3. INCIDENTS AFTER COURT HAS ACQUIRED JURISDICTION OVER THE PARTIES

1. Preliminary

After the court has acquired jurisdiction over the parties, but before the defendant files his responsive pleading, the parties may file the following notice, motions and pleadings:

1. Plaintiff

1.1 notice of dismissal of the complaint under Rule 17, Section 1;

1.2 amended complaint under Rule 10, Section 2;

1.3 motion for leave to file a supplemental complaint under Rule 10, Section 6;

1.4 motion for leave of court to take the deposition upon oral examination or written interrogatories of any person, whether party or not under Rule 23, Section 1;

1.5 motion for leave of court to serve written interrogatories upon defendant under Rule 25, Section 1;

1.6 motion for production or inspection of documents of things under Rule 27, Section 1;

1.7 motion to declare defendant in default under Rule 9, Section 3.

2. Defendant

2.1 motion to set aside order of default under Rule 9, Section 3;

2.2 motion for extension of time to file responsive pleading under Rule 11, Section 11; and

2.3 motion for bill of particulars under Rule 12.

2.4 notice of dismissal of the complaint under Rule 17, Section 1.

2. Rules on the Specific Incidents

1. Notice of Dismissal of Complaint

> A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment.[47]

As a general rule, the dismissal of the complaint under this rule is without prejudice. However, the following are the recognized exceptions:

(a) where the notice of dismissal so provides;

(b) where the plaintiff has previously dismissed the same case in a court of competent jurisdiction;

(c) even where the notice of dismissal does not provide that it is with prejudice but it is premised on the fact of payment by the defendant of the

claims involved.[48] For the notice of dismissal to be effective, there must be an order confirming the dismissal.[49]

2. Amended Complaint

> A party may amend his pleading once as a matter of right at any time before a responsive pleading is served or, in the case of a reply, at any time within ten (10) days after it is served.[50]

The filing by the defendant of a motion to dismiss does not affect the plaintiff's right to amend his complaint without first securing leave of court because a motion to dismiss is not a responsive pleading.[51] Leave of court is necessary after the filing of a responsive pleading. However, even substantial amendments may be made under this Rule. But such leave may be refused, if it appears to the court that the motion was made with intent to delay.[52]

3. Supplemental Complaint

> Upon motion of a party the court may upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented.[53]

The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading.[54] The answer to the complaint shall serve as the answer to the supplemental complaint if no new or supplemental answer is filed.[55]

A supplemental pleading incorporates matters arising after the filing of the complaint. A supplemental pleading is always filed with leave of court. It does not result in the withdrawal of the original complaint.

4. Deposition (Rule 23)

A deposition is not generally supposed to be a substitute for the actual testimony in open court of a party or witness. If the witness is available to testify, he should be presented in court to testify. If available to testify, a party's or witness' deposition is inadmissible in evidence for being hearsay.[56] The exceptions however to the inadmissibility of such deposition are provided for in Rule 23, Section 4, as follows:

> (a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness;
>
> (b) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose;
>
> (c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by *subpoena*; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; and

> (d) If only part of a deposition is offered in evidence by a party, the adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

5. Written Interrogatories upon Defendant (Rule 25, Section 1)

A judgment by default may be rendered against a party who fails to serve his answer to written interrogatories.[57]

If a party fails to avail of written interrogatories as a mode of discovery, the effect is provided for in Rule 25, Section 6, to wit:

> Unless thereafter allowed by the court for good cause shown and to prevent a failure of justice, a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal.

6. Request for Admission

> At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished.[58]

Unless thereafter allowed by the court for good cause shown and to prevent a failure of justice, a party who fails to file and serve a request for admission on the adverse party of material and relevant facts which are, or ought to be within the personal knowledge of the latter, shall not be permitted to present evidence on such facts.[59]

7. Production or Inspection of Document or Things (Rule 27, Section 1)

This mode of discovery does not mean that the person who is required to produce the document or the thing will be deprived of its possession even temporarily. It is enough that the requesting party be given the opportunity to inspect or copy or photograph the document or take a look at the thing.

