other.

In case husband and wife jointly adopt, or one spouse adopts the illegitimate son/daughter of the other, joint parental authority shall be exercised by the spouses.

2. Jurisdictional Venue

A petition for adoption shall be filed in the Regional Trial Court of the place in which the petitioner resides.[167]Adoption now falls under the original and exclusive jurisdiction of the Regional Trial Court.[168]

3. Subjects of adoption

Who may be adopted are enumerated in Sec. 8 of Rep. Act No. 8552.*viz*

(a) Any person below eighteen (18) years of age who has been administratively or

4. Aliens

Aliens are now allowed to adopt. For a time, under the Family Code repealing the provisions in the Civil Code, aliens were not allowed to adopt. Those who possess the same qualifications as Filipino nationals upon the following conditions:

4.1 That his/her country has diplomatic relations with the Republic of the Philippines.

4.2 That he/she has been living in the Philippines for at least three (3) continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered.

4.3 That he/she has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country, and that his/her government allows the adoptee to enter his/her country as his/her adopted son/daughter.

4.4 That the requirements of residency and certification of the alien's qualification to adopt in his/her country may be waived by the following:

4.4.1 a former Filipino citizen who seeks to adopt a relative within the fourth degree of consanguinity or affinity; or

4.4.2 one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse; or

4.4.3 one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth consanguinity or affinity of the Filipino spouse.

5. Joint Adoption

Husband and wife are required to adopt except (a) if one spouse seeks to adopt the legitimate son/daughter of the other; (b) if one spouse seeks to adopt his/her own illegitimate son/daughter, provided that the other spouse has signified his/her consent

thereto; and (c) if the spouses are legally separated from each other.[169]

6. Age Difference

The age difference should be 16 years between the adopter and the adopted, provided that it may be waived when the adopter is the biological parent of the adoptee or is the spouse of the adoptee's parent.[170]

7. Procedure

7.1 Contents of petition

The petition should contain the same allegations in a petition for guardianship, to wit:

(1) The jurisdictional facts;
(2) The qualifications of the adopter;
(3) That the adopter is not disqualified by law;
(4) The name, age, and residence of the person to be adopted and of his relatives or of the persons who have him under their care;
(5) The probable value and character of the estate of the person to be adopted.

7.2 Required consent

Under Sec. 9, Republic Act No. 8552, written consent of the following is required:

(1) The adoptee, if ten (10) years of age or over.
(2) The biological parent(s) of the child, if known, or the legal guardian, or the proper government instrumentality which has legal custody of the child.
(3) The legitimate and adopted sons/daughters, ten (10) years of age or over, of the adopter(s) and adoptee, if any.
(4) The illegitimate sons/daughters, ten (10) years of age or over, of the adopter if living with said adopter and the latter's spouse, if any.
(5) The spouse, if any, of the person adopting or to be adopted.

7.3 Order for hearing

If the petition and consent are sufficient in form and substance, and a favorable case study has been made, as hereafter mentioned, the court, by an order, shall fix the date and place of the hearing which shall not be more than six (6) months after the issuance of the order.[171]

7.4 Publication of order

The order shall direct that a copy thereof be published before the hearing once a week for three (3) successive weeks in a newspaper of general circulation in the province.

7.5 Case Study

No petition for adoption shall be set for hearing unless a licensed social worker of the Department, the social service office of the local government unit, or any child-placing or child-caring agency has made a case study of the adoptee, his/her biological parent(s), as well as the adopter(s), and has submitted the report and recommendations on the matter to the court.

7.6 Birth registration

At the time of preparation of the adoptee's case study, the social worker concerned shall confirm with the Civil Registry the real identity and registered name of the adoptee. If the birth of the adoptee was not registered with the Civil Registry, the social worker shall ensure that the adoptee is registered.

7.7 Legally available

The case study shall establish that the adoptee is legally available for adoption and that the documents to support this fact are valid and authentic. Further, the case study of the adopter shall ascertain his genuine intentions and that the adoption is in the best interest of the child.

7.8 Intervention by DWSD

The DWSD shall intervene on behalf of the adoptee if it finds, after the case study, that the petition should be denied. The case studies and other relevant documents and records pertaining to the adoptee and the adoption shall be preserved by the Department.[172]

7.9 Supervised Trial Custody

No petition for adoption shall be finally granted until the adopter/s has/have been given by the court a supervised trial custody period for at least six (6) months within which the parties are expected to adjust psychologically and emotionally to each other and establish a bonding relationship. During said period, temporary parental authority shall be vested in the adopter/s.

> (a) The court may *motu proprio* or upon motion of any party reduce the trial period if it finds the same to be in the best interest of the adoptee, stating the reasons for the reduction of the period. However, for alien adopters, they must complete the six (6)-month trial custody except for those enumerated in Sec.7(b)(i)(ii)(iii).
>
> (b) If the child is below seven (7) years of age and is placed with the prospective adopter through a pre-adoption placement authority issued by the Department, the prospective adopter shall enjoy all the benefits to which

biological parents are entitled from the date the adoptee is placed with the prospective adopter.[173]

7.10 Decree of adoption

If, after the publication of the order of hearing, no opposition has been interposed, and after consideration of the case studies, the qualifications of the adopter, the trial custody report, and the evidence submitted, the court is convinced that the petitioners are qualified to adopt, and that the adoption would redound to the best interest of the adoptee, a decree of adoption shall be entered. The decree shall state the name by which the child is to be known[174]which shall be effective as of the date the original petition was filed.

Note: This provision shall also apply in case the petitioner dies before the issuance of the decree of adoption to protect the interest of the adoptee.[175]

8. Civil Registry Record

An amended certificate of birth, without any notation that it is an amended issue, shall be issued by the Civil Registry, attesting to the fact that the adoptee is the child of the adopter by being registered with his/her surname. The original certificate of birth shall be stamped 'cancelled' with the annotation of the issuance of an amended birth certificate in its place and shall be sealed in the civil registry records[176]

9. Confidential Nature of Proceedings

All hearings in adoption cases are confidential and shall not be open to the public. All records, books, and papers relating to the adoption cases in the files of the court, the DWSD, or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential. The court may authorize the necessary information to be released, if it is for the best interest of the adoptee and the disclosure is necessary, restricting the purposes for which it may be used.[177]

10. Service of judgment

The judgment shall be served by the clerk on the civil registrar.

