JUDICIAL DECISIONS

The judgment of acquittal in this criminal case involving indigenous people's rights was based in part on the legal effects of "international covenants like the United Nations Declaration on the Rights of Indigenous Peoples, of which our country is a signatory, and Philippine and international jurisprudence which identifies the forms and contents of IP rights."

DIOSDADO SAMA y HINUPAS and BANDY MASANGLAY y ACEVEDA vs.
PEOPLE OF THE PHILIPPINES
[G.R. No. 224469. January 5, 2021.]

LAZARO-JAVIER, J.

FACTS:

The accused are members of the Iraya-Mangyan tribe. They were caught by the police cutting down one dita tree in Oriental Mindoro without license therefor. They were charged with a violation of Section 77 of PD 705 as amended, otherwise known as the Forestry Reform Code.

The accused state that they had been instructed by their tribal elders to cut down a dita tree for the construction of a communal toilet.

The Regional Trial Court found them guilty, and the Court of Appeals affirmed the conviction.

Before the Supreme Court, the accused assert their right, as indigenous people, under RA 8371, the Indigenous People's Rights Act of 1997(IPRA), to harvest the dita tree logs.

The Supreme Court acquitted the accused, specifically finding that one element of the crime charged, that of cutting and collecting the tree without any authority, was not proven beyond reasonable doubt.

RULING (Excerpts):

We acquit.

. . .

Section 77 of PD 705, as amended, punishes, among others, "[a]ny person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority . . . shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code. . . ."

. . .

There is, however, reasonable doubt that the dita tree was cut and collected without any authority granted by the State.

. . .

In *Saguin v. People*, the prohibited act of non-remittance of Pag-IBIG contributions is punishable only when this act was done "without lawful cause" or "with fraudulent intent." According to this case law, lawful cause may result from a confusing state of affairs engendered by new legal developments that re-ordered the way things had been previously done. In *Saguin*, the cause of the confusion was the devolution of some powers in the health sector to the local governments. The devolution was ruled as a "valid justification" constituting the "lawful cause" for the inability of the accused to remit the Pag-IBIG contributions. The devolution gave rise to reasonable doubt as to the existence of the offense's element of lack of lawful cause.

. . .

Here, as in *Saguin*, as reiterated in [*Matalam v. People*], there was confusion arising from the new legal developments, particularly, the recognition of the indigenous peoples' (IPs) human rights normative system, in our country. To paraphrase and import the words used in *Saguin*, while doubtless there was voluntary and knowing act of cutting, removing, collecting, or harvesting of timber, we nonetheless consider the reasonable doubt engendered by the new normative system that the act was done without State authority, as required by Section 77 of PD 705, as amended.

The confusion and the resulting reasonable doubt on whether petitioners were authorized by the State have surfaced from the following circumstances:

One. In light of the amendments to Section 77, the lawful authority seems to be probably more expansive now than it previously was. Presently, the authority could be reasonably interpreted as being inclusive of other modes of authority

such as the exercise of IP rights. As observed by Senior Associate Justice Perlas-Bernabe:

> Further, it must be noted that the original iteration of Section 77 (then Section 68 of Presidential Decree No. 705 [1975]) was passed under the 1973 Constitution and specifically described "authority" as being "under a license agreement, lease, license or permit." However, soon after the enactment of the 1987 Constitution or in July 1987, then President Corazon Aquino issued Executive Order No. 277 (EO 277) amending Section 77, which, among others, removed the above-mentioned descriptor, hence, leaving the phrase "without any authority," generally-worded. To my mind, the amendment of Section 77 should be read in light of the new legal regime which gives significant emphasis on the State's protection of our IP's rights, which includes the preservation of their cultural identity. Given that there was no explanation in EO 277 as to the "authority" required, it may then be reasonably argued that the amendment accommodates the legitimate exercise of IP's rights within their ancestral domains.

The evolution of the penal provision shows that authority has actually become more expansive and inclusive. As presently couched, it no longer qualifies the "authority" required but includes ANY authority. As sharply noted by Senior Associate Justice Perlas-Bernabe, the phrasing of the law has evolved from requiring a "permit from the Director" in 1974 under PD 389, to a mere "license agreement, lease, license or permit" under PDs 705 and 1559 from 1975 to 1987, and to "any authority" from 1987 thereafter. Without any qualifier, the word "authority" is now inclusive of forms other than permits or licenses from the DENR. This doubt is reasonable as it arose from a principled reading of the amendments to Section 77, and this doubt ought to be construed in petitioners' favor.

. . .

Two. It is an admitted fact that petitioners relied upon their elders, the non-government organization that was helping them, and the NCIP, that they supposedly possessed the State authority to cut and collect the dita tree as IPs for their indigenous community's communal toilet. Thus, subjectively, 68 their intent

and volition to commit the prohibited act, that is without lawful authority, was rendered reasonably doubtful by these pieces of evidence showing their reliance upon these separate assurances of a State authority.

. . .

Objectively, their reliance cannot be faulted because IP rights have long been recognized at different levels of our legal system—the Constitution, the statutes like IPRA and a host of others like the ones mentioned by Justice Leonen in his Opinion, the sundry administrative regulations (one of which Chief Justice Peralta and Justice Caguioa have taken pains to outline) which seek to reconcile the regalian doctrine and the civilist concept of ownership with the indigenous peoples' sui generic ownership of ancestral domains and lands, the international covenants like the United Nations Declaration on the Rights of Indigenous Peoples, of which our country is a signatory, and Philippine and international jurisprudence which identifies the forms and contents of IP rights.

We hasten to add though that this recognition has not transformed into a definitive and categorical rule of law on its impact as a defense in criminal cases against IPs arising from the exercise of their IP rights. The ensuing unfortunate confusion as to the true and inescapable merits of these rights in criminal cases justifies the claim that petitioners' guilt for this *malum prohibitum* offense is reasonably doubtful.

. . .

[T]o stress, it is the confusion arising from the novelty of the content, reach, and limitation of the exercise of these rights by the accused in criminal cases which justifies their acquittal for their otherwise prohibited act.

. . .

Indeed, there is reasonable doubt as to the existence of petitioners' IP right to log the dita tree for the construction of a communal toilet for the Iraya-Mangyan ICC. It is engendered by the more expansive definition of authority under the law, the bundle of petitioners' IP rights both under the Constitution and IPRA, and a host of others like the ones mentioned by Justice Leonen in his Opinion, the sundry administrative regulations which seek to reconcile the regalian doctrine and the civilist concept of ownership with the indigenous peoples' *sui generis* ownership of ancestral domains and lands, the international covenants like the

United Nations Declaration on the Rights of Indigenous Peoples, of which our country is a signatory, and Philippine and international jurisprudence which identifies the forms and contents of IP rights. In addition, we have the ever growing respect, recognition, protection, and preservation accorded by the State to the IPs, including their rights to cultural heritage and ancestral domains and lands.

. . .

ACCORDINGLY, the petition is GRANTED. The Decision dated May 29, 2015 and resolution dated April 11, 2016 of the Court of Appeals in CA-G.R. CR No. 33906 are REVERSED and SET ASIDE. Petitioners DIOSDADO SAMA y HINUPAS, BANDY MASANGLAY y ACEVEDA and accused Demetrio Masanglay y Aceveda are ACQUITTED on reasonable doubt in Criminal Case No. CR-05-8066.

SO ORDERED.

This labor case involves the dismissal of a preschool teacher for acts allegedly prejudicial to the well-being of one of her students. The Decision relies in part on the United Nations Convention on the Rights of the Child (UNCRC) to demonstrate that the teacher's acts were grounds for dismissal.

ST. BENEDICT CHILDHOOD EDUCATION CENTRE, INC., and
FR. ERNESTO O. JAVIER vs. JOY SAN JOSE
SECOND DIVISION
[G.R. No. 225991. January 13, 2021.]

LAZARO-JAVIER, J.

FACTS:

San Jose is a preschool teacher at St Benedict Childhood Education Centre. The parents of AAA, one of San Jose's students, complained that she had refused to let their son go to the comfort room twice, despite his having properly asked for permission; the second time resulted in AAA wetting his pants. After the

complaint was brought to the attention of St Benedict and San Jose, AAA stated that San Jose called him a liar in front of his classmates, which caused them to taunt and bully him. St Benedict's formed an ad hoc committee to investigate the matter; San Jose denied the allegations. After investigation, the ad hoc committee recommended dismissal. St Benedict adopted their findings and dismissed San Jose on the ground of gross misconduct and unprofessional behavior in violation of her duty as teacher.

San Jose filed a complaint for illegal dismissal before the Labor Arbiter (LA). The LA dismissed the complaint and the National Labor Relations Commission affirmed the decision. However, the Court of Appeals reversed, finding that the penalty of dismissal was too harsh in light of San Jose's 27-year tenure at St Benedict.

RULING (Excerpts):

Article 282 of the Labor Code, as amended, states that Serious Misconduct is one of the grounds for termination of employment . . .

. . .

Misconduct is defined as an improper and wrongful conduct. It is the transgression of established and definite rule of action, a forbidden act, a dereliction of duty, and implies wrongful intent and not mere error of judgment. In order to justify an employee's termination of services, the misconduct should be (1) serious and not merely trivial or unimportant; (2) relate to the performance of the employee's duties; and (3) show that the employee has become unfit to continue working for the employer.

. . .

As for the rights of a child, Article 3, paragraph 8 of PD 603 states that a child has the right to be protected against circumstances prejudicial to his or her physical, mental, emotional, social, and moral well-being. Article 8 thereof enunciates that a child's welfare shall be the paramount consideration in his or her education . . .

. . .

Likewise, Article 13 of PD 603 specifies that a child's social and emotional growth shall be ensured in the school, among other agencies, to promote the child's welfare . . .

. . .

The United Nations Convention on the Rights of the Child (UNCRC) to which the Philippines is a signatory likewise recognizes a child's fundamental right to dignity and self-worth and that disciplinary measures in the school should conform with this right.

. . .

On two (2) separate occasions, San Jose did not allow AAA to go to the comfort room despite the fact that the child had properly asked permission. The first was on July 19, 2012 when AAA wanted to relieve himself in the toilet. When San Jose refused to give permission, AAA initially stayed put but later left unnoticed because he could no longer bear the discomfort. He thus went to ask help from "Manong Gomer," the school's utility man and hurriedly entered the comfort room to relieve himself. The second occasion happened on July 23, 2012 when AAA asked San Jose anew to allow him to go to the toilet, this time, to urinate. But San Jose, again, unreasonably declined. As a result, AAA wet his pants right there and then. When his parents came to fetch him, they noticed he was quite depressed and unhappy. After some prodding, he confided in them what San Jose did to him which made him pass urine in his pants.

As a teacher who ought to stand in loco *parentis* to her students, San Jose was duty bound to ensure that the children under her care are protected from all forms of harm and distress. But twice, San Jose unjustifiably refused to allow AAA to go to the toilet despite the urgency of the situation. She simply opted to ignore AAA's well-being.

. . .

[R]ight after AAA's parents had left the classroom of San Jose, the latter wasted no time berating the child in front of the class, screaming, "you are a liar." At least two (2) staffers of the school came forward to disclose how they witnessed it up close. This humiliating moment in the fragile life of the five-year-old AAA made him the subject of bullying from his classmates who readily mocked him, "hala ka, you are a liar!" These young bullies obviously had a leader in the person of their teacher, Ms. San Jose, no less. Children are impressionistic. In their young minds and bright eyes, humiliating another individual or calling him or her unpleasant names, especially coming from the teacher they generally idolize, may

look acceptable, if not perfectly normal. So they imitate even the bad ways of their teacher.

. . .

In fine, San Jose's cruel or inhuman treatment of AAA is not just trivial or meaningless. Her misconduct is grave, affecting not only the interest of the school but ultimately the morality and self-worth of an innocent five- year-old child. By committing such grave offense, she forfeits the right to continue working as a preschool teacher.

. . .

ACCORDINGLY, the Petition is GRANTED. The Decision dated May 29, 2015 and Resolution dated June 27, 2016 of the Court of Appeals in CA-G.R. CEB-SP No. 08957 are REVERSED and SET ASIDE. The Decision dated July 31, 2014 of the National Labor Relations Commission in NLRC Case No. VAC- 03-000115-2014 is REINSTATED in full.

SO ORDERED.

This case involves a petition for bail or house arrest by an accused who is currently detained pending the appeal of her conviction.

It discusses the responsibilities of the state with regard to the health care of prisoners as provided in the Nelson Mandela Rules. It identifies the Philippine law and implementing regulation that references and implements the Nelson Mandela Rules, and concludes that nothing in the Nelson Mandela Rules or the local laws support the release of prisoners pending the appeal of their conviction for a capital offense.

THE PEOPLE OF THE PHILIPPINES vs. RAMON "BONG" REVILLA, JR., et. al.
[G.R. No. 247611. January 13, 2021.]