8. Physical and Mental Examination of a Party (Rule 28, Section 1)

In an action in which the mental or physical condition of a party is in controversy, the court in which the action is pending may, in its discretion, order him to submit to a physical or mental examination by a physician.

9. Consequences of Refusal (Rule 29)

A trial court has no discretion to determine what the consequences of a party's refusal to allow or make discovery should be; it is the law which makes that determination; it is grave abuse of discretion for the court to refuse to recognize and observe the effects of that refusal as mandated by law.[60]

10. Default (Rule 9, Section 3)

> If the defending party fails to answer within the time allowed therefore, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion

requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.[61]

Another ground to declare a defending party in default is when he fails to furnish a copy of the answer to the claiming party.[62]

A declaration of default cannot be made by the court *motu proprio*; there must be a motion to that effect.[63] If no motion to declare defendant in default is filed, the complaint should be dismissed for failure to prosecute.

10.1 Rules on Default

10.1.1 Effect of Order of Default

(a) A party in default loses his standing in court. He cannot appear therein, adduce evidence and be heard nor take part in trial.[64] He cannot file a motion to dismiss without first filing a motion to set aside the order of default.[65] He loses his right to present evidence, control the proceedings and examine the witnesses or object to plaintiff's evidence.[66]

(b) A motion to declare the defending party in default should be served upon him. A party in default, however, shall be entitled to notice of subsequent proceedings but not to take part in the trial.[67]

(c) Being declared in default does not constitute a waiver of all rights. What is waived is only the right to be heard and to present evidence during trial while default prevails. A party in default is still entitled to notice of final judgments and orders and proceedings taken subsequent thereto.[68] He may be cited and testify as a witness.[69]

10.1.2 Summary of the Remedies in Default[70]

(a) From notice of the order of default but before judgment, motion to set aside order of default; and, in a proper case, petition for *certiorari* under Rule 65.

(b) After judgment but before its finality:

(i) motion for reconsideration under Rule 37, Section 1;

(ii) motion for new trial under Rule 37, Section 1; and

(iii) appeal under Rule 41, Section 1.

(c) After finality of judgment:

Within the prescribed period, petition for relief from judgment under Rule 38, Section 1; in a proper case and within the prescribed period, petition for *certiorari* under Rule 65; and in a proper case and within the prescribed periods, petition for annulment of judgment under Rule 47.

10.1.3 Actions where Default is Not Allowed

(a) Action for declaration of the nullity of marriage; action for annulment of marriage; and, action for legal separation.

Note: If the defending party fails to answer, the court shall order the prosecuting attorney to investigate whether or not a collusion exists between the parties, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated;[71]

(b) Before expiration of period to answer as when there is a pending motion for extension;[72]

(c) In actions governed by the Rule on Summary Procedure, a motion to declare defendant in default is not allowed.[73]

10.1.4 Two (2) Kinds of Proceedings after Declaration of Default and the Extent of Relief that may be Granted

(a) Without Hearing

The Court may immediately render judgment granting the claimant such relief as his pleading may warrant. Such relief however shall not exceed the amount or be different in kind from that prayed for nor award unliquidated damages.[74]

(b) With Hearing

The court may, in its discretion, allow or require the claimant to submit evidence. Such reception of evidence may be delegated to the Clerk of Court. After the reception of claimant's evidence, the court may render judgment granting the reliefs prayed as established by the evidence. It may also award unliquidated damages without exceeding the amounts prayed for.[75]

11. Extension of Time to file Responsive Pleading (Rule 11)

The granting of a motion to extend the time to plead is addressed to the sound discretion of the court.[76] The court can extend but not shorten the period to plead as fixed by the Rules.

12. Bill of Particulars (Rule 12, Section 1)

Before responding to a pleading, a party may move for a definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading. If the pleading is a reply, the motion must be filed within ten (10) days from service thereof. Such motion shall point out the defects complained of, the paragraphs wherein they are contained, and the details desired.