C. Rescission of Adoption

1. Grounds for rescission

Upon petition of the adoptee, with the assistance of the DSWD if a minor or if over eighteen (18) years of age but is incapacitated, as guardian/counsel, the adoption may be rescinded on any of the following grounds committed by the adopter(s): (a) repeated physical and verbal maltreatment by the

adopter(s) despite having undergone counselling; (b) attempt on the life of the adoptee; (c) sexual assault or violence; or (d) abandonment and failure to comply with parental obligations.[178]

2. Who may file

A minor or other incapacitated person may, through a guardian or guardian *ad litem*, file the petition for rescission of adoption. Under Rep. Act No. 8552, Sec. 19, adoption, being in the best interest of the child, shall not be subject to rescission by the adopter(s). However, the adopter(s) may disinherit the adoptee for causes provided in Article 919 of the Civil Code.

3. Time to file petition

The petition must be filed within five (5) years following attainment of majority, or following recovery from incompetency.[179]

4. Procedure

The court shall issue an order requiring the adverse party to answer the petition within fifteen (15) days from receipt of a copy thereof. The order and a copy of the petition shall be served on the adverse party in such manner as the court may direct. After trial, if the court finds the allegations of the petition to be true, the court shall render judgment ordering rescission, with or without costs, as justice requires.

5. Service of judgment

A certified copy of the judgment shall be served upon the civil registrar concerned. Within thirty (30) days from rendition of the judgment, he shall enter the action in the civil register.[180]

D. Inter-Country Adoption (Rep. Act No. 8043):

1. Adoption by aliens

The Family Code had provided that adoption by aliens of Filipino children, while generally prohibited by the Code, shall be authorized in inter-country adoption as may be allowed by law.

2. The law and the implementing rules and regulations

The Inter-Country Adoption Act was thereafter passed on June 7, 1995 and took effect fifteen days after publication in two newspapers of general circulation.. Its Implementing Rules and Regulations was passed by the Inter-Country Adoption Board (ICAB) which was thereby created. The implementing rules, which were patterned after the 1993 Hague Convention, became effective on January 17, 1996. It has been

observed that the implementing rules contain provisions which are adopted from the Hague Convention but are not authorized by the law.

3. The process

The process of inter-country adoption refers to the process of adopting a Filipino child by a foreigner or by a Filipino citizen permanently residing abroad where the petition is filed. The supervised child custody is undertaken and the decree of adoption is issued outside the Philippines.

4. A legally-free child

For a child to be placed under the coverage of the Inter-Country Adoption Law, he must be legally-free which means that the child has been voluntarily or involuntarily committed to the DSWD in accordance with P.D. No. 603 and the necessary documents submitted to the ICAB.

5. Adopters

The qualifications for adopters are more stringent than the qualifications for adopters in domestic adoption. For one, an adopter must at least be 27 years of age aside from the 16-year difference between the adopter and the adopted.

6. Application

An application for inter-country adoption may be filed with the Regional Trial Court having jurisdiction over the child or with the ICA Board, through an intermediate agency in the country of the prospective or adoptive parents.

7. Functions of the RTC

The Regional Trial Court appears merely to receive applications from foreign adoption agencies, evaluate and assess the qualifications of the proposed adopter, and pursuant to the implementing rules, the court must submit its findings and the application papers to the ICAB. The supervised trial custody is conducted and the decree of adoption is issued by the court in the place of the adopter abroad.

8. Resident Aliens

Aliens who permanently reside in the Philippines are not qualified to become adopters under the Inter-Country Adoption Act. However, under the Domestic Adoption Act, they are qualified to adopt.

8.1 Art. 184, Family Code provides that an alien cannot adopt under Philippine law except '(a) a former Filipino citizen who seeks to adopt a relative by consanguinity; and (b) one who seeks to adopt the legitimate child of his or her Filipino spouse.'

8.2 Where one of the spouses is an alien, the adoption cannot be allowed. [181]

9. Case rulings

9.1 Where one of the spouses is an alien, they are disqualified to adopt under Philippine laws. [182]

9.2 Husband and wife must jointly adopt. [183]

9.3 Non-resident aliens cannot adopt. [184]

V. CUSTODY OF MINORS

A. Jurisdiction

A petition for the custody of minors is also provided in Section 1, Rule 99 which provides for a petition for adoption. The petition for custody of children is now within the exclusive original jurisdiction of Family Courts, as provided in Sec. 5(b), Family Courts Act of 1997, or Rep. Act No. 8369.

B. Children Under Seven Years of Age

Under Article 213, second paragraph Family Code, no child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise. Under Pres.Decreee 603, Art. 17, the age of the child was five years of age, reduced from the Civil Code provision of seven years of age. Now it is back to seven years of age under the Family Code.

1. Formerly, under the Civil Code, the provision was that no mother should be separated from her child under seven years of age. [185]The change emphasizes the fact that it is the welfare of the child that is paramount.

2. This rule, however, is not absolute. [186]

C. Child Abuse

Complaints on cases of unlawful acts committed against children under the Child Abuse Act may be filed by (a) the offended party, (b) parents or guardians, (c) ascendant or collateral relative within the third degree of consanguinity; (d) officer, (e) social worker or representative of a licensed child-caring institution; (f) officer or social worker of the DSWD; (g) *barangay* chairman, or (g) at least three (3) concerned responsible citizens where the violation occurred. [187]

1. Protective Custody

The child shall be immediately placed under the protective custody of the DSWD pursuant to Executive Order No. 56, series of 1986. Custody proceedings shall be in accordance with the provisions of Presidential Decree No. 603. [188]

2. Special Court Proceedings

Cases involving violations of Rep. Act No. 8369 shall be heard in the chambers of the Family Court Judge. [189]

3. When parents are separated

The question as to the care, custody and control of a child or children of parents who are divorced or separated, may be brought before a Regional Trial Court by petition or as an incident to any other proceeding.

3.1 Award of custody

After hearing, the court shall award the care, custody and control of each child as will be for its best interest.

3.2 Choice of the child

The child who is over ten (10) years of age, may choose which parent he/she prefers to live with, unless the parent so chosen is unfit to take charge of the child by reason of moral depravity, habitual drunkenness, incapacity, or poverty.

3.3 Other designations

If both parents are unfit, the court may designate other persons or an institution to take charge of the child, such as the paternal or maternal grandparent of the child, or his oldest brother or sister, or some reputable and discreet person.

3.4 Support

The court may order either or both parents to support or help support the child, irrespective of who may be its custodian. The fact that the father has recognized the child may be a ground for ordering him to give support, but not for giving him custody of the child. [190]

3.5 Visitation or temporary custody

The court may permit the parent who is deprived of care and custody to visit the child or have temporary custody thereof in an order that is just and reasonable.

3.6 Appeal

Either parent may appeal from an order made in accordance with the provisions of

Section 6, Rule 99.

3.7 Rule of thumb

Once more, no child under seven years of age shall be separated from its mother, unless the court finds that there are compelling reasons therefor.

D. Special Provisional Remedies

In cases of violence among immediate family members living in the same domicile or household, the law now has special provisional remedies.