M.V. LOPEZ, J.

FACTS:

Janet Lim Napoles was convicted of Plunder relative to the utilization of Senator Ramon "Bong" Revilla, Jr.'s Priority Development Assistance Fund (PDAF). After being sentenced to *reclusion perpetua*, she appealed her conviction before the Supreme Court. She has been detained at the Correctional Institute for Women pending her appeal. She filed an Urgent Motion for Recognizance/Bail or House Arrest for Humanitarian Reasons Due to COVID-19. She argues that as a person suffering from Type 2 Diabetes, she is at risk of contracting COVID-19 inside the prison. She asserts, *inter alia*, that the Nelson Mandela Rules provide the basis for the release of persons deprived of liberty (PDLs) in times of public health emergencies.

RULING (Excerpts):

The Court denies Napoles' Motion.

...

The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) contain the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners. With respect to the healthcare and wellness of PDLs, it provides, inter alia, that PDLs who require specialized treatment or surgery should be transferred to specialized institutions or to civil hospitals; that every prison should have a health-care service tasked with evaluating and improving the physical and mental health of PDLs; and PDLs who are suspected of having contagious diseases be clinically-isolated and given adequate treatment during the infectious period. Ultimately, the PDLs' access to health care is a State responsibility, thus:

RULE 24

1. The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

Republic Act (RA) No. 10575 or "The Bureau of Corrections Act of 2013" and its Revised Implementing Rules and Regulations (Revised IRR) expressly refer and adhere to the standards laid down in the Nelson Mandela Rules, to wit:

> SEC. 4. The Mandates of the Bureau of Corrections. — …
>
> (a) Safekeeping of National Inmates. — The safekeeping of inmates shall include decent provision of quarters, food, water and clothing in compliance with established United Nations standards. The security of the inmates shall be undertaken by the Custodial Force consisting of Corrections Officers with a ranking system and salary grades similar to its counterpart in the BJMP. (Emphasis supplied.)
>
> RULE II — GENERAL PROVISIONS
>
> SEC. 2. Declaration of Policy. — It is the policy of the State to promote the general welfare and safeguard the basic rights of every prisoner incarcerated in our national penitentiary by promoting and ensuring their reformation and social reintegration, creating an environment conducive to rehabilitation and compliant with the United Nations Standard Minimum Rules for Treatment of Prisoners (UNSMRTP). It also recognizes the responsibility of the State to strengthen government capability aimed towards the institutionalization of highly efficient and competent correctional services.
>
> xxx xxx xxx
>
> RULE IV — MANDATES OF THE BUREAU OF CORRECTION AND TECHNICAL OFFICERS
>
> xxx xxx xxx
>
> a) Safekeeping of National Inmates. In compliance with established United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMRTP), the safekeeping of inmates shall include:
>
> 1. Decent and adequate provision of basic necessities such as shelters/quarters, food, water, clothing, medicine;
>
> xxx xxx xxx

> The core objective of these safekeeping provisions is to "accord the dignity of man" to inmates while serving sentence in accordance with the basis for humane understanding of Presidential Proclamation 551, series 1995, and with UNSMRTP Rule 60.

However, the Revised IRR is also clear that it is only when advance medical treatment is required or prison hospitals prove to be inadequate will the PDLs be brought to the nearest hospital for treatment, viz.:

> RULE VII — FACILITIES OF THE BUREAU OF CORRECTIONS
>
> SEC. 7. Facilities of the Bureau of Corrections. — The BuCor shall operate with the standard and uniform design of prison facilities, reformation facilities, and administrative facilities, through all the operating prison and penal farms.
>
> xxx xxx xxx
>
> d) Hospital/Infirmary — refers to a medical facility established inside the prison compound for treatment of sick or injured inmates. This will also serve as a place of confinement for inmates with contagious disease. Sick inmates requiring advance medical treatment shall be brought to the nearest hospital if the prison hospital does not have the necessary medical equipment and expertise to treat such malady. (Emphasis supplied.)
>
> xxx xxx xxx

On the other hand, the release of PDLs in foreign jurisdictions as a response to COVID-19 is restricted and unavailing to high-risk inmates or those who are considered a danger to the society. While it is true that several countries have implemented release programs for prisoners to prevent the spread of COVID-19 virus, these initiatives are subject to exceptions. In Afghanistan, the members of Islamist Militant Group are not included. In Indonesia, those released were mostly juvenile offenders and those who already served at least two-thirds of their sentences. In Iran, only low-risk and non-violent offenders serving short sentences are released. In Morocco, the prisoners were selected based on their health, age, conduct, and length of detention, and were granted pardon. In United Kingdom, high-risk inmates convicted of violent or sexual offenses, or of national security concern, or a danger to children were excluded. It must be stressed that the release

of prisoners in other jurisdictions was made upon the orders of their Chief Executives.

Notably, neither the Nelson Mandela Rules, the Bureau of Corrections Act of 2013, nor the worldwide trend to decongest jail facilities due to COVID-19, support the release of PDLs pending the appeal of their conviction of a capital offense. Thus, Napoles failed to allege, much less prove, any source of right under the international or domestic laws, to warrant her temporary release.

. . .

FOR THESE REASONS, accused-appellant Janet Lim Napoles' Urgent Motion for Recognizance/Bail or House Arrest for Humanitarian Reason Due to COVID-19, is DENIED.

SO ORDERED.

This civil service case involves the interpretation of Republic Act 9710, the 'Magna Carta of Women.' It relied on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to interpret the statute.

HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL vs.
DAISY B. PANGA-VEGA
[G.R. No. 228236. January 27, 2021]

M.V. LOPEZ, J:

FACTS:

Atty. Panga-Vega was Secretary of the House of Representatives Electoral Tribunal (HRET). In February 2011, she availed of the special leave benefit under Republic Act (RA) No. 9710, otherwise known as the "Magna Carta of Women" in order to undergo a total hysterectomy.

One month later, Atty. Panga-Vega informed the HRET Chairperson that she was resuming her duties and presented a medical certificate indicating that she was fit for work. The HRET directed Atty. Panga-Vega to complete her two-

month special leave. After the HRET denied her reconsideration, she filed an appeal with the Civil Service Commission (CSC).

The CSC issued a decision granting the appeal of Atty. Panga-Vega. It ruled that she only needed to present a medical certificate attesting her physical fitness to return to work and need not exhaust the full leave she applied for under RA No. 9710. It also held that applying the rules on maternity leave, she is entitled to both the commuted money value of the unexpired portion of the special leave and her salary for actual services rendered effective the day she reported back for work. The Court of Appeals affirmed the CSC decision.

In its Petition, the HRET argues that the CSC should not have applied suppletorily the rules on maternity leave to the special leave benefit under RA No. 9710. On the other hand, Atty. Panga-Vega claims that the suppletory application of the rules on maternity leave to the special leave benefit is more in accord with the thrust and intent of RA No. 9710.

The Supreme Court found that RA 9710 is a form of social legislation meant to empower women. Thus, it is just and more in accord with the spirit and intent of RA No. 9710 to suppletorily apply the rule on maternity leave to the special leave benefit.

RULING (Excerpts):

Section 18 of RA No. 9710 entitles a woman, who has rendered a continuous aggregate employment service of at least six months for the last 12 months, a special leave of two months with full pay based on her gross monthly compensation following surgery caused by gynecological disorders. In relation to this provision, the case involving Panga-Vega gives rise to the issue of whether the rules on maternity leave under Sec. 14, Rule XVI of the Omnibus Rules Implementing Book V of Executive Order No. 292, which provides that the commuted money value of the unexpired portion of the special leave need not be refunded, and that when the employee returns to work before the expiration of her special leave, she may receive both the benefits granted under the maternity leave law and the salary for actual services rendered effective the day she reports for work, may have a suppletory application.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), acknowledges the need to guarantee the basic human rights and fundamental freedoms of women through the adoption in the political, social,

economic, and cultural fields, of appropriate measures, including legislation, to ensure their full development and advancement. Consistent thereto, no less than the fundamental law of the land imposes on the State the duty to protect working women by providing safe and healthful working conditions, as well as facilities and opportunities to enhance their welfare, and enable them to realize their full potential in the service of the nation.

In fulfillment of the foregoing obligation under the CEDAW, and the 1987 Philippine Constitution to advance the rights of women, RA No. 9710 was enacted. This law acknowledges the economic, political, and socio- cultural realities affecting their work conditions and affirms their role in nation-building. It guarantees the availability of opportunities, services, and mechanisms that will allow them to actively perform their roles in the family, community, and society. As a social legislation, its paramount consideration is the empowerment of women. Thus, in case of doubt, its provisions must be liberally construed in favor of women as the beneficiaries.

. . .

FOR THESE REASONS, the petition is DENIED. The Decision dated April 29, 2016 and Resolution dated November 8, 2016 of the Court of Appeals in CA-G.R. SP No. 128947 are AFFIRMED.

SO ORDERED.

This case revolves around a Petition to direct the executive to cancel its notice of withdrawal from the Rome Statute. In this case, the Supreme Court discusses the provision of the Rome Statue, the sources of international law, and the principle of *pacta sunt servanda*.

SENATORS FRANCIS "KIKO" N. PANGILINAN, et. al. vs. ALAN PETER S. CAYETANO, et. al.
[G.R. No. 238875. March 16, 2021.]

PHILIPPINE COALITION FOR THE INTERNATIONAL CRIMINAL COURT (PCICC), et. al. vs. OFFICE OF THE EXECUTIVE SECRETARY, REPRESENTED BY HON. SALVADOR MEDIALDEA, et. al.
[G.R. No. 239483. March 16, 2021.]

INTEGRATED BAR OF THE PHILIPPINES, Petitioner, vs. OFFICE OF THE EXECUTIVE SECRETARY, REPRESENTED BY HON. SALVADOR C. MEDIALDEA, et. al.
[G.R. No. 240954. March 16, 2021.]

LEONEN, J.

FACTS:

In 2000, the Philippines signed the Rome Statue of the International Criminal Court (ICC). More than a decade later in 2011, Senate Concurrence was obtained to the Rome Statute enabling the Philippines to consummate its accession to the treaty and deposit its instrument of ratification. On November 1, 2011, the Rome Statute entered into force in the Philippines.

In February 2018, the Office of International Criminal Court Trial Prosecutor Fatou Bensouda (Prosecutor Bensouda) commenced the preliminary examination of the atrocities allegedly committed in the Philippines pursuant to the Duterte administration's "war on drugs."

A month later, the Philippines announced that it was withdrawing from the International Criminal Court. On March 16, 2018, the Philippines formally submitted its Notice of Withdrawal from the International Criminal Court to the United Nations, which was received by the UN Secretary-General.

The instant petitions were filed. Petitioners argued that the President's unilateral withdrawal from the Rome Statute was unconstitutional, being bereft of Senate concurrence. They prayed that the withdrawal be declared void ab initio, and that the executive be directed to notify the UN Secretary-General of the cancellation of the notice of withdrawal.

The Supreme Court dismissed the petitions finding them to be moot and academic. The Court reasoned that the President had already done all that was necessary to be withdraw from the International Criminal Court and that there was no legal mandate for the President to cancel the withdrawal.

RULING (Excerpts):

It is true that this Court, in the exercise of its judicial power, can craft a framework to interpret Article VII, Section 21 of the Constitution and determine the extent to which Senate concurrence in treaty withdrawal is imperative. However, it will be excessive for any such framework to be imposed on the circumstances surrounding these present Petitions, seeing as how the incidents here are *fait accompli*.

. . .

On July 1, 2002, the Rome Statute of the International Criminal Court entered into force upon ratification by 60 states. This formally constituted the International Criminal Court.

The International Criminal Court has an international legal personality, and sits at The Hague in the Netherlands. It may exercise its functions and powers "on the territory of any [s]tate [p]arty and, by special agreement, on the territory of any other [s]tate."

State parties to the Rome Statute recognize the jurisdiction of the International Criminal Court over the following:

ARTICLE 5
Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(a) The crime of genocide;
(b) Crimes against humanity;
(c) War crimes;
(d) The crime of aggression.

The International Criminal Court's jurisdiction is "complementary to national criminal jurisdictions." Complementarity means that the International Criminal Court may only exercise jurisdiction if domestic courts were "unwilling

or unable" to prosecute. Article 17 of the Rome Statute contemplates these situations:

> 2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:
>
> (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
> (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
> (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.
>
> 3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings. (Emphasis supplied)

The International Criminal Court has jurisdiction over natural persons. Criminal liability shall attach to one who:

> (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
> (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

i. Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
ii. Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites
(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

Individual criminal responsibility under the Rome Statute does not affect state responsibility in international law. Further, the Rome Statute provides additional grounds of criminal responsibility for commanders and other superiors.