The Court need not wait for the date set for hearing of the motion. Upon the filing of the motion, the clerk of court must immediately bring it to the attention of the court which may either grant or deny it or hold a hearing therein.[77]

If the order directing the plaintiff to submit a bill of particulars is not complied with, the court may order the striking out of the pleading or the portion thereof to which the order was directed or make such orders as it deems just.[78]

13. Motion to Dismiss

1. Grounds (Rule 16, Section 1)

Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

(a) That the court has no jurisdiction over the person of the defending party;

(b) That the court has no jurisdiction over the subject matter of the claim;

(c) That venue is improperly laid;

(d) That the plaintiff has no legal capacity to sue;

(e) That there is another action pending between the same parties for the same cause;

(f) That the cause of action is barred by a prior judgment or by the statute of limitations;

(g) That the pleading asserting the claim states no cause of action;

(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

(i) That the claim on which the action is founded is unenforceable under the provisions of the Statute of Frauds; and

(j) That a condition precedent for filing the claim has not been complied with.

It is a decisional rule that in a motion to dismiss on the ground that the complaint states no cause of action, the movant hypothetically admits the truth of the allegations of the complaint which are relevant and material to plaintiff's cause of action. This admission does not include inferences or conclusions drawn from the alleged facts nor to matters of evidence, surplasage or irrelevant matters nor to allegations of fact the falsity of which is subject to judicial nature.[79]

Formal Requisite: The motion must comply with Rule 15. The court is without authority to act on the motion without proof of service of the notice of hearing.[80]

2. Discussion of Individual Grounds

2.1 Court has no jurisdiction over the person defending party.

2.2 Court has no jurisdiction over the subject matter of the claim.[81]

2.3 Venue is improperly laid.

(a) Venue of an action depends upon the:

a.1 nature of the action;

a.2 residence of the parties;

a.3 stipulation of the parties; and

a.4 law.

(b) Test to Determine Nature of Action

The nature of the action is determined from the allegations of the complaint, the character of the relief, its purpose and prime objective. When the prime objective is to recover real property, it is a real action.[82]

(c) Rule that Stipulations as to Venue may Either Be Permissive or Mandatory

Written stipulations are either mandatory or permissive. In interpreting stipulations as to venue, inquiry must be made as to whether or not the agreement is restrictive in the sense that the suit may be filed only in the place agreed upon or merely permissive in that the parties may file their suits not only in the place agreed upon but also in the places fixed by the rules.[83]

Qualifying or restrictive words are 'must,' 'only,' and 'exclusively' as cited in *Philippine Banking Corporation v. Tensuan,*[84] 'solely,' 'in no other court,' 'particularly,' nowhere else but except', etc.[85]

(d) Waiver by Failure to File Motion to Dismiss Based on Improper Venue:

Improper venue may now be pleaded as an affirmative defense in the answer.[86] Improper venue may only be deemed waived if it is not pleaded either in a motion to dismiss or in the answer.[87]

2.4 Plaintiff Has No Legal Capacity to Sue

(a) Meaning

Legal capacity to sue means that a party is not suffering from any disability such as minority, insanity, covertures, lack of juridical personality, incompetence, civil interdiction[88] or does not have the character or representation which he claims[89] or with respect to foreign corporation, that it is doing business in the Philippines with a license.[90]

(b) Decisional Rules

In *Pilipinas Shell Petroleum Corporation v. Dumlao,*[91] the Supreme Court held that a person who has no interest in the estate of a deceased person has no legal capacity to file a petition for letters of administration. With respect to foreign corporation*s,* the qualifying circumstances of plaintiff's capacity to sue being an essential element must be affirmatively pleaded.[92] The qualifying circumstance is an essential part of the element of the plaintiff's capacity to sue.[93] The complaint must either allege that it is doing business in the Philippines with a license or that it is a foreign corporation not engaged in business and that it is suing in an isolated transaction.