1. Restraining Order

Family Court may issue a restraining order against the accused or defendant upon a verified application by the complainant or the victim for relief from abuse.

2. Temporary Custody

The court may also order the temporary custody of children in all civil actions for their custody.

3. Support *Pendente Lite*

The court may also order support pendente lite, including deduction from the salary and use of conjugal home and other properties in all actions for support. [191]

E. Foster Care

Provisions on foster care are to be found in Articles 67 to 70, Presidential Decree No. 603. Foster care is to be preferred to institutional care. No child below nine (9) years of age shall be placed in an institution. [192]

F. Dependent, Abandoned Or Neglected Children

These types of children are defined in Presidential Decree No. 603, Art. 141. A verified petition for their involuntary commitment may be filed. [193]

1. Involuntary commitment

For various provisions on the procedure for involuntary commitment, such as the contents of the petition, verification, order to set time for hearing, summons, when not necessary, representation of child, duty of fiscal, hearing, commitment of child, when child may stay in his own home, termination of rights of parents, authority of person, agency or institution, change of custody, refer to Articles 142-153, Presidential Decree 603.

2. Voluntary commitment

Provisions on voluntary commitment which should be in writing, legal custody, visitation, report, temporary custody of children, prohibited acts, report of person or institution, refer to Articles 154 to 159, Presidential Decree 603.

3. Various other provisions

Other significant provisions in Presidential Decree No. 603 refer to:

Art. 159. Temporary Custody of Child
Art. 160. Prohibited Acts of Leaving an Institution
Art. 161. Duty to Report Abandonment
Art. 162. Adoption of Dependent or Abandoned or Neglected Child
Art. 163. Restoration of Child After Involuntary Commitment
Art. 164. Restoration After Voluntary Commitment
Art. 165. Removal of Custody
Art. 166. Report of Maltreated or Abused Child
Art. 167. Freedom from Liability of Reporting Person or Institution.

4. Special Children

A child who appears to be mentally retarded, physically handicapped, emotionally disturbed, or mentally ill, and needs institutional care but his parents or guardians are opposed thereto, a petition for commitment of the child may be filed. [194] Provisions on venue, contents of petition, order of hearing, disposition of property or money of the committed child, children with cerebral palsy, discharge of a child judicially committed, discharge of child voluntarily committed, report on conduct of child, and related provisions, refer to Articles 178 to 204, P.D. 603.

VI. HABEAS CORPUS

A. Definition and Nature

Basically, it is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place, with the day and cause of his capture and detention, to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf. The Latin term *habeas corpus* which literally means "you have the body," is a high prerogative writ, of ancient common-law origin, the great object of which is the liberalization of those who may be imprisoned without sufficient cause.

B. Function and Scope of Writ

The writ of habeas corpus generally extends to all cases of illegal confinement or detention by which a person is (1) deprived of liberty, or (2) the rightful custody of a person is withheld from the person entitled thereto. [195] The writ of habeas corpus is

no longer available to one who is already out on bail. [196]

C. Grounds for Relief

1. Deprivation of fundamental or constitutional rights

There is restraint of liberty where one is deprived of freedom of action, such as the freedom of locomotion. [197]

2. Lack of jurisdiction of the court to impose the sentence

A person may be detained on the basis of a void judicial order, such as there the court issuing it had no jurisdiction of the crime charged, or of the place where the crime was allegedly committed, or of the person of the accused [198] or where the court had no jurisdiction over the subject matter. [199]

3. Excessive penalty

The writ of habeas corpus also issues when a bond given by the accused entitled thereto is not admitted, or excessive bond is required, [200] or the penalty imposed by the court is not provided by law. [201]

D. Power to Grant Writ; Enforceability

The writ may be issued by the Supreme Court or by the Court of Appeals or any member thereof, enforceable anywhere in the Philippines, returnable to the same court or any member thereof or to the RTC (CFI) or any judge thereof for hearing and decision. [202]

E. Requisites of application

If the detention is by an officer, the writ shall be directed to him, commanding him to bring the body of the person restrained of liberty before the court at the time and place specified. If the detention is by a person other than an officer, then the writ shall be directed to an officer commanding him to the same effect and to summon the person restraining. The respondent will be asked to explain the cause of the detention. [203]

F. Procedure (Issuance of writ and return)

If the writ if issued by an RTC judge, it is returnable only to himself and enforceable only within his judicial district (now region) [204]

G. Discharge of Person Detained

When the prisoner is unlawfully restrained, the court or judge shall order his discharge

which shall not be effective until a copy of the order is served on the officer or person detaining the prisoner. If such officer or person does not desire to appeal, the prisoner shall be forthwith released. [205]

VII. ESCHEATS

A. Meaning of

Escheat, a term of French or Norman derivation meaning chance or accident, is the reversion of property to the State when the title thereto fails from defect of an heir. It is the falling of a decedent's estate into the general property of the State.

B. Procedure

1. When filed

A petition to escheat property is filed when a person dies intestate, leaving behind real or personal property but without an heir. [206]

2. Who files petition

The petitioner is the Solicitor General or his representative in behalf of the Republic of the Philippines. [207]

3. Where filed

The petition is filed in the Regional Trial Court where the deceased last resided or in which he had property if he resided out of the Philippines. [208]

4. Contents of petition

The petition shall set forth the facts and pray that the estate of the deceased be declared escheated. [209]

5. Order of Hearing

The court shall fix a date and place for the hearing of the petition, which date shall not be more than six months after the rendition of the order. [210]

6. Publication

The order shall also direct that a copy thereof shall be published at least once a week for six (6) successive weeks in some newspaper of general circulation in the province as the court deems best. [211]

7. Judgment

After hearing, the court shall adjudge the properties escheated after payment of just debts and charges, and the properties shall be assigned pursuant to law as follows:

7.1 The personal estate shall be assigned to the municipality or city where the deceased last resided in the Philippines.

7.2 The real estate shall be assigned to the municipalities or cities, respectively, in which the same is situated.

7.3 If the deceased never resided in the Philippines, the whole estate may be assigned to the respective municipalities or cities where the same is located.

7.4 Such estate shall be for the benefit of public schools, and public charitable institutions and centers in said municipalities or cities. [212]

C. Permanent Trust

The court may order the establishment of a permanent trust so that only the income from the property shall be used. [213]

D. Claim Within Five Years

If a person entitled to the estate escheated appears and files a claim with the court within five (5) years from the date of the judgment, he shall obtain possession and title to the property. If it has already been sold, the municipality or city shall be accountable to him for the proceeds, after deducting expenses for the care of the estate, but a claim not made with said time shall be forever barred.

E. Other Actions for Escheat

Actions for reversion or escheat of properties alienated in violation of the Constitution or of any statute shall be governed also by Rule 91, except that the action shall be instituted in the province where the land lies in whole or in part.