In determining liability under the Rome Statute, a person's official capacity is irrelevant:

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official

> capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
> 2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person

The Rome Statute provides that state parties are obliged to give their full cooperation toward the International Criminal Court's investigation and prosecution of crimes within its jurisdiction. The International Criminal Court may request, "through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, acceptance, approval or accession," state parties to cooperate. It may employ measures to "ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families."

The International Criminal Court may also ask for cooperation and assistance from any intergovernmental organization pursuant to an agreement with the organization and in accordance with its competence and mandate. State parties are required to ensure that their national law provides a procedure "for all of the forms of cooperation" specified in Part 9 of the treaty.

A state party's failure to comply with the International Criminal Court's request to cooperate would warrant the International Criminal Court's finding to that effect. It will then "refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the International Criminal Court, to the Security Council."

The Assembly of States Parties is the International Criminal Court's management oversight and legislative body, comprised of representatives of all the states that ratified and acceded to the Rome Statute.

Upon a finding of conviction, the International Criminal Court may impose any of the following penalties:

> (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or

(b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

2. In addition to imprisonment, the Court may order:

(a) A fine under the criteria provided for in the Rules of Procedure and Evidence;
(b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

All disputes involving the International Criminal Court's judicial functions are settled by its decision. Disputes of at least two state parties which relate to the application of the Rome Statute, and which are unsettled by "negotiations within three months of their commencement, shall be referred to the Assembly of States Parties." The Assembly may "settle the dispute or may make recommendations on further means of settlement of the dispute.

Article 127 of the Rome Statute provides mechanisms on how a state party may withdraw from it:

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
2. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

Burundi is, thus far, the only other state party to withdraw from the Rome Statute. In accordance with Article 127 (1) of the Rome Statute, it sent a written notification of withdrawal to the Secretary-General of the International Criminal Court on October 27, 2016. Burundi's withdrawal was effected on October 26, 2017.

Following Burundi, South Africa, Gambia, and the Philippines manifested their intent to withdraw. Nonetheless, Gambia and South Africa rescinded their notifications of withdrawal on February 10, 2017 and March 7, 2017, respectively.

. . .

The Vienna Convention on the Law of Treaties (Vienna Convention) defines treaties as "international agreement[s] concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."

In our jurisdiction, we characterize treaties as "international agreements entered into by the Philippines which require legislative concurrence after executive ratification. This term may include compacts like conventions, declarations, covenants and acts."

Treaties under the Vienna Convention include all written international agreements, regardless of their nomenclature. In international law, no difference exists in the agreements' binding effect on states, notwithstanding how nations opt to designate the document.

However, Philippine law distinguishes treaties from executive agreements.

. . .

Though both are sources of international law, treaties must be distinguished from generally accepted principles of international law.

Article 38 of the Statute of the International Court of Justice enumerates the sources of international law:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
b. international custom, as evidence of a general practice accepted as law;
c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Two constitutional provisions incorporate or transform portions of international law into the domestic sphere, namely: (1) Article II, Section 2, which embodies the incorporation method; and (2) Article VII, Section 21, which covers the transformation method. They state:

> ARTICLE II
> Declaration of Principles and State Policies Principles
> xxx xxx xxx
> SECTION 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.
>
> ARTICLE VII
> Executive Department
> xxx xxx xxx
>
> SECTION 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate. (Emphasis supplied)

The sources of international law—international conventions, international custom, general principles of law, and judicial decisions—are treated differently in our jurisdiction.

Article II, Section 2 of the Constitution declares that international custom and general principles of law are adopted as part of the law of the land.

. . .

Thus, generally accepted principles of international law include international customs and general principles of law. Under the incorporation clause, these principles form part of the law of the land. And, "by mere

constitutional declaration, international law is deemed to have the force of domestic law."

Pursuant to Article VII, Section 21 of the Constitution, treaties become "valid and effective" upon the Senate's concurrence.

. . .

In sum, treaty-making is a function lodged in the executive branch, which is headed by the president. Nevertheless, a treaty's effectivity depends on the Senate's concurrence, in accordance with the Constitution's system of checks and balances.

. . .

Accordingly, in fulfilling his or her functions as primary architect of foreign policy, and in negotiating and enforcing treaties, all of the president's actions must always be within the bounds of the Constitution and our laws. This mandate is exceeded when he or she is acting outside what the Constitution or our laws allow. When any such excess is so grave, whimsical, arbitrary, or attended by bad faith, it can be invalidated through judicial review.

The Petitions here raise interesting legal questions. However, the factual backdrop of these consolidated cases renders inopportune a ruling on the issues presented to this Court.

. . .

A plain reading of the Constitution identifies two instances when judicial power is exercised: (1) in settling actual controversies involving rights which are legally demandable and enforceable; and (2) in determining whether or not there has been a grave abuse of discretion amounting to a lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

. . .

Thus, "even now, under the regime of the textually broadened power of judicial review articulated in Article VIII, Section 1 of the 1987 Constitution, the requirement of an actual case or controversy is not dispensed with.

. . .

The Petitions are moot. They fail to present a persisting case or controversy that impels this Court's review.

In resolving constitutional issues, there must be an "existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory.

. . .

On March 19, 2019, the International Criminal Court itself, through Mr. O-Gon Kwon, the president of the Assembly of States Parties, announced the Philippines' departure from the Rome Statute effective March 17, 2019. It made this declaration with regret and the hope that such departure "is only temporary and that it will re-join the Rome Statute family in the future."

This declaration, coming from the International Court itself, settles any doubt on whether there are lingering factual occurrences that may be adjudicated. No longer is there an unsettled incident demanding resolution. Any discussion on the Philippines' withdrawal is, at this juncture, merely a matter of theory.

However, even prior to the filing of these Petitions, the President had already completed the irreversible act of withdrawing from the Rome Statute.

To reiterate, Article 127 (1) of the Rome Statute provides the mechanism on how its state parties may withdraw:

> A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

The Philippines announced its withdrawal from the Rome Statute on March 15, 2018, and formally submitted its Notice of Withdrawal through a Note Verbale to the United Nations Secretary- General's Chef de Cabinet on March 16, 2018. The Secretary-General received the notification on March 17, 2018. For all intents and purposes, and in keeping with what the Rome Statute plainly requires, the Philippines had, by then, completed all the requisite acts of withdrawal. The Philippines has done all that were needed to facilitate the withdrawal. Any subsequent discussion would pertain to matters that are *fait accompli*.

. . .

Moreover, while its text provides a mechanism on how to withdraw from it, the Rome Statute does not have any proviso on the reversal of a state party's withdrawal. We fail to see how this Court can revoke — as what petitioners are in effect asking us to do — the country's withdrawal from the Rome Statute, without writing new terms into the Rome Statute.

Petitioners harp on the withdrawal's effectivity, which was one year from the United Nations Secretary-General's receipt of the notification. However, this one-year period only pertains to the effectivity, or when exactly the legal consequences of the withdrawal takes effect. It neither concerns approval nor finality of the withdrawal. Parenthetically, this one-year period does not undermine or diminish the International Criminal Court's jurisdiction and power to continue a probe that it has commenced while a state was a party to the Rome Statute.

Here, the withdrawal has been communicated and accepted, and there are no means to retract it. This Court cannot extend the reliefs that petitioners seek. The Philippines' withdrawal from the Rome Statute has been properly received and acknowledged by the United Nations Secretary-General, and has taken effect. These are all that the Rome Statute entails, and these are all that the international community would require for a valid withdrawal. Having been consummated, these actions bind the Philippines.

. . .

A writ of mandamus lies to compel the performance of duties that are purely ministerial, and not those that are discretionary. Petitioners must show that they have a clear legal right and that there was a neglected duty which was incumbent upon the public officer.

Here, however, there is no showing that the President has the ministerial duty imposed by law to retract his withdrawal from the Rome Statute. Certainly, there is no constitutional or statutory provision granting petitioners the right to compel the executive to withdraw from any treaty. It was discretionary upon the President, as primary architect of our foreign policy, to perform the assailed act.

Moreover, issuing a writ of mandamus will not *ipso facto* restore the Philippines to membership in the International Criminal Court. No provision in the Rome Statute directs how a state party may reverse its withdrawal from the treaty. It cannot be guaranteed that the Note Verbale's depositary, the United

Nations Secretary-General, will assent to this Court's compulsion to reverse the country's withdrawal.

. . .

Pacta sunt servanda is a generally accepted principle of international law that preserves the sanctity of treaties. This principle is expressed in Article 26 of the Vienna Convention:

> Article 26
> "Pacta sunt servanda"
>
> Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

A supplementary provision is found in Article 46:

> Article 46
> Provisions of internal law regarding competence to conclude treaties
>
> 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
> 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

A state party may not invoke the provisions of its internal law to justify its failure to perform a treaty. Under international law, we cannot plead our own laws to excuse our noncompliance with our obligations.

. . .

The Philippines' withdrawal was submitted in accordance with relevant provisions of the Rome Statute. The President complied with the provisions of the

treaty from which the country withdrew. There cannot be a violation of *pacta sunt servanda* when the executive acted precisely in accordance with the procedure laid out by that treaty. Article 127 (1) of the Rome Statute states:

> 1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

From its text, the Rome Statute provides no room to reverse the accepted withdrawal from it. While there is a one-year period before the withdrawal takes effect, it is unclear whether we can read into that proviso a permission for a state party to rethink its position, and retreat from its withdrawal.

. . .

The Rome Statute contemplates amendments, and is replete with provisions on it:

Article 121
Amendments

> 1. After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties.
>
> 2. No sooner than three months from the date of notification, the Assembly of States Parties, at its next meeting, shall, by a majority of those present and voting, decide whether to take up the proposal. The Assembly may deal with the proposal directly or convene a Review Conference if the issue involved so warrants.
>
> 3. The adoption of an amendment at a meeting of the Assembly of States Parties or at a Review Conference on which

consensus cannot be reached shall require a two- thirds majority of States Parties.

4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them.

5. Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory.

6. If an amendment has been accepted by seven-eighths of States Parties in accordance with paragraph 4, any State Party which has not accepted the amendment may withdraw from this Statute with immediate effect, notwithstanding article 127, paragraph 1, but subject to article 127, paragraph 2, by giving notice no later than one year after the entry into force of such amendment.

7. The Secretary-General of the United Nations shall circulate to all States Parties any amendment adopted at a meeting of the Assembly of States Parties or at a Review Conference.

Article 122
Amendments to provisions of an institutional nature

1. Amendments to provisions of this Statute which are of an exclusively institutional nature, namely, article 35, article 36, paragraphs 8 and 9, article 37, article 38, article 39, paragraphs 1 (first two sentences), 2 and 4, article 42, paragraphs 4 to 9, article 43, paragraphs 2 and 3, and articles 44, 46, 47 and 49, may be proposed at any time, notwithstanding article 121, paragraph 1, by any State Party. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations or such

other person designated by the Assembly of States Parties who shall promptly circulate it to all States Parties and to others participating in the Assembly.

2. Amendments under this article on which consensus cannot be reached shall be adopted by the Assembly of States Parties or by a Review Conference, by a two-thirds majority of States Parties. Such amendments shall enter into force for all States Parties six months after their adoption by the Assembly or, as the case may be, by the Conference.

Article 123
Review of Statute

1. Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.

2. At any time thereafter, at the request of a State Party and for the purposes set out in paragraph 1, the Secretary- General of the United Nations shall, upon approval by a majority of States Parties, convene a Review Conference.

3. The provisions of article 121, paragraphs 3 to 7, shall apply to the adoption and entry into force of any amendment to the Statute considered at a Review Conference.

Generally, *jus cogens* rules of customary international law cannot be amended by treaties. As Articles 121, 122, and 123 allow the amendment of provisions of the Rome Statute, this indicates that the Rome Statute is not *jus cogens*. At best, its provisions are articulations of customary law, or simply, treaty law. Article 121 (6) sanctions the immediate withdrawal of a state party if it does not agree with the amending provisions of the Rome Statute. Therefore, withdrawal from the Rome Statute is not aberrant. Precisely, the option is enabled for states parties.

Petitioners' contention—that withdrawing from the Rome Statute effectively repeals a law—is inaccurate. The Rome Statute remained in force for its States parties, and Article 127 specifically allows state parties to withdraw.

. . .

Withdrawing from the Rome Statute does not discharge a state party from the obligations it has incurred as a member. Article 127 (2) provides:

> A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

A state party withdrawing from the Rome Statute must still comply with this provision. Even if it has deposited the instrument of withdrawal, it shall not be discharged from any criminal proceedings. Whatever process that was already initiated before the International Criminal Court obliges the state party to cooperate.

Until the withdrawal took effect on March 17, 2019, the Philippines was committed to meet its obligations under the Rome Statute. Any and all governmental acts up to March 17, 2019 may be taken cognizance of by the International Criminal Court.

. . .

WHEREFORE, the consolidated Petitions in G.R. Nos. 238875, 239483, and 240954 are DISMISSED for being moot.

SO ORDERED.