2.5 *Litis Pendentia*

(a) Rationale of the Rule: Like *res judicata* as a doctrine, *litis pendentia* is a sanction of public policy against multiplicity of suits.[94]

The principle upon which a plea of another action pending is sustained is that the latter action is deemed unnecessary and vexatious.[95]

(b) Requisites of *Litis Pendentia:* To prevail as a ground for a motion to dismiss, the following elements must be present:

b.1 Identity of parties, or at least such as representing the same interest in both actions;

b.2 Identity of rights asserted and prayed for, the relief being founded on the same facts; and

b.3 The identity on the preceding particulars should be such that any judgment which may be rendered on the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[96]

(c) Which of the Two Cases Should be Dismissed?

The Rules do not require as a ground for dismissal of a complaint that there is a prior pending action. They provide that there is a pending action, not a pending prior action. Given, therefore, the pendency of two actions, the following are the relevant considerations in determining which action should be dismissed:

c.1 the date of the filing, with preference generally given to the first action filed to be retained;

c.2 whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and

c.3 whether the action is the appropriate vehicle for litigating the issues between the parties.[97]

2.6 *Res Judicata*

(a) Statement of the Doctrine

The doctrine of res *judicata* is a rule which pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely:

a.1 public policy and necessity which make it to the interest of the state that there should be an end to litigation – *interest reipublicae ut sit finis litium,* and

a.2 the hardship on the individual that he should be vexed twice for the same cause – *nemo debet bis vexari et eadem causa.* [98]

(b) The requisites of *res judicata* are the following*:*

b.1 the former judgment or order must be final;

b.2 it must be a judgment or order on the merits;

b.3 the court which rendered it had jurisdiction over the subject matter and the parties; and

b.4 there must be, between the first and second actions, identity of parties, of subject matter and of cause of action.[99]

(c) Two Aspects of *Res Judicata*

c.1 Bar by Former Judgment – when, between the first case where the judgment was rendered, and the second case where the judgment is invoked, there is identity of parties, subject matter and cause of action.

c.2 Conclusiveness of Judgment – when there is an identity of parties but not cause of action, the judgment being conclusive in the second case only as to those matters actually and directly controverted and determined, and not as to matters invoked thereon.[100]

(d) Decisional Rules

A judicial compromise has the effect of *res judicata* and is immediately executory and not appealable.[101] The ultimate test in ascertaining the identity of causes of action is said to be to look into whether or not the same evidence fully supports and establishes both the present cause of action and the former cause of action.[102] Only substantial, and not absolute, identity of parties is required for *res judicata.*[103]

2.6 Statute of Limitation (Prescription of Action)

An action prescribes by the lapse of time fixed in the Civil Code (Articles 1139 to 1155).

ART. 1139. Actions prescribe by the mere lapse of time fixed by law.

ART. 1140. Actions to recover movables shall prescribe eight years from the time the possession thereof is lost, unless the possessor has acquired the ownership by prescription for a less period, according to article 1132, and without prejudice to the provisions of articles 559, 1505, and 1133.

ART. 1141. Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

ART 1142. A mortgage action prescribes after ten years.

ART 1143. The following rights, among others specified elsewhere in this Code, are not extinguished by prescription:

1. To demand a right of way, regulated in article 649;

2. To bring an action to abate a public or private nuisance.

ART. 1144. The following actions must be brought within ten years from the time the right of action accrues:

1. Upon a written contract;

2. Upon an obligation created by law;

3. Upon a judgment.

ART. 1145. The following actions must be commenced within six years:

1. Upon an oral contract;

2. Upon a quasi-contract.

ART. 1146. The following actions must be instituted within four years:

1. Upon an injury to the rights of the plaintiff;

2. Upon quasi-delict.

However, when the action arises from or out of any act, activity, or conduct of any public officer involving the exercise of powers or authority arising from Martial Law including the arrest, detention and/or trial of the plaintiff, the same must be brought within one (1) year.[104]

Art. 1147. The following actions must be filed within one year:

1. For forcible entry and detainer;

2. For defamation.

ART. 1148. The limitations of action mentioned in articles 1140 to 1142, and 1144 to 1147 are without prejudice to those specified in other parts of this Code, in the Code of Commerce and in special laws.