VIII. CHANGE OF NAME

A. Name Defined

A name is that word or combination of words by which a person is distinguished from others and which he bears as a label or appellation for the convenience of the world at large in addressing him or in speaking of or dealing with him. [214]

1. Minor

A minor may sign and verify his petition for a change of name subject to the required

assistance of a guardian *ad litem*, although the absence of the latter does not void the proceeding because it is amendable. [215]

2. Resident Aliens

Resident aliens may also petition for a change of name. A nonresident alien may not avail himself of the same right; such a proceeding would not be of much benefit to him. [216] But the petition will not be entertained if petitioner's citizenship is either controverted or doubtful. [217]

B. Procedure

1. Venue

The petition shall be filed in the RTC (CFI) of the place of residence of the person desiring to change his name. [218]

2. Petition

Petitioner should allege (1) that he is a bona fide resident of the region (province) for at least three (3) years, (2) the cause for the change of name, and (3) the name asked for. [219]

3. Hearing

The hearing is held after notice and publication. [220] The inclusion in the title of the petition for change of name and in the published order of the name sought to be authorized, is jurisdictional. [221]

3. Case Rulings

1. Joinder of causes of action

Petitions for adoption and change of name cannot be joined. They are not the same in nature and character nor do they present common questions of law and fact. [222]

2. Resumption of use of maiden name after divorce

The resumption by the wife of her maiden name after a Muslim divorce, is not change of name under Rule 103. The proceeding filed to resume the use of the maiden name is a superfluity but it is directory. [223]

3. Absence of cause

No proper and reasonable cause has been shown in the petition for a change of name

from Vicencio to Yu. In fact, confusion is likely. Adoption is required. [224]

4. Causes for change of name

A 47-year old resident of Tacloban City, named Haw Liong, wanted to change his name to Alfonso Lantin, as he would soon be a Filipino. The Supreme Court, however, held that there was no compelling reason for the change of name. According to the Court, what may be considered, among others, as proper and reasonable causes that may warrant the change are: (1) when the name is ridiculous, tainted with dishonor, or is extremely difficult to write or pronounce; (2) when the request for change is a consequence of a change of status, such as when a natural child is acknowledged or legitimated; and (3) when the change is necessary to avoid confusion. [225]

5. Erasing signs of former nationality

Petitioner was born in Hong Kong and came to the Philippines as a British subject. He became a naturalized Filipino. The Court of Appeals found that the evidence established sufficient justification for petition for change of name, i.e., a sincere desire to adopt a Filipino name Kenneth Kiana So, to erase signs of his former nationality which will unduly hamper his social and business life; his change of name will do away with his many aliases which should be discouraged, apart from the fact that it will avoid confusion and will be for the convenience of the world at large in addressing him or in speaking of or dealing with him. [226]

6. Resulting confusion

Legitimate minor children were not allowed to adopt the surname of the mother's second husband, because there would be a false impression of their family relations, as it could result in confusion in their paternity. [227]

7. Improving personality or social standing

On the other hand, a natural child through her mother petitioned for a change of name to adopt the surname of her stepfather. The Solicitor General argued that this would hide the child's illegitimacy. The Supreme Court held that there was nothing wrong with it, and that a change of name may be asked to improve one's personality or social standing and to promote his best interests as long as injury or prejudice is not caused to anyone. [228]

8. Legitimate minor child

A legitimate minor child may not also be allowed to change his surname from that of a father who was a fugitive from justice to that of his mother. There will be confusion as to parentage as it might create the impression that the minors were illegitimate since they would carry the maternal surname only, which is inconsistent with their legitimate status in their birth records. [229]

IX. ABSENTEES

1. Basic Concepts

1. Provisional representative

When a person disappears without leaving an agent behind, an interested party, relative or friend, may file a petition before the RTC (CFI) of the last place of residence of the person who disappeared to appoint provisionally a representative for him. [230]

2. Trustee or Administrator

After two (2) years without any news or after five (5) years if an agent was left to administer his property, a petition for declaration of absence and appointment of a trustee or administrator may be filed. [231]

3. Notice and publication is required. [232]

4. Preferences

The court may appoint as trustee or administrator or provisional representative (1) the spouse of the missing person if they are not legally separated or if the spouse is not a minor or otherwise incompetent; or, in default of the spouse, (2) any competent person. [233]

5. Termination

The appointment shall be terminated (1) if the absentee appears personally or by agent; (2) when death is proved and the heirs appear; or (3) when a third person acquires the property of the absentee.

6. A wife filed a petition to declare her missing husband absent and presumed dead. But he left no property. HELD: There is no need for the petition. [234]A declaration of presumption of death can never be final. [235]

X. CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

1. Petitioner

> The petitioner may be any interested person concerning the civil status of persons. [236]

2. Venue

The petition may be filed with the RTC (CFI) where the corresponding civil registry is located. [237]

3. Parties

The civil registrar and all persons affected shall be made parties to the proceeding. [238]

4. Notice and publication are required before the hearing. [239]

5. The remedy for the correction of the civil status of a person is in Rule 108 which is not a summary but an adversary proceeding. [240]

Note: Sec. 3, Rule 108, requires all interested persons who may be affected by the petition to be made parties.

XI. SUMMARY PROCEEDINGS UNDER THE FAMILY CODE

1. Summary Proceedings under the Family Code

The cases shall be heard by the proper court authorized to hear family cases, if one exists, or in the regional trial court or its equivalent, sitting in the place where either of the parties or spouses resides. [241]

1. Rationale

The summary remedy was thought of mainly because of separated spouses. One of them usually has difficulty obtaining the consent of the other spouse for a transaction where such consent is required. Thereafter, it was felt that this summary remedy may as well apply to other cases provided in the Family Code where court approval is needed.

2. Procedural rules

At the same time, however, there was the apprehension that some people may not accept the fact that a piece of legislation is providing for procedural rules which, according to them, is within the exclusive authority of the Supreme Court. Hence, it was provided in the Family Code that: Until modified by the Supreme Court, the procedural rules in the Family Code govern all cases provided in the Code requiring court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules. [242]

3. Coverage

Summary procedure may be used in cases provided in Articles 239, 248, 223, 225, 235, 41, 51, 69, 73, 96, 124, 217, Family Code, *viz*:

3.1 A verified petition may be filed to seek judicial authorization for a transaction where the consent of an estranged spouse is needed. [243] Claims for damages by either spouse, except costs, may be litigated only in a separate action. [244]

3.2 The petition for judicial authority to administer or encumber specific separate property of the abandoning spouse and to use the fruits or proceeds thereof for support of the family. [245]

3.3 Petitions filed under Articles 223, 225 and 236 of the Family Code involving parental authority which shall be verified, to be filed in the proper court of the place where the child resides. The court shall notify the parents or, in their absence or incapacity, the individuals, entities or institutions exercising parental authority over the child.