This labor case involves the treatment of 'racism' as a serious misconduct which is, under Philippine law, a ground for dismissal. It relies on the Philippines' signature to the International Convention on the Elimination of All Forms of Discrimination to find that racism constitutes serious misconduct, a ground for dismissal under the Labor Code.

ANICETO B. OCAMPO, JR vs. INTERNATIONAL SHIP CREW MANAGEMENT PHILS., INC. (currently: D' AMICO SHIP ISHIMA PHILS., INC.), et. al.
THIRD DIVISION
[G.R. No. 232062. April 26, 2021.]

LEONEN, J.

FACTS:

Ocampo was hired by International Ship Crew Management Phils as Captain of MT Golden Ambrosia. Ocampo was relieved of duty after it came to light that he had exhibited a racist attitude towards Myanmar crew members. He had allegedly shouted profanity at them, called them 'animals' and rationed their drinking water.

Ocampo filed a complaint for illegal dismissal before the Labor Arbiter (LA). The LA dismissed the complaint finding that the dismissal was valid. The National Labor Relations Commission affirmed the LA Decision. The Court of Appeals likewise upheld the validity of the dismissal reasoning that his racist behavior constituted serious misconduct.

RULING (Excerpts):

On the substantive aspect, the Petition likewise fails.

Serious misconduct is a just cause for dismissal. It requires that:

(a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee

> has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.

Petitioner was dismissed on this ground due to his racist treatment of his subordinates. Particularly, petitioner was reported to have called his Myanmar crew members "animals," and worse, he allegedly withheld drinking water from them and rationed it out despite its eventual availability. This pattern of discriminatory treatment against the Myanmar crew members shows that the acts were deliberately done.

More than creating hostile and inhumane working conditions, these incidents also display petitioner's prejudice against his crew members who are of different national and ethnic origin. To refer to other human beings as "animals" reflects the sense of superiority petitioner has for himself and how he sees others as subhuman.

Racial discrimination is a grave issue. Discrimination on the basis of race, nationality, or ethnic origin has deep historical roots, and is a global phenomenon that still exists until today. Racist attitudes have cost numerous lives and livelihoods in the past as in the present, and they should no longer be tolerated in any way. The State has formally made clear its intention to end racial discrimination as early as the 1960's when the Philippines signed the International Convention on the Elimination of All Forms of Discrimination. In this Convention, racial discrimination is described as:

> ... any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Evidently, petitioner's misconduct is considered serious, as it is "of such a grave and aggravated character and not merely trivial or unimportant."

That he is the commander of the entire crew worsens the situation. Being the leader of the vessel, it was his duty to inspire a "harmonious and congenial atmosphere on board," which he failed to do. His ill treatment of his subordinates is inevitably related to the performance of his duties as Master and Captain, and it

shows his unfitness to continue in such capacity. Thus, his dismissal for serious misconduct was done for a just cause.

. . .

WHEREFORE, the Petition is DENIED. The Court of Appeals' Decision and Resolution are AFFIRMED.

SO ORDERED.

The ruling in this environmental law case is based on the Philippines' obligations under the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat and its implication for the reclamation project which was the subject matter.

CYNTHIA A. VILLAR, FORMER MEMBER, HOUSE OF REPRESENTATIVES, LONE DISTRICT OF LAS PIÑAS CITY [supported by THREE HUNDRED FIFTEEN THOUSAND EIGHT HUNDRED FORTY-NINE (315,849) RESIDENTS OF LAS PIÑAS CITY] vs. ALLTECH CONTRACTORS, INC., et. al.
[G.R. No. 208702. May 11, 2021.]

CARANDANG, J.

FACTS:

Alltech Contractors entered into Joint Venture Agreements with the cities of Las Piñas and Parañaque for the reclamation of land along the coast of Manila Bay. The Philippine Reclamation Authority approved the proposed reclamation projects. After the submission of various plans and the holding of hearings the Environmental Management Bureau issued an Environmental Compliance Certificate for the project.

Petitioner Villar, concerned that the proposed project would cause flooding in the adjacent barangays, filed a Petition for the Issuance of a Writ of

Kalikasan before the Supreme Court. Villar asked that the reclamation projects be enjoined.

The Court issued the writs and thereafter remanded the case to the Court of Appeals (CA) to accept the return of the writ and to conduct the necessary hearing, reception of evidence, and rendition of judgment.

The CA denied the Petition. It reasoned that the proposed projects had complied with the legal requirements therefor and that Villar had failed to prove that the projects would expose the residents of the adjacent barangays to catastrophic environmental damage.

Before the Supreme Court, Villar argues, inter alia, that the proposed project impinges on the viability and sustainability of the Las Piñas-Parañaque Critical Habitat and Ecotourism Area (LPPCHEA). She asked the Court to take judicial notice of the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Convention on Wetlands), an international treaty for the conservation and sustainable use of wetland where the Philippines is a signatory, and of the fact that on March 15, 2013, the Convention on Wetlands certified LLPCHEA as a "Wetland of National Importance."

The Supreme Court denied the Petition. It found that the classification of the LLPCHEA as a wetland of national importance did not preclude the Philippine Government from undertaking reclamation projects adjacent to said wetland.

RULING (Excerpts):

[W]hile the Court acknowledges the international responsibilities of the Philippines, as a Contracting Party of the Convention on Wetlands, for the wise use of all designated wetlands of international importance in the country, this does not mean that a reclamation project alongside or adjacent a designated wetland is absolutely prohibited. Paragraph 3, Article 2 of the Convention on Wetlands of International Importance especially Waterfowl Habitat states:

> 3. The inclusion of a wetland in the List does not prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetland is situated.

It is clear that the classification of an area as a wetland of international importance does not diminish the control the government exercises over the

wetlands and adjacent areas within its territory. The government may continue to utilize these areas as it may deem beneficial for all its stakeholders. Here, the government, through the DENR, found Alltech's proposal and studies conducted sufficient to allay the concerns of the stakeholders.

WHEREFORE, the petition is DENIED. The Decision dated April 26, 2013 and the Resolution dated August 14, 2013 of the Court of Appeals in CA-G.R. SP No. 00014, which denied the petition for writ of kalikasan, are AFFIRMED.

SO ORDERED.

This case rules on the validity in the Philippines of a foreign divorce between a Filipino and an American citizen, obtained through a joint petition, using the principles of Private International Law, as transformed in Art 26(2) of the Family Code of the Philippines.

RAEMARK S. ABEL vs. MINDY P. RULE, et. al.
[G.R. No. 234457. May 12, 2021.]

LEONEN, J.

FACTS:

In 2005, Raemark Abel, an American citizen, married Mindy Rule, a Filipino citizen, in California, USA. In 2008, they both sought the summary dissolution of their marriage before the Los Angeles Superior Court. In 2009, the Superior Court of California dissolved their marriage. Meanwhile, Abel reacquired his Filipino citizenship and became a dual citizen. In 2012, Rule became an American citizen.

In 2017, after a copy of the California Judgment was registered with the City Registry Office of Manila, Abel filed a Petition for the judicial recognition of foreign divorce and correction of civil entry before the Regional Trial Court (RTC).

The Office of the Solicitor General (OSG) filed an opposition stating that according to Article 26(2) of the Family Code, the foreign divorce, to be recognized, must have been obtained by the foreign spouse, not jointly by both. The OSG also argued that the joint petition before the Los Angeles Court was

tantamount to a severance of marriage upon a stipulation of facts, confession of judgment, or even collusion between the parties, which are all against State policy.

The RTC, agreeing with the OSG, dismissed the Petition. Thus, Abel filed this petition with the Supreme Court.

The Supreme Court granted the Petition. It ruled that based on *Republic vs. Manalo*, there is no requirement that the foreign spouse alone be the one to initiate the divorce proceedings. Furthermore, the ruling in *Galapon vs. Republic* clarifies that joint petitions for divorce abroad may be recognized in the Philippines.

RULING (Excerpts):

In *Republic v. Manalo* and succeeding cases, we have consistently held that it is irrelevant if the foreign or Filipino spouse initiated the foreign divorce proceeding. Thus, the question that should be raised before the courts "is not who among the spouses initiated the proceedings but rather if the divorce obtained . . . was valid."

. . .

In reversing the Court of Appeals and reinstating the Regional Trial Court decision, this Court in *Galapon* referred to the ruling in Manalo that it is immaterial if the foreign or Filipino spouse initiated the divorce proceeding. *Galapon* emphasized that "[p]ursuant to the majority ruling in Manalo, Article 26 (2) applies to mixed marriages where the divorce decree is: (i) obtained by the foreign spouse; (ii) obtained jointly by the Filipino and foreign spouse; and (iii) obtained solely by the Filipino spouse."

Applying *Manalo* and the latter case of *Galapon* to the present case, that the divorce decree was obtained jointly by petitioner, then a citizen of the United States of America, and private respondent, then a Filipino citizen, is of no moment. They are deemed to have obtained the divorce as required in Article 26 (2) of the Family Code, capacitating them to remarry under the Philippine law.

WHEREFORE, the Petition for Review on Certiorari is GRANTED. The July 5, 2017 and September 6, 2017 Orders of the Regional Trial Court, Branch 7, Manila in Special Proceeding Case No. 17-137507 are REVERSED and SET ASIDE. The case is REMANDED to the court of origin for further proceedings and reception of evidence.

SO ORDERED.

This case holds that the authority of the Sandiganbayan to issue Hold Departure Orders against those accused before it violates the right to travel and freedom of movement. In deciding, the Supreme Court references the Universal Declaration of Human Rights as one of the sources of the right to travel and freedom of movement.

PROSPERO A. PICHAY, JR vs. THE HONORABLE SANDIGANBAYAN (FOURTH DIVISION) and PEOPLE OF THE PHILIPPINES, as represented by THE OFFICE OF THE SPECIAL PROSECUTOR
[G.R. Nos. 241742 and 241753-59. May 12, 2021.]

DELOS SANTOS, J.

FACTS:

The Office of the Special Prosecutor filed eight informations against Prospero Pichay, Jr. with the Sandiganbayan for violation of the Manual of Regulation for Banks, in relation to RA 7653, RA 8791, RA 3019, and malversation.

The Sandiganbayan *motu proprio* issued a Hold Departure Order (HDO) Resolution directing the Bureau of Immigration to prevent Pichay from leaving the country except upon prior written permission from the Sandiganbayan.

Pichay filed a motion to lift the HDO, but the Sandiganbayan denied his motion. The Sandiganbayan reasoned that the issuance of a HDO was a valid restriction on Pichay's right to travel, as it was done in the exercise of the Sandiganbayan's inherent power to preserve and maintain its jurisdiction over the case and the person of the accused.

Pichay filed this Petition before the Supreme Court to challenge the dismissal of his motion.

The Supreme Court dismissed the Petition finding that the Sandiganbayan had the inherent power to issue HDOs as a court of justice.

RULING (Excerpts):

The petition lacks merit.

. . .

The right to travel and to freedom of movement is a fundamental right guaranteed by the 1987 Constitution and the Universal Declaration of Human Rights (UDHR) to which the Philippines is a signatory.

. . .

Article 13 of the UDHR provides:

> Art. 13. Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country including his own, and to return to his country.

. . .

"The Sandiganbayan is a special court tasked to hear and decide cases against public officers and employees, and entrusted with the difficult task of policing and ridding the government ranks of the dishonest and corrupt." While there is no law particularly vesting the Sandiganbayan the authority to issue HDOs, the same is not necessary for it to exercise this power. The Sandiganbayan is "given the full disposition of all the powers inherent in all courts of justice to effectuate the exercise of its jurisdiction, including the issuance of HDOs, if in its good judgment, it finds necessary in the administration of justice."

. . .

The provisions stated in the Constitution, as well as the UDHR, should by no means be construed as delimiting the inherent power of the courts to use all means necessary to carry their orders into effect in criminal cases pending before them. When by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, process, and other means necessary to carry it into effect may be employed by such court or officer.

. . .

Criminal prosecutions should be allowed to run their course without undue delay. Pichay, as one facing criminal charges with the People of the

Philippines as the offended party, should hold himself amenable to court orders and processes at all times. Otherwise, such orders and processes would serve no purpose if he would be allowed to leave the country, outside the reach of the courts. An accused in a criminal case may be issued an HDO, as a valid restriction on their right to travel, so that they may be dealt with in accordance with law.

. . .

WHEREFORE, the petition is DISMISSED. The Resolutions dated March 16, 2018 and June 19, 2018 of the Sandiganbayan in SB-16-CRM-0425 to 0432 are hereby AFFIRMED.

SO ORDERED.

This case involves a Petition challenging the Court of Appeals' vacation of an arbitration award. It involves a discussion of the United Nations Commission on International Trade Law (UNCITRAL) Model Law.