ART. 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues.

ART. 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

ART. 1151. The time for the prescription of actions which have for their object the enforcement of obligations to pay principal with interest or annuity runs from the last payment of the annuity or of the interest.

ART. 1152. The period for prescription of actions to demand the fulfillment of obligation declared by a judgment commences from the time the judgment became final.

ART. 1153. The period for prescription of actions to demand accounting runs from the day the persons who should render the same cease in their functions.

The period for the action arising from the result of the accounting runs from the date when said result was recognized by agreement of the interested parties.

ART. 1154. The period during which the obligee was prevented by a fortuitous event from enforcing his right is not reckoned against him.

ART. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

(a) Decisional Rules

Prescription and estoppel cannot be invoked against the State.[105] If the defense of prescription has not been raised in a motion to dismiss or an answer, if the plaintiff's complaint or evidence shows that the action had prescribed, the action shall be dismissed.[106] Prescription cannot be invoked as a ground if the contract is alleged to be *void ab initio*[107] but where prescription depends on whether the contract is void or voidable, there must be a hearing.[108]

2.7 Pleading Asserting Claim States No Cause of Action

(a) Elements of a Cause of Action

A cause of action exists if the following elements are present, namely:

a.1 a right in favor of the plaintiff by whatever means and under whatever law it arises or is created;

a.2 an obligation on the part of the named defendant to respect or not to violate such right; and

a.3 an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[109]

(b) Hypothetical Admission of Allegations of Fact in the Complaint

It is axiomatic that a defendant moving to dismiss a complaint on this ground is regarded as having admitted all the averments thereof, at least hypothetically, the test of the sufficiency of the facts found in a petition, as constituting a cause of action, being whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer thereof. In determining the sufficiency of the statements in the complaint as setting forth a cause of action, only those statements in the complaint, to repeat, may properly be considered, and it is error for the Court to take cognizance of external facts, or hold a preliminary hearing to determine their existence.[110]

(c) The following Allegations are not Deemed Hypothetically Admitted:

c.1 allegations of which the court will take judicial notice are not true; neither allegations of conclusions nor allegations of fact the falsity of which the court may take judicial notice are deemed admitted;[111]

c.2 legally impossible facts;

c.3 facts inadmissible in evidence; and

c.4 facts which appear by record or document included in the pleadings to be unfounded;[112]

c.5 When other facts may be considered;

c.6 Where the motion to dismiss was heard with the submission of evidence or if documentary evidence admitted by stipulation discloses facts sufficient to defeat the claim[113] or admitted during hearing on preliminary injunction,[114] the facts therein adduced may be considered;

c.7 All documents attached to a complaint, the due execution and genuineness of which are not denied under oath by the defendant, must be considered as part of the complaint without need of introducing evidence thereon;[115]

c.8 In resolving a motion to dismiss, every court must take cognizance of decisions the Supreme Court has rendered because they are proper subjects of mandatory judicial notice as provided by Section 1 of Rule 129 of the Rules of Court. The said decisions, more importantly, 'form part of the legal system,' and failure of any court to apply them shall constitute an abdication of its duty to resolve a dispute in accordance with law, and shall be a ground for administrative action against an inferior court magistrate;[116]

c.9 Exhaustion of Administrative Remedies. Where plaintiff has not exhausted all administrative remedies, the complaint not having alleged the fact of such exhaustion, the same may be dismissed for lack of cause of action.[117]

(d) Claim or Demand Set Forth in the Plaintiff's Pleading Has Been Paid, Waived, Abandoned or Otherwise Extinguished

ART. 1231. Obligations are extinguished:

(i) by payment or performance;

(ii) by the loss of the thing due;

(iii) by the condonation or remission of the debt;

(iv) by the confusion or merger of rights of debtor and creditor;

(v) by compensation; and

(vi) by novation.