3.4 Summary proceedings filed under Articles 41, 51, 69, 96, 124 and 217, insofar as they are applicable.

4. Procedure

The summary procedure is set forth in certain provisions of the Family Code (Arts. 239-247, 250-252, FC) as follows:

4.1 A verified petition

A verified petition setting forth the alleged facts and attaching the proposed deed of the transaction involved. [246]

4.2 Notice to interested persons

Notice shall be given to all interested persons upon the filing of the petition.

4.3 Preliminary conference

The preliminary conference shall be conducted by the judge personally without the parties being assisted by counsel. After the initial conference, if the court deems it useful, the parties may be assisted by counsel at the succeeding conferences and hearings. [247]

4.4 Requiring appearance

In case of non-appearance of the other party, the court shall inquire into the reasons why and shall require such appearance, if possible. [248]

4.5 *Ex-parte* proceeding

If attendance is not secured, then the court may proceed ex parte and render judgment as the facts and circumstances warrant, but the court shall endeavor to protect the interests of the non-appearing party.

4.6 Summary hearing

The case shall be heard on the basis of affidavits, documentary evidence or oral testimonies at the sound discretion of the court. [249]

4.7 Testimony

If testimony is needed, the court shall specify the witnesses to be heard and the subject matter of their testimonies, directing the parties to present said witnesses. [250]

4.8 Judgment

The judgment of the court shall be immediately executory. [251]

XII. TRUSTEES

1. Basic Concepts

1. Appointment

Upon a proper petition, a trustee may be appointed to carry into effect the provisions of a will or written instrument. [252] The appointment will be made if the testator omitted in his will A nonresident alien may not avail himself of the same right; such as to appoint a trustee in the Philippines, and if the appointment is necessary to proceeding would not be of much benefit to him. [253]

2. Venue

The petition may be filed in the RTC (CFI) in which the will is allowed if allowed here; [254] if not, by the RTC (CFI) in the region in which the property or part thereof affected by the trust is situated. [255]

3. Notice

No publication is required but the appointment is after notice to all persons interested. [256]

4. Bond, inventory and sale of trust estate

Similar to executors and administrators, the trustee also files a bond except when the court exempts him. [257] He also files an inventory. He may sell or encumber trust property with court approval. [258]

XIII. PROCEEDINGS FOR THE HOSPITALIZATION OF INSANE PERSONS

1. Venue

The petition should be filed in the RTC (CFI) of the place where the person alleged to be insane is found. [259]

2. Petitioner

The petition is to be filed by the Director of Health when, in his opinion, the commitment to a hospital or other place for the insane is for the public welfare, or the welfare of the alleged insane who in his judgment is truly insane and such person or the one in charge of him is opposed to the commitment.[260]

3. The court shall provide for the custody of the property or money of the insane until a guardian is appointed.[261]

4. The Director of Health shall file a petition for discharge if the person committed is temporarily or permanently cured, or may be released without danger.[262]

5. The Provincial or City Fiscal (Prosecutor) represents the Director of Health in court. [263]

XIV. OTHER SPECIAL PROCEEDINGS

A. Voluntary Dissolution of Corporations

1. This Rule is no longer relevant. The voluntary dissolution of corporations has been governed by Presidential Decree No. 902-A and the provisions of the Corporation Code, particularly Secs. 117 to 122 thereof.

2. Proceedings have been before the Securities and Exchange Commission, but under Rep. Act No. 8799, which is the new Securities Regulation Code, approved July 19, 2000, its quasi-judicial cases have been transferred back to the regular courts. Sec. 5.2 of Rep. Act No. 8799 provides:

> The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending

suspension of payments/ rehabilitation cases filed as of 30 June 2000 until finally disposed.

3. Section 5 of Presidential Decree No. 902-A, mentioned in Sec. 5.2 of Rep. Act No. 8799 above-quoted, enumerates the following cases:

> (a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission.
>
> (b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;
>
> (c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations; and
>
> (d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership, or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree. (*as added by P.D. No. 1758*.)

4. Decisions of the courts in the foregoing cases are appealable to the Court of Appeals, as provided by Section 70 of Rep. Act No. 8799, which is an affirmation of Rule 43, 1997 Rules of Civil Procedure.

5. Effective December 15, 2000, the Interim Rules of Procedure on Corporate Rehabilitation took effect on December 15, 2000. (A.M. No. 008-10-SC, promulgated on November 21, 2000)

B. Judicial Approval of Voluntary Recognition of Minor Natural Children

1. There is no longer any provision in the Family Code for acknowledged natural children. Children are either legitimate or illegitimate.

2. What is to be proved is filiation, and voluntary recognition could be the means of proving filiation if the putative father or mother would later refuse to continue the

child.

3. Relevant provisions of law are in Articles 172, 173 and 175 of the Family Code.

4. In the case of illegitimate children, the action also survives the death of either or both of the parties except when the action is based on the second paragraph of Article 172, referring to an action based on the open and continuous possession of the status of a legitimate child and any other means allowed by the Rules of Court, in which case the action may be brought only during the lifetime of the alleged parent.

5. The action under Rule 105 may be converted to an action for paternity and filiation.

5.1 Venue

The petition should be filed in the RTC (CFI) where the child resides. 264

5.2 Contents of petition

Aside from the jurisdictional facts, the petition shall contain:

5.2.1 the names and residences of the parents or one of them who acknowledged, their compulsory heirs and the person or persons with whom the child lives; and

5.2.2 the document containing the recognition, a copy of which should be attached to the petition, which document is either a statement before a court of record or an authentic writing. [265]

5.3 A hearing is held after notice and publication. [266] The court grants the petition when it is satisfied that the recognition was willingly and voluntarily made and is for the best interest of the child. [267]

3. Constitution of the Family Home

1. Rule 106 on the Constitution of the Family Home is already irrelevant in view of the Family Code.

2. Under the Family Code, the family home is automatically constituted. Article 153 of the Family Code provides: 'The family home is deemed constituted on a house and lot from the time it is occupied as a family residence.'

3. The constitution of the family home, however, is not retroactive. [268]

4. The family home must be deemed constituted on both the house and lot such that if the occupants of the family residence do not own the lot on which it stands, there is no family home exempt from execution. [269]

XV. APPEALS IN SPECIAL PROCEEDINGS

A. Appealability

An order or judgment which is appealable in special proceedings is an order or judgment which

1. Allows or disallows a will;

2. Determines who are the lawful heirs of a deceased person, or the distributive share of the estate to which such person is entitled;

3. Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;

4. Settles the account of an executor, administrator, trustee, or guardian;

5. Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and

6. Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing, unless it be an order granting or denying a motion for new trial or for reconsideration. [270]

B. Who May Appeal

Any interested person may appeal. A stranger having neither material nor direct interest in a testate or intestate estate has no right to appeal from any order issued therein. [271] Those who have been allowed to appeal are:

1. A surety of an executor or administrator, made a party to an accounting made by such executor or administrator, from an order approving or disapproving such accounting.