DR. BENJAMIN D. ADAPON, FOR HIMSELF AND ON BEHALF OF THE COMPUTERIZED IMAGING INSTITUTE, INC., FORMERLY KNOWN AS THE COMPUTED TOMOGRAPHY CENTER, INC., vs. MEDICAL DOCTORS, INC.
[G.R. No. 229956, June 14, 2021]

LEONEN, J.

FACTS:

The Computerized Imaging Institute (CII), of which Dr. Adapon was a minority shareholder, entered into a Letter of Intent (LOI) wherein Makati Medical Doctors (MMD) undertook not to compete with CII (formerly Computed Tomography Center, Inc.). The LOI also provided that the parties shall agree to have the disputed or unsettled matters arbitrated by a panel of arbitrators, and to abide by the ruling of the panel of arbitrators. Believing that the non-compete clause of their contract was violated by MMD, Dr. Adapon filed a complaint with the RTC to compel MMD to pay it compensation, however the RTC ordered the parties to undergo arbitration. An arbitral tribunal was constituted and it

subsequently decided, inter alia, that MMD had indeed violated the non-compete clause in the LOI.

MMD filed a Petition to Vacate the Arbitral Award before the RTC which was subsequently dismissed. They filed a petition for review before the Court of Appeal (CA) and the CA vacated the arbitral award. Dr. Adapon comes to the Supreme Court challenging the CA decision vacating the arbitral award in his favor.

RULING (Excerpts):

Arbitration is a voluntary dispute resolution process "outside the regular court system," where parties agree to submit their conflict to an arbitrator or panel of arbitrators of their own choice. Resort to arbitration requires consent from the parties either through an arbitration clause in the contract or an agreement to submit an existing controversy between them to arbitration.

. . .

Being a purely private system of adjudication, the parties generally have autonomy over the conduct of the proceedings. They can choose: (a) the arbitrators, and thus, tailor-fit the tribunal's composition to the nature of their dispute; the procedures that will control the arbitral proceedings; and the place of arbitration.

. . .

Pursuant to the policy of judicial restraint in arbitration proceedings, this Court's review of a Court of Appeals decision is discretionary and limited to specific grounds provided under the Special ADR Rules.

. . .

The Regional Trial Court may also set aside the arbitral award based on the following grounds under Article 34 of the United Nations Commission on International Trade Law or UNCITRAL Model Law. Article 34(2) of the Model Law states:

Article 34

. . .

(2) An arbitral award may be set aside by the court specified in article 6 only if:
(a) the party making the application furnishes proof that:
(i) A party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the Philippines; or
(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only the part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of ADR Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with ADR Act; or
(b) The Court finds that:
(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Philippines; or
(ii) the award is in conflict with the public policy of the Philippines.

The standards to vacate an arbitral award are firmly confined to grounds extraneous to the merits of the arbitral award. The grounds concern either the conduct of the arbitral tribunal and the arbitrator's qualifications, or the regularity of arbitration proceedings. "They do not refer to the arbitral tribunal's errors of fact and law, misappreciation of evidence, or conflicting findings of fact." The list is exclusive in that any other ground raised shall be disregarded by the court.

. . .

Wherefore, the Petition is GRANTED. The Court of Appeals' February 15, 2017 Decision in CA-G.R. SP No. 146577 is REVERSED and SET ASIDE. The February 19, 2016 Resolution and June 21, 2016 Order of the Regional Trial Court confirming the arbitral tribunal's Final Award is REINSTATED.

SO ORDERED.

Using Private International Law Choice of Law, this case involves a dispute between the widow and the collateral relatives of a deceased person over the indemnity granted for the death.

ESTHER VICTORIA ALCALA VDA. DE ALCAÑESES, petitioner, vs. JOSE S. ALCAÑESES, substituted by his legal heirs, GRACIA SANGA, MARIA ROSARIO ALCAÑESES, ANTHONY ALCAÑESES, VERONICA ALCAÑESES-PANTIG, MARCIAL ALCAÑESES, and DEBORA ALCAÑESES-OBIAS, et. al.
THIRD DIVISION
[G.R. No. 187847. June 30, 2021.]

LEONEN, J.

FACTS:

In January of 2000, Efren Alcañeses boarded a Kenya Air flight as a non-paying passenger. The plane exploded in mid-air killing everyone on board. Consequently, Efren's widow, Esther, executed an affidavit of self-adjudication. She also obtained an appointment as the legal representative of Efren's estate from the Regional Trial Court. Thereafter, she filed a claim for damages against Kenya Air in Kenya. Kenya Air amicably settled with her. Esther received US$430,000.00.

A year later, the brothers and sisters (collateral relatives) of Efren filed a Complaint for Partition of Estate and Declaration of Nullity of Affidavit of Self-

adjudication and Damages with the Regional Trial Court of Lucena City. They wanted a share in the indemnity from Kenya Air.

As regards the indemnity, the RTC found for the collateral relatives. The Court of Appeals affirmed the RTC reasoning that under Article 2206 of the Civil Code, indemnity for death arising from a quasi-delict must be paid to the decedent's heirs, which under Philippine law includes the collateral relatives and the widow.

Petitioner maintains that the Fatal Accidents Act of Kenya is the applicable law, and not the Civil Code of the Philippines.

The Supreme Court ruled in favor of the Petitioner. Applying choice of law principles the Court concluded that the applicable law is the Fatal Accidents Act of Kenya, and that said law had been sufficiently pleaded and proved.

RULING (Excerpts):

When laws of two or more states may potentially govern a dealing, a conflict of laws arises. Transnational transactions have made this possible:

> The more jurisdictions having an interest in, or merely even a point of contact with, a transaction or relationship, the greater the number of potential fora for the resolution of disputes arising out of or related to that transaction or relationship. In a world of increased mobility, where business and personal transactions transcend national boundaries, the jurisdiction of a number of different fora may easily be invoked in a single or a set of related disputes.

The parties appear to confuse the concepts of jurisdiction and choice of law. *Hasegawa v. Kitamura* distinguished the two:

> Analytically, jurisdiction and choice of law are two distinct concepts. Jurisdiction considers whether it is fair to cause a defendant to travel to this state; choice of law asks the further question whether the application of a substantive law which will determine the merits of the case is fair to both parties. The power to exercise jurisdiction does not automatically give a state

> constitutional authority to apply forum law. While jurisdiction and the choice of the *lex fori* will often coincide, the "minimum contacts" for one do not always provide the necessary "significant contacts" for the other. The question of whether the law of a state can be applied to a transaction is different from the question of whether the courts of that state have jurisdiction to enter a judgment. (Citations omitted)

Jurisdiction pertains to the court or tribunal's competence to rule on a matter before it. Choice of law deals with determining which law applies.

Previously, this Court had ruled that the Warsaw Convention "has the force and effect of law in this country." *Santos III v. Northwest Orient Airlines* detailed the chronicle of events:

> The Republic of the Philippines is a party to the Convention for the Unification of Certain Rules Relating to International Transportation by Air, otherwise known as the Warsaw Convention. It took effect on February 13, 1933. The Convention was concurred in by the Senate, through its Resolution No. 19, on May 16, 1950. The Philippine instrument of accession was signed by President Elpidio Quirino on October 13, 1950, and was deposited with the Polish government on November 9, 1950. The Convention became applicable to the Philippines on February 9, 1951. On September 23, 1955, President Ramon Magsaysay issued Proclamation No. 201, declaring our formal adherence thereto, to the end that the same and every article and clause thereof may be observed and fulfilled in good faith by the Republic of the Philippines and the citizens thereof. (Citation omitted)

The Warsaw Convention governs international air carriage, and "seeks to accommodate or balance the interests of passengers seeking recovery for personal injuries and the interests of air carriers seeking to limit potential liability." It enumerates the most convenient fora where claims between an airline and its passengers may be litigated.

Petitioner is correct in arguing that the Warsaw Convention confers jurisdiction, in determining which court has the competence to rule upon a transnational concern. Accordingly, she instituted the claim for damages against Kenya Air in Kenya, albeit later resorting to settle.

We have held in a plethora of cases that the Warsaw Convention does not preclude the application of the Civil Code. However, the Warsaw Convention finds no application when the action does not involve an international carrier's liability.

Here, respondents did not implead Kenya Air to seek damages from it. Neither did they question its indemnity award to petitioner. In imploring this Court to direct petitioner to deliver to them a portion of the settlement, respondents anchor their cause of action on Philippine law.

Thus, this Court is confronted with the issue of whether or not Philippine law may be applied to order the division of an international carrier's indemnity payment to a Filipino widow.

III

Choice-of-law problems resolve the following questions:

(1) What legal system should control a given situation where some of the significant facts occurred in two or more states; and
(2) to what extent should the chosen legal system regulate the situation[?]

There is no specifically prescribed means to resolve a conflict of laws problem. Choice of law varies depending on the circumstances. *Saudi Arabian Airlines v. Court of Appeals* explores them:

> Several theories have been propounded in order to identify the legal system that should ultimately control. Although ideally, all choice-of-law theories should intrinsically advance both notions of justice and predictability, they do not always do so. The forum is then faced with the problem of deciding which of these two important values should be stressed.
>
> Before a choice can be made, it is necessary for us to determine under what category a certain set of facts or rules fall. This process is known as characterization, or the doctrine of qualification. It is the process of deciding whether or not the facts relate to the kind

of question specified in a conflicts rule. The purpose of characterization is to enable the forum to select the proper law.

Our starting point of analysis here is not a legal relation, but a factual situation, event, or operative fact. An essential element of conflict rules is the indication of a "test" or "connecting factor" or "point of contact." Choice-of-law rules invariably consist of a factual relationship (such as property right, contract claim) and a connecting
factor or point of contact, such as the situs of the res, the place of celebration, the place of performance, or the place of wrongdoing.

Note that one or more circumstances may be present to serve as the possible test for the determination of the applicable law. These "test factors" or "points of contact" or "connecting factors" could be any of the following:

(1) the nationality of a person, his [or her] domicile, his [or her] residence, his [or her] place of sojourn, or his [or her] origin;
(2) the seat of a legal or juridical person, such as a corporation;
(3) the situs of a thing, that is, the place where a thing is, or is deemed to be situated. In particular, the lex situs is decisive when real rights are involved;
(4) the place where an act has been done, the locus actus, such as the place where a contract has been made, a marriage celebrated, a will signed or a tort committed. The lex loci actus is particularly important in contracts and torts;
(5) the place where an act is intended to come into effect, e.g., the place of performance of contractual duties, or the place where a power of attorney is to be exercised;
(6) the intention of the contracting parties as to the law that should govern their agreement, the lex loci intentionis;
(7) the place where judicial or administrative proceedings are instituted or done. The lex fori—the law of the forum—is particularly important because, as we have seen earlier, matters of 'procedure' not going to the substance of the claim involved are governed by it; and because the lex fori applies whenever the content of the otherwise applicable foreign law

> is excluded from application in a given case for the reason that it falls under one of the exceptions to the applications of foreign law; and
>
> (8) the flag of a ship, which in many cases is decisive of practically all legal relationships of the ship and of its master or owner as such. It also covers contractual relationships particularly contracts of affreightment. (Emphasis supplied, citations omitted)

Pursuant to these guidelines and upon scrutiny of the records, this Court holds that the following "points of contact" are material: (1) the parties' nationality; (2) Kenya Air's principal place of business; (3) the place where the tort was committed; and (4) the intention of the contracting parties as to the law that should govern their agreement.

Saudi Arabian Airlines continued that *lex loci delicti commissi* has seen declining relevance. "In keeping abreast with the modern theories on tort liability," it applied the state of the most significant relationship rule.

A perusal of the records reveals that Kenya had the "most significant relationship" to the conflict; thus, its law must be applied in the transaction.

To recall, the parties to this case are Filipinos. However, Kenya Air is a foreign corporation, with principal place of business in Kenya. The tort was committed aboard one of its planes, and it granted the disputed amount of money to petitioner as settlement.

Moreover, the Release and Receipt stipulated that it "shall be subject to the laws of Kenya[,]" and that it "was signed in the Philippines simply as a matter of convenience of Claimant [petitioner]." It appears that the only "point of contact" with Philippine law was that Efren, petitioner, and respondents happened to be Filipino.

IV

Courts do not take judicial notice of foreign law. However, this Court finds that petitioner properly pleaded and proved the applicable Kenyan law.

Chapter 32 of the Laws of Kenya, "An Act of Parliament for compensating the families of persons killed in accidents," otherwise known as the Fatal Accidents Act of Kenya, provides that a person may institute an action against one causing death through a wrongful act:

> 3. Whenever the death of a person is caused by a wrongful act, neglect or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured and although the death was caused under such circumstances as amount in law to felony.