Other causes of extinguishment of obligations, such as annulment, rescission, fulfillment of a resolutory condition, and prescription, are governed elsewhere in this Code.

(e) Statute of Frauds

(f) The Civil Code enumerates in Art. 1403 the contracts falling under the Statute of Frauds.

ART. 1403. The following contracts are unenforceable, unless they are ratified:

1. Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

2. Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases, an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or secondary evidence of its contents:

> a. An agreement that by its terms is not to be performed within a year from the making thereof;
>
> b. An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;
>
> c. An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;
>
> d. A representation as to the credit of a third person.

3. Those where both parties are incapable of giving consent to a contract.

(g) Some Decisional Rules

Absence of compliance with the Statute of Frauds may be proved in a motion to dismiss.[118] Plaintiff must produce all notes or memorandum during the hearing of the motion to dismiss. A motion invoking the Statute of Frauds may be filed even if the same does not appear on the face of the complaint. That the claim is unenforceable under the Statute of Frauds may be shown and determined during the hearing of the motion to dismiss on said ground.[119] Under Sec. 2, Chapter 6 of RA 8792 (E-Commerce Law) where the law requires a writing or document, that requirement is met by an electronic document which maintains its integrity and reliability and can be authenticated so as to be useable for subsequent reference.

The Civil Code on cases where compromise is not allowed:

Art. 2035. No compromise upon the following questions shall be valid:

> (1) The civil status of persons;
>
> (2) The validity of a marriage or a legal separation;

(3) Any ground for legal separation;

(4) Future support;

(5) The jurisdiction of courts;

(6) Future legitime.

3. Resolution of the Motion

After the hearing, the court may dismiss the action or claim, deny the motion, or order the amendment of the pleading.

The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable.

In every case, the resolution shall state clearly and distinctly the reasons therefor.[120]