2. An heir, legatee or devisee who has been served with notice as to a money claim against the estate admitted by the executor or administrator, from an order of the court approving such claim;

3. A creditor who is allowed by the court to bring an action for recovery of property;

4. A special administrator, from an order disallowing a will. [272]

C. Perfection of Appeal

1. Rules 41 (Appeal from the Regional Trial Courts), 42 (Petition for Review from the Regional Trial Courts to the Court of Appeals) and Rule 45 (Appeal by Certiorari to the Supreme Court), all of the 1997 Rules of Civil Procedure) apply in conformity with

Rule 72, section 2, which refers to the applicability of the rules of civil actions to special proceedings and which provides that in the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings.

2. Appeals in special proceedings are termed "multiple appeals" under the Interim Rules of Court and under the 1997 Rules of Civil Procedure. For multiple appeals, a record on appeal is required, while the period of appeal is thirty (30) days, instead of fifteen (15) days.

D. Advance Distribution

1. A part of the estate as may not be affected by the controversy or appeal, may be distributed among the heirs or legatees, upon compliance with the conditions set forth in Rule 90. [273]

2. A partial distribution should as much as possible be discouraged by the courts, and unless in extreme cases, such form of advances should not be countenanced. [274]

3. The reason for this strict rule is obvious -- courts should guard with utmost zeal and jealousy the estate of the decedent to the end that the creditors thereof be adequately protected and all the rightful heirs assured of their shares in the inheritance. [275]

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[1] Rules of Court, Rule 1, Sec. 3 (c).

[2] Civil Code, Art. 782, par. 2.

[3] *Ibid*.

[4] Civil Code, Art. 775.

[5] Rules of Court, Rule 78.

[6] *Ibid*

[7] Paynaga v. Wolfe, 2 Phil. 146 [1903].

[8] Prasnik v. Republic 98 Phil. 665 [1956].

[9] Civil Code, Arts. 152 and 153.

[10] Civil Code, Art. 407.

[11] Rules of Court, Rule 1, Sec. 3; Suntay v. Cojuangco-Suntay, G. R. No. 132524, December 29, 1998, 300 SCRA 760

[12] Rules of Court, Rule 72, Sec. 2

[13] Fernandez v. Maravilla, No. L-18799, March 31, 1964, 10 SCRA 589.

[14] Matute v. Court of Appeals, No. L-26751, January 3, 1969, 26 SCRA 768.

[15] *Batas Blg*. 129, Secs 19 (4) and 33 (1), as amended.

[16] Rep. Act No. 7651, Sec. 5.

[17] Garcia Fule v. Court of Appeals, No. L-40502, November 29, 1976, 74 SCRA 189.

[18] Rules of Court, Rule 73, Sec. 1, last sentence.

[19] Cuenco v. Court of Appeals, No. L-24742, October 26, 1973, 53 SCRA 360.

[20] Pilipinas Shell Petroleum Corporation v. Dumlao, G. R. No. 44888, February 7, 1992, 206 SCRA 40.

[21] Rules of Court, Rule 73, Sec. 2.

[22] Presidential Decree No. 1083, Art. 143.

[23] Rules of Court, Rule 74, Sec. 1.

[24] *Ibid*.

[25] *Ibid*.

[26] Rules of Court, Rule 74, Sec. 1.

[27] *Ibid*.

[28] *Ibid*.

[29] Rules of Court, Rule 74, Sec. 2.

[30] No longer the Court of First Instance as provided in Sec. 2, Rule 74 but a

Metropolitan or Municipal Court because the value of the property does not exceed Php 200,000 for both Metro Manila and outside Metro Manila (*Batas Blg*. 129, Sec. 33[1]; R.A. No. 7691, Sec. 5.).

[31] Civil Code, Art. 783.

[32] Civil Code, Art. 804.

[33] *Ibid*, Art. 805, first paragraph.

[34] *Ibid*, Art. 805, third paragraph.

[35] *Ibid*, Art. 806.

[36] Rules of Court, Rule 76, Sec. 5.

[37] *Ibid*, Sec. 11.

[38] Civil Code, Art. 810.

[39] *Ibid*, Article 811; Rules of Court, Rule 76, Sec. 5.

[40] Rules of Court, Rule 76, Sec. 11, second paragraph.

[41] *Ibid*, Rule 75, Sec. 2.

[42] *Ibid*, Sec. 3.

[43] . Rules of Court, Rule 76, Sec. 2.

[44] Rules of Court, Rule 76, Sec. 3.

[45] Nuguid v. Nuguid, G. R. No. L-23445, June 23, 1966, 17 SCRA 449

[46] Rules of Court, Rule 76, Sec. 3.

[47] *Ibid*.

[48] Rules of Court, Rule 76, Sec. 4.

[49] *Ibid*, Sec. 5.

[50] *Ibid*, Sec. 6.

[51] Rules of Court, Rule 76, Sec. 7.

[52] *Ibid*, Sec. 8.

[53] *Ibid*, Sec. 10.

[54] *Ibid*, Sec. 9.

[55] Rules of Court, Rules 78 and 79.

[56] *Ibid*, Rule 79, Sec. 1.

[57] Rules of Court, Rule 79, Sec. 2.

[58] *Ibid*, Rule 78, Sec. 1.

[59] *Ibid*, Sec. 4

[60] Rules of Court, Rule 78, Section. 5.

[61] Rules of Court, Rule 78, Sec. 6.

[62] Silverio, Sr. v. Court of Appeals, G. R. No. 109979, March 11, 1999, 304 SCRA 541.

[63] Rules of Court, Rule 80, Sec. 1.

[64] Ozaeta v. Pecson, 93 Phil. 416 [1953].

[65] Ocejo v. Consul General of Spain, 67 Phil. 475 [1939].

[66] Ozaeta v. Pecson, *supra*, note 64; Fernandez v. Maravilla, *supra*, note 13.

[67] Rules of Court, Rule 80, Sec. 2.

[68] Silverio, Sr. v. Court of Appeals, *supra*, note 62.

[69] Anderson v. Perkins, No. L-15388, January 31, 1961, 1 SCRA 387.

[70] De Gala v. Gonzales, 53 Phil. 104 [1929]; Roxas v. Pecson, 82 Phil. 407 [1948].

[71] Rules of Court, Rule 80, Sec. 3.

[72]. Rules of Court, Rule 81.

[73] Rules of Court, Rule 81, Sec. 2.