It further provides that the action for damages shall be for the family of the deceased—wife, husband, parent, or child—which makes no mention of collateral relatives:

> 4. Every action brought by virtue of the provision of this Act shall be for the benefit of the wife, husband, parent, and child of the person whose death was so caused, and shall, subject to the provisions of Section 7, be brought by and in the name of the executor or administrator of the person deceased, and in every such action the court may award such damages as it may think proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought; and the among so recovered, after deducting the costs not recovered from the defendant, shall be divided among persons in such shares as the court, by its judgment, shall find and direct[.](Emphasis supplied)

WHEREFORE, the Petition for Review on Certiorari is GRANTED. The Court of Appeals' January 30, 2009 Decision and May 11, 2009 Resolution in CA-G.R. CV No. 85919 are REVERSED and SET ASIDE, insofar as it directed petitioner Esther Victoria Alcala Vda. de Alcañeses to deliver respondents' respective one-tenth (1/10) share of the US$430,000.00 award.

. . .

SO ORDERED.

This is an administrative case against a lawyer which resulted in disbarment. It discusses the legal effect in the Philippines of judgments of disbarment against Philippine lawyers obtained in jurisdictions outside the Philippines.

IN RE: RESOLUTION DATED 05 AUGUST 2008
IN A.M. No. 07-4-11-SC ATTY. JAIME V. LOPEZ
[A.C. No. 7986. July 27, 2021.]

PER CURIAM

FACTS:

In 2000, Atty. Lopez was disbarred from the practice of law in the US State of California. The charges against him included misappropriation of funds received on behalf of his client. In 2007, Chief Justice Reynato Puno received a letter informing him of Atty. Lopez' disbarment. After an investigation, the Investigating Commissioner of the Integrated Bar of the Philippines (IBP) recommended suspension from the practice of law for a maximum period of 3 years. The IBP Board of Governors modified the penalty to disbarment.

RULING (Excerpts):

When a foreign court renders a judgment imposing disciplinary penalty against a Filipino lawyer admitted in its jurisdiction, such Filipino lawyer may be imposed a similar judgment in the Philippines provided that the basis of the foreign court's judgment includes grounds for the imposition of disciplinary penalty in the Philippines.

. . .

Records reveal that respondent has been admitted to both the Philippine Bar and the State Bar of California.

. . .

Reciprocal Discipline

When a lawyer is sanctioned for violating a bar's disciplinary rules or code of conduct, other jurisdictions where he or she is admitted must conduct separate adjudications in order to invoke disciplinary sanctions for the same violation. Generally, the initial finding of wrongdoing in the first jurisdiction is treated as conclusive evidence that the violation occurred. Where the second jurisdiction finds that a sanction in its own jurisdiction is appropriate, it decides on the proper sanction independently even as the first jurisdiction's findings are given great deference. In many jurisdictions, the second sanction is identical to the first, unless circumstances are shown that such identical discipline is inappropriate. Reciprocal discipline is part of the protocols being developed for international cooperation on lawyer discipline, especially for lawyers engaged in transnational legal practice.

Decision of foreign court as prima facie
evidence of ground for disciplinary action

In our jurisdiction, the authority of this Court to disbar or suspend a lawyer for acts or omissions committed in a foreign jurisdiction is found in Section 27, Rule 138 of the Revised Rules of Court, as amended by Supreme Court Resolution dated 13 February 1992, which reads:

> SEC. 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. —
>
> A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases

> at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.
>
> The disbarment or suspension of a member of the Philippine Bar by a competent court or other disciplinary agency in a foreign jurisdiction where he has also been admitted as an attorney is a ground for his disbarment or suspension if the basis of such action includes any of the acts hereinabove enumerated.
>
> The judgment, resolution or order of the foreign court or disciplinary agency shall be prima facie evidence of the ground for disbarment or suspension. (Emphases supplied)

That the decision of the California Supreme Court constitutes *prima facie* evidence of grounds for disciplinary action in the Philippines is "consistent with Section 48, Rule [39] of the Revised Rules of Court which provide that the judgment of a foreign court cannot be enforced by execution in the Philippines, but only creates a right of action. Section 48 further states that a foreign judgment against a person is only presumptive evidence of a right against that person. Hence, the same may be repelled by evidence of clear mistake of law."

Once a foreign judgment is admitted and proven in a Philippine court, it can only be repelled on grounds external to its merits, i.e., "want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact." The rule on limited review embodies the policy of efficiency and the protection of party expectations, as well as respecting the jurisdiction of other states.

In cases filed before administrative and quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Recognition of a foreign judgment only requires proof of fact of the judgment. In the present case, the official copy of the decision from the Supreme Court of California is sufficient proof of the judgment.

At this juncture, the Court rejects respondent's contention that the California Supreme Court's decision is void and cannot serve as *prima facie* case against him in the Philippines. In his second motion for extension, respondent claimed that he had no actual knowledge of the California State Bar Court's decision and that his basic constitutional rights were trampled upon.

Respondent's insistence that due process was not observed in the California disbarment proceedings due to constitutionally deficient notices is not supported by the records. Respondent paid no mind to the fact that the California State Bar Court sent notices to his official address upon taking judicial notice of respondent's official membership records address at 3600 Wilshire Blvd. #910, Los Angeles, CA 90010. Notably, aside from the charges for mishandling of his client's funds, the California State Bar Court also sanctioned respondent for failure to "maintain current State Bar membership records as required by Business and Professions Code section 6002.1" Respondent failed to rebut the same with his bare and unsubstantiated allegations that he sent written notice of his Philippine address to the California State Bar and that he has stayed put in the Philippines continuously for over 13 years without going abroad after his return in the country in 1995 to bury his mother and to take care of his two siblings.

Respondent's acts in the foreign jurisdiction constitute grounds for the imposition of disciplinary penalty in this Jurisdiction

. . .

Stated differently, a foreign court's judgment of suspension against a Filipino lawyer admitted in its jurisdiction may transmute into a similar judgment of suspension in the Philippines only if the basis of the foreign court's action includes any of the grounds of disbarment or suspension in this jurisdiction. This, however, is not automatic. Due process demands that a lawyer disciplined in a foreign jurisdiction must be "given the opportunity to defend himself and to present testimonial and documentary evidence on the matter in an investigation to be conducted in accordance with Rule 139- B of the Revised Rules of Court. Said rule mandates that a respondent lawyer must in all cases be notified of the charges against him. It is only after reasonable notice and failure on the part of the respondent lawyer to appear during the scheduled investigation that an investigation may be conducted *ex parte*."

Upon meticulous review of the records, the Court agrees with the findings of the Investigating Commissioner that respondent's acts as charged in Case Nos. 96-O-04592 and 96-O-06201 violate the standards of ethical behavior for members of the Philippine bar and thus constitute grounds for the imposition of disciplinary penalty in this jurisdiction.

. . .

WHEREFORE, respondent Atty. Jaime V. Lopez, having violated the Code of Professional Responsibility by committing unlawful, dishonest, deceitful conduct, and by willfully disregarding the lawful processes of courts is DISBARRED and his name is ordered STRICKEN OFF the Roll of Attorneys EFFECTIVE IMMEDIATELY.

A copy of this Decision should be entered in the records of respondent Atty. Jaime V. Lopez. Further, other copies should be served on the Integrated Bar of the Philippines and on the Office of the Court of Administrator, which is directed to circulate them to all the courts in the country for their information and guidance. This Decision is immediately executory.

SO ORDERED.

This is a case for damages against an air carrier for lost luggage that applied the Warsaw Convention's provisions limiting the air carrier's liability.

KLM ROYAL DUTCH AIRLINES vs. DR. JOSE M. TIONGCO
SECOND DIVISION
[G.R. No. 212136. October 4, 2021.]

HERNANDO, J.

FACTS:

Dr. Tiongco was invited by the United Nations-World Health Organization to speak at an event in Almaty, Kazakhstan. Seeing as there was no direct flight from the Philippines to Kazakhstan, Dr. Tiongco had to book several connecting flights, Manila-Singapore (Singapore Airlines), Singapore-Amsterdam (KLM), Amsterdam-Frankfurt (KLM), and Frankfurt-Almaty (Lufthansa).

On the day of his flight, Dr. Tiongco went to the counter of Singapore Airlines and checked-in a suitcase containing a copy of his speech, resource materials, clothing for the event, and other personal items. His third flights,

Amsterdam-Frankfurt (KLM), was delayed, so he missed the last flight. KLM arranged for him to take a Lufthansa flight to Istanbul, and from there, a Turkish Airlines flight to Almaty.

Before boarding the flight from Istanbul to Almaty, Dr. Tiongco discovered that his suitcase was missing. Pressed for time, Dr. Tiongco was forced to fly to Kazakhstan without his suitcase. Dr. Tiongco eventually had to make his presentation without his visual aids, resource materials, and in improper attire because his suitcase was not returned to him. He wrote Singapore Airlines, KLM, and Lufthansa, demanding compensation for his lost luggage and the inconvenience he suffered. After his demand was not heeded, he filed a complaint for damages against the airlines before the Regional Trial Court (RTC).

The RTC ruled that KLM alone is liable. Aside from being the principal carrier, having been the airline to issue Dr Tiongco's ticket's, the RTC found that KLM transferred the suitcase to the wrong Lufthansa flight. The RTC awarded nominal, exemplary, and moral damages, and attorney's fees. On appeal, the Court of Appeals (CA) concurred with the findings of the RTC but reduced the damages awarded.

Before the Supreme Court, KLM assails the finding of liability on their part as well as the amount of damages awarded.

The Supreme Court affirmed KLM's liability and modified the award of damages. It found that KLM should be liable for temperate damages and not nominal damages.

RULING (Excerpts):

A contract of carriage is one whereby a certain person or association of persons obligate themselves to transport persons, things, or goods from one place to another for a fixed price. Under Article 1732 of the Civil Code, a common carrier refers to "persons, corporations, firms, or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public."

. . .

Considering that a contract of carriage is vested with public interest, a common carrier is presumed to have been at fault or to have acted negligently in case of lost or damaged goods unless they prove that they observed extraordinary

diligence. Hence, in an action based on a breach of contract of carriage, the aggrieved party does not need to prove that the common carrier was at fault or was negligent. He or she is only required to prove the existence of the contract and its non-performance by the carrier.

There is no dispute that KLM and Dr. Tiongco entered into a contract of carriage. Dr. Tiongco purchased tickets from the airline for his trip to Almaty, Kazakhstan. KLM, however, breached its contract with Dr. Tiongco when it failed to deliver his checked-in suitcase at the designated place and time. The suitcase contained his clothing for the conference where he was a guest speaker, a copy of his speech, and his resource materials. Worse, Dr. Tiongco's suitcase was never returned to him even after he arrived in Manila from Almaty. Thus, KLM's liability for the lost suitcase was sufficiently established as it failed to overcome the presumption of negligence.

. . .

We agree with the RTC and the CA that KLM acted in bad faith. It is undisputed that Dr. Tiongco's luggage went missing during his flight. Even after his return to the Philippines, Dr. Tiongco's suitcase was still missing. Nobody from KLM's personnel updated him of what happened to the search. It was only when Dr. Tiongco wrote KLM a demand letter that the latter reached out to him asking for time to investigate the matter. Yet, it did not even notify him of the result of the purported investigation.

To make matters even worse, the Customer Relations Officer of KLM, Arlene Almario, categorically testified that the suitcase was eventually found in Almaty as shown in the baggage report dated December 18, 1998 of Turkish Airlines. Said airline immediately notified KLM. However, KLM did not bother to inform Dr. Tiongco that his suitcase had been found or took the necessary steps to transport it back to Manila.

. . .

Article 2221 of the Civil Code states that nominal damages may be awarded in order that the plaintiff's right, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered. They are "recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of

contract and no substantial injury or actual damages whatsoever have been or can be shown."

On the other hand, Article 2224 of the same Code states that temperate damages or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty. Simply put, temperate damages are awarded when the injured party suffered some pecuniary loss but the amount thereof cannot, from the nature of the case, be proven with certainty.

Dr. Tiongco incurred pecuniary loss when his suitcase containing his personal belongings was lost during his flight and was never returned. Unfortunately, he did not present any actual receipt that would have proved the actual amount due, as mandated under Article 2199 of the Civil Code, so as to entitle him to the award of actual damages. This, however, does not preclude Dr. Tiongco from recovering temperate damages, and not nominal damages, since the exact amount of damage or pecuniary loss he sustained was not duly established by competent evidence. Verily, the Court finds the award of P50,000.00 as temperate damages fair and reasonable in view of the circumstances in this case.

KLM's liability for temperate damages may not be limited to that prescribed in Article 22 (2) of the Warsaw Convention, as amended by the Hague Protocol, in the presence of bad faith. As aptly held in *Northwest Airlines, Inc. v. Court of Appeals*, citing *Alitalia*:

> The [Warsaw] Convention does not operate as an exclusive enumeration of the instances of an airline's liability, or as an absolute limit of the extent of that liability. Such a proposition is not borne out by the language of the Convention, as this Court has now, and at an earlier time, pointed out. Moreover, slight reflection readily leads to the conclusion that it should be deemed a limit of liability only in those cases where the cause of the death or injury to person, or destruction, loss or damage to property or delay in its transport is not attributable to or attended by any willful misconduct, bad faith, recklessness, or otherwise improper conduct on the part of any official or employee for which the carrier is responsible, and there is otherwise no special or extraordinary form of resulting injury. The Convention's provisions, in short, do not "regulate or exclude liability for other breaches of contract by the carrier" or misconduct of its officers

> and employees, or for some particular or exceptional type of damage.
>
> . . .