[47] Rules of Court, Rule 17, Sec. 1.
[48] Serrano v. Cabrera, 93 Phil 774 [1953].
[49] Rules of Court, Rule 17, Sec. 1; Minute Resolution, Gordon v. Payumo, G. R. No. 134071, July 7, 1998.
[50] Rules of Court, Rule 10, Sec. 2.
[51] Paeste v. Jarique, 94 Phil 179 [1953].
[52] Rules of Court, Rule 10, Sec. 3.
[53] Rules of Court, Rule 11, Sec. 7.
[54] *Ibid.*
[55] *Ibid*.
[56] Dasmariñas Garments, Inc. v. Reyes, G. R. No. 108229, August 24, 1993, 225 SCRA 622.
[57] Rules of Court, Rule 29, Sec. 3 (3).
[58] Rules of Court, Rule 26, Sec. 1.
[59] *Ibid*, Sec. 5.
[60] Diman v. Alimbres G. R. No. 131466 November 27, 1998, 299 SCRA 459.
[61] Rules of Court, Rule 9.
[62] Gonzalez v. Francisco, 49 Phil 747 [1926]; Ramirez v. Court of Appeals, G. R. No. 76366, July 3, 1990, 187 SCRA 153.
[63] The Philippine British Co., Inc. v. De los Angeles, Nos. L-33720-1, March 10, 1975, 63 SCRA 50.
[64] Cavili v. Florendo, No. L-73039, October 9, 1987, 154 SCRA 610.
[65] Santos v. Samson, No. L-46371, December 14, 1981, 110 SCRA 215.
[66] Cavili v. Florendo, *supra*, note 64.
[67] Rules of Court, Rule 9, Sec. 3(a).
[68] Garcia v. Court of Appeals, G. R. No. 83929, June 11, 1992, 209 SCRA 732.
[69] Cavili v. Florendo, *supra*, note 64.
[70] Rules of Court, Rule 9, Sec. 3 (b), Lina v. Court of Appeals, No. L-63397, April 9, 1985, 135 SCRA 637; Circle Financing Corporation v. Court of Appeals, G. R. No. 77315, April 22, 1991, 196 SCRA 166; Malanyaon v. Suñga, G. R. No. 49463, May 7, 1992, 208 SCRA 436; Omico Mining and Industrial Corporation v. Vallejos, No. L-38974, March 25, 1975, 63 SCRA 285; Matute v. Court of Appeals, L-26571, January 31, 1969, 26 SCRA 768; Akut v. Court of Appeals, G. R. No. L-45472, August 30, 1982, 116 SCRA 213.
[71] Rules of Court, Rule 9, Sec. 3 (e).
[72] Joesteel Container Corporation v. Commonwealth Financing Corporation, No. L-25778, September 30, 1982, 117 SCRA 43; Denso (Phils.), Inc. v. Intermediate Appellate Court, No. L-75000, February 27, 1987, 148 SCRA 280; Continental Cement Corporation v. Court of Appeals, G. R. No. 88586, April 27, 1990, 184 SCRA 728.
[73] Rules of Court, Rule 70, Secs. 13 and 19.
[74] Rules of Court, Rule 9, Sec. 3 (d).
[75] Rules of Court, Rule 9, Sec. 3 (d).
[76] Naga Development Corporation v. Court of Appeals, G. R. No. 28173, September 30, 1971, 41 SCRA 105.
[77] Rules of Court, Rule 12, Sec. 2.
[78] *Ibid.*, Sec. 4.
[79] De Dios v. Bristol Laboratories (Phil.), Inc., G. R. No. 25530, January 29, 1974, 55 SCRA 349.
[80] Rules of Court, Rule 15, Sec. 6.
[81] *Ibid.*
[82] Fortune Motors, Inc. v. Court of Appeals, G. R. No. 76431, October 19, 1989, 178 SCRA 564.
[83] Rules of Court, Rule 4, Sec. 4 (b), Polytrade v. Blanco, No. L-27033, October 31, 1969, 30 SCRA 187; Unimasters Conglomeration, Inc. v. Court of Appeals, G. R. No. 119657, February 7, 1997, 267 SCRA 759.
[84] G. R. No. 106920, December 10, 1993, 228 SCRA 385; Bautista v. Borja, G. R. No. 20600, October 28, 1966, 18 SCRA 474.
[85] Unimasters Conglomeration, Inc. v. Court of Appeals, *supra*, note 83.
[86] Rules of Court, Rule 1, Sec. 6.
[87] Rules of Court, Rule 9, Sec. 1.
[88] Calano v. Cruz, 91 Phil. 247 [1952].
[89] 1 Moran 174-177 [1979].

[90] Corporation Code, Sec. 133.

[91] G.R. No. 44888, February 7, 1992, 206 SCRA 40.

[92] Leviton Industries v. Salvadro, No. L-40163, June 19, 1982, 114 SCRA 420.

[93] Bulakhidas v. Navarro, No. L-49695, April 7, 1986, 142 SCRA 4; Antam Consolidated, Inc. v. Court of Appeals, No. L-61523, July 31, 1986, 143 SCRA 288.

[94] Investors' Finance Corporation v. Ebarle, No. L-70640, June 29, 1988, 163 SCRA 60.

[95] Victronics Computers, Inc. v. Logarta, G. R. No. 104019, January 25, 1993, 217 SCRA 517; Arceo v. Oliveros, No. L-38257, January 31, 1985, 134 SCRA 308; Andresons Groups, Inc. v. Court of Appeals, G. R. No. 114928, January 21, 1997, 266 SCRA 423.