[74] Rules of Court, Rule 84, Sec. 2.

[75] *Ibid*, Sec. 3.

[76] *Ibid*, Sec. 1.

[77] Rules of Court, Rule 87, Sec. 4.

[78] Rules of Court, Rule 83, Sec. 2.

[79] *Ibid*, Sec. 3.

[80] Sanchez v. Court of Appeals, G. R. No. 108947, September 29, 1997, 279 SCRA 647.

[81] Heirs of Pedro Escanlar v. Court of Appeals, G. R. No. 119777, October 23, 1997, 281 SCRA 176.

[82] Rules of Court, Rule 87, Sec. 2.

[83] *Ibid*, Rule 89, Sec. 4.

[84] *Ibid*, Sec. 3.

[85] Rules of Court, Rule 39.

[86] Rules of Court, Rule 89, Sec. 7.

[87] Rules of Court, Rule 87, Sec. 1.

[88] These claims are specifically described as contractual money claims in the Rules of Court, Rule 3, Sec. 20.

[89] Rules of Court, Rule 86, Sec. 5; Belamala v. Polinar, No. L-24098, November 18,

1967, 21 SCRA 970.

[90] Rules of Court, Rule 87, Sec. 5.

[91] Rules of Court, Rule 87, Sec. 5.

[92] *Ibid*., Sec. 6.

[93] *Ibid*., Sec. 7.

[94] Rules of Court, Rule 87, Sec. 8.

[95] *Ibid*., Sec. 9.

[96] *Ibid*., Sec. 10.

[97] Rules of Court, Rule 87, Sec. 10.

[98] *Ibid*, Rule 86, Sec. 10.

[99] *Ibid*, Sec. 2.

[100] *Ibid*.

[101] Rules of Court, Rule 86, Sec. 4.

[102] *Ibid*, Sec. 5.

[103] Rules of Court, Rule 3, Sec. 20.

[104] Rules of Court, Rule 86, Sec. 5.

[105] *Ibid*, Sec. 9.

[106] *Ibid*.

[107] Rules of Court, Rule 86, Sec. 9.

[108] *Ibid*, Sec. 11.

[109] *Ibid*, Secs. 11 and 12.

[110] Rules of Court, Rule 86, Sec. 13

[111] Rules of Court, Rule 88, Sec. 1.

[112] *Ibid*, Sec. 2.

[113] *Ibid*, Sec. 3.

[114] Rules of Court, Rule 88, Sec. 7.

[115] Rules of Court, Rule 88, Sec. 10.

[116] *Ibid*, Sec. 15.

[117] Rules of Court, Rule 85, Sec. 1.

[118] *Ibid*, Sec. 2.

[119] Rules of Court, Rule 85, Sec. 4.

[120] *Ibid*, Sec. 5.

[121] *Ibid*, Sec. 1.

[122] Rules of Court, Rule 85, Sec. 1.

[123] *Ibid*, Sec. 7.

[124] Dacanay v. La Mancomunidad de Telepuis, 72 Phil. 50 [1941]; Aldamiz v. Judge of the Court of First Instance of Mindoro, 85 Phil. 228 [1949].

[125] Rules of Court, Rule 85, Sec. 7.

[126] *Ibid*, Sec. 8.

[127] *Ibid*, Sec. 9.

[128] Rules of Court, Rule 85, Sec. 10.

[129] *Ibid*, Sec. 11.

[130] Rules of Court, Rule 90.

[131] Rules of Court, Rule 90, Sec. 1, first and second paragraphs.

[132] *Ibid*, second paragraph.

[133] Vera v. Navarro, No. L-27745, October 18, 1977, 79 SCRA 408.

[134] Rules of Court, Rule 90, Sec. 3.

[135] Moran, *Comments on the Rules of Court,* 1997 ed., Vol. 3, pp. 688-9.

[136] Rules of Court, Rule 90, Sec. 4.

[137] Gorostiaga v. Sarte, 68 Phil. 4 [1939].

[138] Rules of Court, Rule 92, Sec. 2.

[139] *Ibid*, Rule 93, Sec. 7.

[140] Rules of Court, Rule 93, Sec. 1.

[141] *Ibid*, Rule 92, Sec. 3.

[142] Rules of Court, Rule 93, Sec. 1.

[143] Rules of Court, Rule 93, Sec. 2.

[144] *Ibid*, Sec. 3.

[145] *Ibid*, Sec. 4.

[146] Rules of Court, Rule 93, Sec. 5.

[147] *Ibid*, Rule 93, Sec. 6.

[148] Rules of Court, Rule 94, Sec. 1.

[149] *Ibid*, Sec. 2.

[150] Rules of Court, Rule 94, Sec. 3.

[151] Rules of Court, Rule 96, Sec. 4.

[152] *Ibid*, 6, Sec. 6.

[153] *Ibid*, Secs. 7 and 8.

[154] Rules of Court, Rule 96, Sec. 8.

[155] *Ibid*, Rule 97, Sec. 2.

[156] Francisco v. Court of Appeals, No. L-57438, January 31, 1984, 127 SCRA 371.

[157] Rules of Court, Rule 95, Sec. 1.

[158] *Ibid*, Sec. 4.

[159] *Ibid*.

[160] . Lopez v. Teodoro, 86 Phil. 499 [1950].

[161] Rules of Court, Rule 97, Sec. 1.

[162] Rules of Court, Rule 97, Sec. 2.

[163] *Ibid*, Sec. 3.

[164] Francisco v. Court of Appeals, *supra*, note 156.

[165] Parco v. Court of Appeals, G. R. No. L-33152, January 30, 1982, 111 SCRA 262.

[166] Sec. 26, Republic Act No. 8552, Sec. 26.

[167] Rules of Court, Rule 99, Sec. 1.

[168] *Batas Blg*. 129, amending Sec. 19 (7).

[169] Rep. Act No. 8552, Sec. 7.

[170] Rep. Act No. 8552, Sec. 7 (a).

[171] Rules of Court, Rule 99, Sec. 4.

[172] Rep. Act No. 8552, Sec. 11.

[173] Rep. Act No. 8552, Sec. 12.

[174] Rep. Act No. 8552, Sec. 13.

[175] *Ibid*.

[176] Rep. Act No. 8552, Sec. 14.

[177] Rep. Act No. 8552, Sec. 15.

[178]. Rep. Act No. 8552, Sec. 19.

[179]. Rules of Court, Rule 100, Sec. 5.

[180]. Rules of Court, Rule 100, Sec. 4.

[179] Rules of Court, Rule 100, Sec. 5.

[180] Rules of Court, Rule 100, Sec. 4.

[181] Executive Order No. 91, paragraph 2, December 17, 1986.

[182] Republic v. Court of Appeals and Hughes, G.R. No. 100835, October 26, 1993, 227 SCRA 401.