WHEREFORE, the Petition for Review on Certiorari is DENIED. The April 10, 2013 Decision of the Court of Appeals in CA-G.R. CV No. 00884-MIN is hereby AFFIRMED with MODIFICATION in that:

> . . .
>
> (b) temperate damages in the amount of P50,000.00 is awarded to Dr. Jose M. Tiongco in lieu of nominal damages;
>
> . . .
>
> SO ORDERED.

This case involves a Petition for Recognition of Foreign Divorce obtained in Japan. It discusses the procedures involved in giving full effect to a foreign divorce decree as well as the requirement of proving the relevant foreign law.

IN RE: PETITION FOR RECOGNITION OF FOREIGN JUDGMENT OF DIVORCE WITH PRAYER TO CHANGE CIVIL STATUS OF JANEVIC ORTEZA ORDANEZA FROM MARRIED TO SINGLE, JANEVIC ORTEZA ORDANEZA, REPRESENTED BY: RICKY O. ORDANEZA vs. REPUBLIC OF THE PHILIPPINES
[G.R. No. 254484. November 24, 2021]

CARANDANG, J.

FACTS:

Janevic (Filipino) married a Japanese national, Masayoshi. Subsequently, Janevic and her Japanese husband obtained a divorce decree in Japan. She filed a petition for recognition of foreign divorce decree with the RTC of Pasay City. She also prayed that her civil status be changed from 'married' to 'single'. The RTC granted her petition but the Court of Appeals (CA) reversed the decision on the

ground that Janevic's petition failed to comply with the jurisdictional requirements of Rule 108 of the Rules of Court on the cancellation or correction of entries in the civil registry. Janevic filed this Petition before the Supreme Court to challenge the CA's decision. In addition, the Office of the Solicitor General (OSG) argued that Janevic failed to prove that Japanese law allowed divorced Japanese nationals to remarry, a precondition for recognition of foreign divorce.

RULING (Excerpts):

Janevic's petition for judicial recognition of foreign divorce decree should not be treated as a petition for cancellation or correction of entries under Rule 108 of the Rules.

. . .

In *Corpuz v. Sto. Tomas*, the Court categorically acknowledged that a petition for recognition of a foreign judgment in relation to the second paragraph of Article 26 of the Family Code is not the same as a petition for cancellation of entries in the civil registry under Rule 108 of the Rules.

. . .

More recently, in *Republic v. Cote*, the Court reiterated the differentiation made in Corpuz v. Sto. Tomas between the nature of recognition proceedings under Rule 39 and cancellation or correction of entries under Rule 108.

The import of the recent rulings of the Court is that there is more than one remedy to judicially recognize a foreign divorce decree in the Philippines and availing one remedy does not automatically preclude the institution of another remedy.

Here, it is clear from the prayer that Janevic intended to cancel or correct her civil status entry in the civil registry aside from the judicial recognition of the divorce decree. The cancellation or correction of her civil status cannot be done through a petition for recognition under Article 26 (2) without complying with the requirements of Rule 108. In *Fujiki v. Marinay*, the Court stressed that:

> Rule 1, Section 3 of the Rules of Court provides that "[a] special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact." Rule 108 creates a remedy to

> rectify facts of a person's life which are recorded by the State pursuant to the Civil Register Law or Act No. 3753. These are facts of public consequence such as birth, death, or marriage, which the State has an interest in recording. As noted by the Solicitor General, in Corpuz v. Sto. Tomas this Court declared that "[t]he recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact." (Citation omitted; italics in the original; underscoring supplied)

An individual seeking the change of his or her civil status must adhere to the requirements governing a petition for cancellation or correction of entries in the civil registry under Rule 108. There are underlying objectives and interests that the State seeks to protect in imposing the requirements in Rule 108, including inter alia the requirements on venue (Section 1 of Rule 108) and parties to implead (Section 3 of Rule 108), that the Court cannot simply disregard in favor of expediency.

Section 1 of Rule 108 specifically states that the petition must be filed:

> …with the Court of First Instance [now Regional Trial Court] of the province where the corresponding civil registry is located. (Emphasis supplied) Meanwhile, Section 3 of Rule 108 provides that: Section 3. Parties. — When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding. (Emphasis supplied)

Compliance with these requirements is necessary because inherent in the petition under Rule 108 is a prayer that the trial court order the concerned local civil registrar to make the necessary correction or cancellation in entries of documents in its custody.

Here, the interested parties referred to in Section 3 of Rule 108 include inter alia the Local Civil Registrar of Pasay City and Masayoshi. The RTC of Kidapawan City does not possess any authority to instruct the Local Civil Registrar

of Pasay City to reflect the change in civil status of Janevic considering that it was not impleaded in her petition.

While the change in Janevic's civil status is an expected consequence of the judicial recognition of her foreign divorce, it does not automatically follow that the Petition she filed is the petition contemplated under Rule 108. Janevic herself acknowledged in her Petition that "[t]he court does not altogether preclude the filing of the separate proceedings to effect the same." Since Rule 108 pertains to a special proceeding, its particular provisions on venue and the parties to implead must be observed to vest the Court with jurisdiction. Therefore, the Court cannot take cognizance of Janevic's prayer for the cancellation or correction of her civil status from "married" to "single" as this may only be pursued and granted in the proper petition filed in compliance with the specific requirements of Rule 108.

The foreign law capacitating the foreign spouse to remarry must be proven as a fact during trial and in accordance with the Rules.

To date, Philippine laws do not provide for absolute divorce. Nevertheless, jurisdiction is conferred on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage. Article 26 of the Family Code states:

> Article 26. All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.
>
> Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law. (Emphasis supplied)

Under the second paragraph of the quoted provision and the seminal case of *Republic v. Manalo*, twin elements must be established: (1) there is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and (2) A valid divorce is obtained capacitating the parties to remarry regardless of the

spouse who initiated the divorce proceedings. The Court has recognized the second paragraph of Article 26 of the Family Code as "a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country."

It is settled that the divorce decree and the governing personal law of the alien spouse must be proven because courts cannot take judicial notice of foreign laws and judgments. This must be alleged and proven in accordance with the Rules. Here, Janevic was able to prove the Japanese law permitting her and Masayoshi to obtain a divorce by agreement. The pertinent provision of the Civil Code of Japan that was properly presented during trial states: Article 763. A husband and wife may divorce by agreement.

While Janevic was able to allege and prove as a fact the divorce by agreement and the Japanese law supporting its validity, the OSG insists that the provision of the Civil Code of Japan capacitating the foreign spouse to remarry was not properly alleged and proven in accordance with the Rules. The OSG contends that the relevant provisions of the Civil Code of Japan duly proven during trial allegedly did not explicitly state that the divorce obtained abroad permits the parties to remarry. Janevic alleged in her petition Articles 732 and 733 of the Civil Code of Japan, to wit:

> Japanese people can remarry, however there are restrictions, to wit:
>
> (Period of Prohibition of Remarriage)
>
> "Article 733. A woman may not remarry unless six months have elapsed from the dissolution or annulment of her previous marriage.
>
> 2. In cases [sic] a woman is pregnant from before dissolution or annulment of her previous marriage, the preceding paragraph shall cease to apply as from the day of her delivery."
>
> (Prohibition of Bigamous Marriage)
>
> "Article 732. A person who has a spouse may not affect an additional marriage."

The Court is mindful that it cannot simply take judicial notice of the foreign law purportedly capacitating the foreign spouse to remarry without being properly presented during trial.

In *Racho v. Tanaka*, the Court found that the national law of the foreign spouse absolutely and completely terminated the spouses marital relationship, thereby concluding that they are not restricted from remarrying. The Court explained that the "Certificate of Acceptance of the Report of Divorce does not state any qualifications that would restrict the remarriage of any of the parties. There can be no other interpretation than that the divorce procured by petitioner and respondent is absolute and completely terminates their marital tie."

In the present case, Janevic alleged in her petition, though not properly presented and proven during trial, that there are restrictions to remarrying in Japan but these restrictions apply only to women, and not the male foreign spouse. Similar to the case of *Racho*, the fact remains that the divorce by agreement severed the marital relationship between the spouses and the Japanese spouse is capacitated to remarry. Moreover, the official document Janevic submitted to prove the fact of divorce, the Divorce Notification, did not indicate any restriction on the capacity of either spouse to remarry. Therefore, the Court deems it prudent to adopt its ruling in Racho, which involved the same foreign law, in holding that the capacity to remarry of the foreign spouse had been established.

Accordingly, the petition of Janevic is granted only insofar as her foreign divorce decree by agreement is recognized. The other relief prayed for, that her civil status be changed from "married" to "single" cannot be given due course and awarded in this petition. This ruling is without prejudice to the filing of a petition for cancellation or correction of entries in compliance with the requirements outlined in Rule 108 where the appropriate adversarial proceeding may be conducted.

WHEREFORE, premises considered, the Decision dated September 7, 2020 of the Court of Appeals in CA-G.R. CV No. 05087-MIN is SET ASIDE. The petition for review on certiorari of Janevic Orteza Ordaneza is PARTIALLY GRANTED only insofar as her foreign divorce decree by agreement is judicially recognized.

SO ORDERED.

This decision involves a petition for recognition of foreign divorce and discusses, using the principles of Private International Law, the distinction between recognition of a foreign judgment of divorce and the change of the petitioner's civil status from married to single.

MARIETTA PANGILINAN JOHANSEN vs. OFFICE OF THE CIVIL REGISTRAR GENERAL, DEPARTMENT OF FOREIGN AFFAIRS, PHILIPPINE STATISTICS AUTHORITY, AND OFFICE OF THE SOLICITOR GENERAL
[G.R. No. 256951. November 29, 2021.]

CARANDANG, J.

FACTS:

In 2015, Marietta (Filipino) married Knul (Norwegian) in Norway. A few years later, Knul obtained a divorce decree against Marietta under Chapter 4 of the Norwegian Marriage Act. A Final Decree of Divorce dated November 30, 2018 was issued by the Counter Governor of Oslo and Akershusner and Katsuyuki duly authenticated by the Vice Consul of the Embassy of the Philippines. In 2019, Marietta filed a Petition for Recognition of Foreign Judgment of Divorce in the Regional Trial Court (RTC) of Malolos, Bulacan. She prayed that the RTC order the Office of the Civil Registrar General (OCRG) to annotate the divorce decree on the Report of Marriage

In 2021, the RTC dismissed the case for lack of jurisdiction. It reasoned that because Marietta prayed for the annotation of the divorce on the Report of Marriage, her petition is one for correction of entry in the civil registry under Rule 108. Thus, the venue (which is jurisdictional) requirement under said rule must be observed. Under Rule 108, the venue is the place where the record may be found. The Report of Marriage is found in the Department of Foreign Affairs (DFA) or the OCRG. Thus, the venue/jurisdiction is vested in the RTCs of Pasig City or Quezon City, not that of Malolos. Marietta challenged the dismissal before the Supreme Court.

RULING (Excerpts):

Case law teaches that the court's recognition of a foreign divorce decree does not, by itself, authorize the cancellation of the entry in the civil registry.

. . .

A recognition of a foreign judgment is an action for Philippine courts to recognize the effectivity of a foreign judgment, which presupposes a case which was already tried and decided under foreign law. A foreign judgment relating to marriage where one of the parties is a citizen of a foreign country is governed by the second paragraph of Article 26 of the Family Code, to wit:

> Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

Petitioner needs to prove the foreign judgment as a fact under Rule 39, Section 48 (b) in relation to Rule 132, Sections 24 and 25 of the Rules of Court.

. . .

Rule 108 of the Rules of Court supplements Article 412 by providing a special remedial proceeding by which entries in the civil registry may be judicially cancelled or corrected. Rule 108 states the jurisdictional and procedural requirements that must be complied with before a judgment, authorizing the cancellation or correction, may be annotated in the civil registry.

. . .

We further elaborated in *Fujiki v. Marinay* that since recognition of a foreign judgment or final order only requires proof of fact of the judgment, it may be made in a special proceeding for cancellation or correction of entries in the civil registry under Rule 108 of the Rules of Court. A foreign judgment is presumptive evidence of a right between the parties. Upon its recognition, the right becomes conclusive, and the judgment serves as the basis for the correction or cancellation of entry in the civil registry. Accordingly, in the interest of judicial economy and

simplification, parties-in- interest who seek not only to have a foreign decree of divorce recognized in the country but also to cancel or correct their civil status in the local civil registry must file a petition under Rule 108 in relation to Rule 39 of the Rules of Court for correction/cancellation of entry in the civil registry coupled with judicial recognition of foreign judgment.