[96] Lamin Ents. v. Lagamon, No. L-57250, October 30, 1981, 108 SCRA 740; FEU-Dr. Nicanor Reyes Medical Foundation v. Trajano, No. L-76273, July 31, 1987, 152 SCRA 725; Suntay v. Aquiluz, G. R. No. L-28883, June 3, 1992, 209 SCRA 500; Valencia v. Court of Appeals, G. R. No. 111401, October 17, 1996, 263 SCRA 275; Cokaliong Shipping Lines, Inc. v. Amin, G. R. No. 112233, July 31, 1996, 260 SCRA 122.

[97] Allied Banking Corporation v. Court of Appeals, G. R. No. 95223, July 26, 1996, 259 SCRA 371.

[98] Linzag v. Court of Appeals, G. R. No. 122181, June 26, 1998, 291 SCRA 304.

[99] Casil v. Court of Appeals, G. R. No. 121534, January 28, 1998, 285 SCRA 204.

[100] Islamic Directorate of the Philippines v. Court of Appeals, G. R. No. 117897, May 14, 1997, 272 SCRA 454.

[101] Republic v. Court of Appeals, G. R. No. 110020, September 25, 1998, 296 SCRA 171.

[102] Bachrach Corporation v. Court of Appeals, G. R. No. 128349, September 25, 1998, 296 SCRA 487.

[103] Sempio v. Court of Appeals, G. R. No. 124326, January 22, 1998, 284 SCRA 580.

[104] As amended by PD No. 1755, December 24, 1980.

[105] Delos Reyes v. Court of Appeals, G. R. No. 121468, January 27, 1998, 285 SCRA 81.

[106] Rules of Court, Rule 9, Sec. 1; Ferrer v. Ericta, No- L-41767, August 23, 1978, 84 SCRA 705; Aznar v. Bernad, No. L-81190, May 9, 1988, 161 SCRA 276.

[107] Ruiz v. Court of Appeals, No. L-29213, October 21, 1977, 79 SCRA 525; Castillo v. Heirs of Vicente Madrigal, G. R. No. 62650, June 27, 1991, 198 SCRA 556.

[108] Landayan v. Bacani, No. L-30455, September 30, 1982, 117 SCRA 117.

[109] Dulay v. Court of Appeals, G. R. No. 108017, April 3, 1995, 243 SCRA 220 cited in Parañaque Kings Enterprises, Inc. v. Court of Appeals, G. R. No. 11538, February 16, 1997.

[110] D. C. Crystal, Inc. v. Laya, G.R. No. 53597, February 28, 1989, 170 SCRA 734; Del Bros. v. Court of Appeals, G. R. No. 87678, June 16, 1992, 210 SCRA 33; Rava Development Corporation v. Court of Appeals, G. R. No. 96825, July 3, 1992, 211 SCRA 144; Merill Lynch Futures, Inc. v. Court of Appeals, G. R. No. 97816, July 24, 1992, 211 SCRA 824.

[111] Mathay v. Consolidated Bank and Trust Company, No. L-23136, August 26, 1974, 58 SCRA 560; U. Bañez Electric Light Company v. Abra Electric Cooperative, Inc., No. L-59480, December 8, 1982, 119 SCRA 90; Dalandan v. Julio, No. L-19101, February 29, 1964, 10 SCRA 400; Marcopper Mining Corporation v. Garcia, No. L-55935, July 30, 1986, 143 SCRA 178.

[112] Tan v. Director of Forestry, No. L-24548, October 27, 1983, 125 SCRA 302.

[113] *Ibid.*

[114] Santiago v. Pioneer Savings and Loan Bank, G. R. No. 77502, January 15, 1988, 157 SCRA 100.

[115] Asia Banking Corporation v. Walter E. Olsen and Co., 48 Phil. 529 [1925].

[116] Peltan Development, Inc. v. Court of Appeals, G. R. No. 117029, March 29, 1997, 270 SCRA 82.

[117] Pineda v. Court of First Instance of Davao, 111 Phil. 643 [1961]

[118] Yuvienco v. Dacuycuy, No. L-55048, May 27, 1981, 104 SCRA 668.

[119] *Ibid.*

[120] Rules of Court, Rule 16, Sec. 3.