[183] Republic v. Court of Appeals and Hughes, G.R. No. 100835, October 26, 1993, 227 SCRA 401.

[184] Brehm v. Republic, G.R No. L-18566, September 30, 1963, 9 SCRA 172.

[185] Civil Code, Article 363, second paragraph.

[186] Espiritu v. Court of Appeals, G.R. No. 115640, March 15, 1995, 242 SCRA 362. For cases on custody, Orda v. Court of Appeals, G.R. No. 92625, December 26, 1990; 192 SCRA 768; Luna v. Intermediate Appellate Court, No. L-68374, June 18, 1985, 137 SCRA 7.

[187] Rep. Act No. 7192, Sec. 27.

[188] *Ibid*, Sec. 28.

[189] *Ibid*, Sec. 30.

[190] David v. Court of Appeals, G.R. No.111180, November 16, 1995, 250 SCRA 82

[192] Pres. Decree No. 603, Article 68.

[193] . Pres. Decree No. 603, Article 142.

[194] Pres. Decree No. 603, Article 177.

[195] Rules of Court, Rule 102, Sec. 1.

[196] Zacarias vs. Cruz, G.R. No. L-25899, November 29, 1969, 30 SCRA 729.

[197] Villavicencio v. Lukban, 39 Phil. 778 [1919].

[198] Malinao v. Raveles, 108 Phil. 1159 [1960].

[199] Makapagal v. Santamaria, 55 Phil. 418 [1930].

[200] In re: McCullough Dick, 38 Phil. 41 [1918].

[201] Llobrera v. Director of Prisons, 87 Phil. 179 [1950].

[202] Rules of Court, Rule 102, Sec. 2.

[203] Rules of Court, Rule 102, Sec. 6.

[204] Rules of Court, Sec. 2.

[205] Rules of Court, Sec. 15.

[206] Rules of Court, Rule 91, Sec. 1.

[207] *Ibid*.

[208] *Ibid*.

[209] Rules of Court, Rule 91, Sec. 1.

[210] The Rules use the word 'entry' but it means rendition.

[211] Rules of Court, Rule 91, Sec. 1.

[212] Rules of Court, Rule 91, Sec. 3.

[213] Rules of Court, Rule 91, Sec. 3, second paragraph.

[214] Yu v. Republic, G.R. No. 20874, May 25, 1966, 17 SCRA 253.

[215] Tse v. Republic, G.R. No. 20708, August 31, 1967, 20 SCRA 1261.

[216] Ong Huan Tin v. Republic, G.R. No. 20997, April 27, 1967, 19 SCRA 966.

[217] Basas v. Republic, G.R. No. 23595, February 20, 1968, 22 SCRA 652.

[218] Rules of Court, Rule 103, Sec. 1.

[219] *Ibid*, Sec. 2.

[220] *Ibid*, Secs 3 and 4.

[221] Go v. Republic, G. R. No. L-31760, May 25, 1977, 77 SCRA 65.

[222] Republic v. Hernandez, G. R. No. 117209, February 9, 1996, 253 SCRA 509.

[223] Yasin v. Judge, Shari'a District Court, G.R. No. 94986, February 23, 1995, 241 SCRA 606.

[224] Republic v. Court of Appeals, G.R. No. 88202, December 14, 1998, 300 SCRA 138.

[225] Haw Liong v. Republic, G.R. No. 21194, April 24, 1966, 16 SCRA 677.

[226] Republic v. Intermediate Appellate Court, G. R. No. L-70513, October 13, 1986, 145 SCRA 25.

[227] Padilla vs. Republic, No. L-28274, April 30, 1982, 113 SCRA 789.

[228] Calderon v. Republic, G.R. No. 18127, April 5, 1967, 19 SCRA 721.

[229] Naldoza v. Republic, G.R. No. L-55538, March 15, 1982, 112 SCRA 568.

[230] Rules of Court, Rule 107, Sec. 1.

[231] *Ibid*, Sec. 2.

[232] *Ibid*, Sec. 4.

[233] Rules of Court, Rule 106, Sec. 7.

[234] Reyes v. Alejandro, No. L-32026, January 16, 1986, 141 SCRA 65.

[235] Jones v. Hortiguela, 64 Phil. 179 [1937].

[236] Rules of Court, Rule 108, Sec. 1.

[237] *Ibid*.

[238] Rules of Court, Rule 108, Sec. 3.

[239] *Ibid*, Sec. 4.

[240] Republic v. Valencia, No. L-32181, March 5, 1986, 141 SCRA 462.

[241] Family Code, Art. 241.

[242] *Ibid*, Art. 238.

[243] Family Code, Article 239.

[244] *Ibid*.

[245] Family Code, Article 248.

[246] Family Code, Article 239.

[247] *Ibid*, Art. 243.

[248] *Ibid*, Art. 244.

[249] Family Code, Art. 246.

[250] *Ibid*.

[251] Family Code, Art. 24.

[252] Rules of Court, Rule 98, Sec. 1.253. *Ibid*, Sec. 2.254. Basas v. Republic, No. L-23595, February 20, 1968, 22 SCRA 652.

[253] *Ibid*., Sec. 2

[254] Basas v. Republic, No. L-23595, February 20, 1968, 22 SCRA 652

[256] *Ibid*, Sec. 2.

[257] *Ibid*, Secs. 5 and 6.

[258] *Ibid*, Sec. 9.

[259] Rules of Court, Rule 101, Sec. 1.

[260] *Ibid*, Secs. 1 and 3.

[261] *Ibid*, Sec. 3.

[262] *Ibid*, Sec. 4.

[263] *Ibid*, Sec. 5.

[264] Rules of Court, Rule 105, Sec. 5.

[265] *Ibid*, Sec. 2.

[266] *Ibid*, Sec. 3.

[267] *Ibid*, Sec. 5.

[268] Modequilla v. Breva, G.R. No. 86355, May 31, 1990, 185 SCRA 766; Manacop v. Court of Appeals, G.R. No. 104875, November 13, 1992, 215 SCRA 773; Taneo, Jr. v. Court of Appeals, G.R. No. 108532, March 9, 1999, 304 SCRA 308, 319-320 [1999].

[269] Taneo, Jr. v. Court of Appeals, *supra*, note 268.

[270] Rules of Court, Rule 109, Sec. 1.

[271] Espinosa v. Barrios, 70 Phil. 311 [1940].

[272] Fluemer v. Hix, 54 Phil. 610 [1930].

[273] Rules of Court, Rule 109, Sec. 2.

[274] Gatmaitan v. Medina, 109 Phil. 109 [1960]; reiterated in Dael v. Intermediate Appellate Court, G.R. No. 68873, March 31, 1989, 171 SCRA 524.

[275] *Ibid*.

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