Thus, the petition of petitioner in the RTC is governed not only by Rule 108 but also by Rule 39 as to the matter pertaining to the recognition of foreign divorce decree.

. . .

Per the Decision of the RTC, the Report of Marriage in this case is found either in the DFA or the OCRG, that is, in Pasay City or Quezon City, respectively. Pursuant to Section 1, Rule 108, the petition must be filed in the RTC where the corresponding civil registry is located. However, petitioner filed the case in the RTC of Malolos City, Bulacan because it is convenient for her as she is residing in San Miguel, Bulacan. Thus, venue was improperly laid. More, the local civil registrar of Pasay (in case the Report of Marriage is with the DFA) was not impleaded. The RTC of Malolos City, Bulacan has no authority to order the civil registrar of Pasay or Quezon City to correct the civil status of petitioner.

In fine, considering the foregoing defects in the petition, the RTC of Malolos City, Bulacan did not err in dismissing it for lack of jurisdiction.

. . .

WHEREFORE, the petition is DENIED. The Decision dated January 14, 2021 and the Order dated April 5, 2021 of the Regional Trial Court of Malolos City, Bulacan, Branch 84, in Special Proceedings No. 73-M-2019 are AFFIRMED without prejudice to the filing of the appropriate actions.

SO ORDERED.

This case resolved a boundary dispute between the City of Makati and the Municipality of Taguig using the concept of critical date from Public International Law.

MUNICIPALITY OF MAKATI (NOW CITY OF MAKATI) vs. MUNICIPALITY OF TAGUIG (NOW CITY OF TAGUIG)
[G.R. No. 235316. December 1, 2021.]

ROSARIO, J.

FACTS:

In 1993, the Municipality of Taguig, now a City, filed a Complaint before the Regional Trial Court (RTC) of Pasig against the City of Makati (Makati) et al. denominated as "Judicial Confirmation of the Territory and Boundary Limits of [Taguig] and Declaration of the Unconstitutionality and Nullity of Certain Provisions of Presidential Proclamations 2475 and 518. Both Makati and Taguig were claiming that the areas comprising the Enlisted Men's Barangays and Fort Bonifacio were within their respective territories.
RULING (Excerpts):

Taguig, as the plaintiff in the case before the RTC of Pasig, must prove by preponderance of evidence that it has a better claim to the disputed areas. Simply put, Taguig must prove that its claim aligns more with the intent of the legislature than that of Makati.

. . .

In assessing the evidence presented by the parties, it goes without saying that we can only consider those that were formally offered. However, in addition to the formally offered evidence, We can take judicial notice of the official acts of the legislative, executive and judicial branches of the government, and take them into account in resolving the case, regardless if they were raised by the parties.

Since we are dealing here with mostly historical evidence, we also apply by analogy the concept of "critical date" from public international law. A doctrine

often used in resolving territorial disputes, critical date means that point in time when the dispute has crystallized. The critical date acquires much significance in that acts performed by the parties after the critical date to bolster their respective claims are accorded little to no probative value, unless they are a normal continuation of prior acts and not undertaken merely to improve their legal position.

The reason for this is simple. Such acts would lack any evidentiary weight as they were executed in bad faith merely to reinforce a party's theory of the case or cure whatever weakness exists in their claim.

Here, we fix the critical date on January 31, 1990, the date when Proclamation No. 518, s. of 1990 was issued. While the territorial row has been brewing prior to this date, it can be said that the territorial dispute crystallized when President Aquino issued the second assailed proclamation. At this moment, both parties were put on notice regarding their contending claims over the disputed areas, the culmination of which was the filing of Taguig's complaint on November 22, 1993.

. . .

After sifting through the voluminous records and the numerous issues raised by both parties, we are convinced that Taguig was able to prove by preponderance of evidence its claim over the disputed area.

In arriving at this decision, we considered historical evidence, maps, cadastral surveys, and the contemporaneous acts of lawful authorities.

. . .

WHEREFORE, the Petition is DENIED. The RTC Decision dated July 8, 2011 is REINSTATED with MODIFICATION as follows:

1. Fort Bonifacio Military Reservation, consisting of Parcels 3 and 4, Psu-2031, is confirmed to be part of the territory of the City of Taguig;

2. The Writ of Preliminary Injunction dated August 2, 1994 issued by the RTC of Pasig, explicitly referring to Parcels 3 and 4, Psu-2031, comprising Fort Bonifacio, be made PERMANENT insofar as it enjoined the Municipality, now City of Makati, from exercising jurisdiction over, making improvements on, or otherwise treating as part of its territory, Parcels 3 and 4, Psu-2031, comprising Fort Bonifacio.

3. Ordering City of Makati to pay the costs of the suit.

SO ORDERED.

This case involves the resolution of various petitions challenging the legality of the Anti-Terrorism Act of 2020. It discusses the status of terrorism in international law and references a number of international legal instruments including Resolutions of the United Nations Security Council and United Nations General Assembly and the United Nations' proposed Comprehensive Convention on International Terrorism.

ATTY. HOWARD M. CALLEJA, et al. v. EXECUTIVE SECRETARY, et. al.

G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, 16663, 252802, 252809, 252903, 25 2904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191 & 253420,
[December 7, 2021]

CARANDANG, J.
FACTS:

In this case, the Supreme Court decided the merits of the numerous petitions challenging the constitutionality of Republic Act (R.A.) No. 11479 or the "Anti-Terrorism Act of 2020" (ATA).

RULING (Excerpts):

When deconstructed, Section 4 of the ATA consists of two distinct parts: the main part and the proviso.

The main part of Section 4 provides for the *actus reus*, the *mens rea*, and corresponding imposable penalty for the crime of terrorism; in this regard, the main part is thus subdivided into three components. The first component enumerates the conduct which consists of the *actus reus* of terrorism, i.e., Section 4 (a) to (e), or the overt acts that constitute the crime. The second component

enumerates the purposes or intents of any of the *actus reus*, i.e., to intimidate the general public or a segment thereof; to create an atmosphere or spread a message of fear; to provoke or influence by intimidation the government or any international organization; to seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety. This is the *mens rea* component of terrorism, which is inferred from the nature and context of the *actus reus*. The third component provides the imposable penalty for the crime of terrorism, i.e., life imprisonment without the benefit of parole and the benefits of R.A. No. 10592.

On the other hand, the proviso, if rephrased into its logical inverse, purports to allow for advocacies, protests, dissents, stoppages of work, industrial or mass actions, and other similar exercises of civil and political rights to be punished as acts of terrorism if they are "intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."

On the basis of this deconstruction, it is evident that the main part chiefly pertains to conduct, while the proviso, by clear import of its language and its legislative history, innately affects the exercise of the freedom of speech and expression. Hence, considering the delimitation pursuant to the facial analysis as above explained, the Court's ruling shall focus on (albeit not exclusively relate to) the proviso of Section 4 in light of its chilling effect to petitioners in this case.

. . .

[T]here is no consensus definition of terrorism in the international community. Even the UN Office on Drugs and Crime (UNODC) notes that the 2011 judgment of the Special Tribunal for Lebanon, which had declared that there exists a customary definition of transnational terrorism, has been widely criticized.

. . .

Terrorism as defined in the ATA is not overbroad.

Likewise, petitioners' claim of overbreadth on the main part of Section 4 fails to impress. A careful scrutiny of the language of the law shows that it is not overbroad since it fosters a valid State policy to combat terrorism and protect

national security and public safety, consistent with international instruments and the anti-terrorism laws of other countries.

The Court notes that the ATA's definition of terrorism under the main part of Section 4 is congruent with the UN's proposed Comprehensive Convention on International Terrorism which defines terrorism under Article 2 (1) as follows:

> 1. Any person commits an offense within the meaning of the present Convention if that person, by any means, unlawfully and intentionally, causes:
> (a) Death or serious bodily injury to any person; or
> (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or to the environment; or
> (c) Damage to property, places, facilities or systems referred to in paragraph 1 (b) of the present article resulting or likely to result in major economic loss;
> when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.
>
> . . .

The first mode of designation is a constitutionally acceptable counterterrorism measure under Section 25.

The first paragraph of Section 25, which contains the first mode of designation, states:

> Section 25. Designation of Terrorist Individual, Group of Persons, Organizations or Associations.—Pursuant to our obligations under United Nations Security Council Resolution (UNSCR) No. 1373, the ATC shall automatically adopt the United Nations Security Council Consolidated List of designated individuals, groups of persons, organizations, or associations designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group. x x x

Using the tests identified in the immediately preceding discussion, the Court finds that the first mode of designation as provided under the first paragraph of Section 25 is a legitimate exercise of the State's police power.

. . .

The first mode of designation is but an implementation of the country's standing obligation under international law to enforce anti-terrorism and related measures, and the Court is not convinced that the automatic adoption by the ATC of the designation or listing made by the UNSC is violative of the due process clause or an encroachment of judicial power. Further, the adoption of the Consolidated List is in accord with the doctrine of incorporation, as expressed in Section 2, Article II of the Constitution, whereby the Philippines adopts the generally accepted principles of international law and international jurisprudence as part of the law of the land and adheres to the policy of peace, cooperation, and amity with all nations. In this regard, it is important to remember that UNSCR No. 1373 was issued by the UNSC as an act under Chapter VII of the UN Charter and in response to "threats to international peace and security caused by terrorist acts." Under the doctrine of incorporation, the Philippines has committed to the preservation of international peace. As such, the adoption of the UNSCR No. 1373 finds basis in the Constitution.

While the ATA mentions only the country's obligations under UNSCR No. 1373, this reference should be understood as reflecting the country's commitments under the UN Charter, particularly under Articles 24 (1) and 25, Chapter V and Articles 48 and 49, Chapter VII thereof, which provide:

> Article 24
>
> 1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council the primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf;
>
> xxx xxx xxx
>
> Article 25
>
> The Members of the United Nations agree to accept and carry out decisions of the Security Council in accordance with the present Charter.

xxx xxx xxx

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.
2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council. [Emphases and underscoring supplied]

For the Court, these commitments lay down sufficient bases in construing that the measures adopted in UNSCR No. 1373, and other supplemental UNSCRs, are generally binding on all member states.

Additionally, UNSCR No. 1373 specifically cites two issuances that buttress its generally binding nature. One is General Assembly Resolution No. 2625 (XXV), adopted on October 24, 1970, and the other is UNSCR No. 1189, adopted by the UNSC on August 13, 1998.

General Assembly Resolution No. 2625 (XXV), or the "Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations" (Declaration), affirmed the importance of the progressive development and codification of the principles of international law concerning friendly relations and cooperation among States. The Declaration likewise emphasized that its adoption "would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in promoting the rule of law among nations, and particularly in the universal application of the principles embodied in the UN Charter." In addition to the principle stated in UNSCR No. 1373 that "every State has the duty to refrain from organizing, instigating, assisting, or participating in terrorist acts in another state, or acquiescing in organized activities within its territory directed towards the

commission of such acts," the Declaration likewise adopted the principle that States have the duty to cooperate with one another in accordance with the UN Charter.

The principles declared in United Nations General Assembly Resolution No. 2625 were reiterated in UNSCR No. 1189 (1998), which reaffirmed "the determination of the international community to eliminate international terrorism in all its forms and manifestations," and stressed the need to strengthen "international cooperation between States in order to adopt practical and effective measures to prevent, combat, and eliminate all forms of terrorism affecting the international community as a whole." UNSCR No. 1189 thereby called upon states "to adopt, in accordance with international law and as a matter of priority, effective and practical measures for security cooperation, for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators."

. . .

While the Court is not prepared to state here that the practice and process of designation as a counterterrorism measure has ripened to the status of customary international law, it is very obvious from the foregoing and from other issuances emanating from the UN and its organs that there is an underlying acknowledgment, first, of the need to prevent, and the duty of member States to prevent, terrorism; second, that cooperation between States is necessary to suppress terrorism; and third, that member States should adopt effective and practical measures to prevent its commission. It is not lost on the Court that UNSCR No. 1373 uses such language to the effect that the UNSC has decided that all States shall carry out the actions and implement the policies enumerated therein, which is highly indicative of the generally binding nature of the issuance.

The Court would also venture to say here that the automatic adoption by the ATC of the UNSC Consolidated List is surely not an exercise of either judicial or quasi-judicial power, as it only affirms the applicability of the sanctions under the relevant UNSC resolutions within Philippine jurisdiction, as existing under Philippine law. In automatically adopting the designation pursuant to UNSCR No. 1373, the ATC does not exercise any discretion to accept or deny the listing, and it will not wield any power nor authority to determine the corresponding rights and obligations of the designee. Instead, it merely confirms a finding already made at the level of the UNSC, and affirms the applicability of sanctions existing in present

laws. It is thus in this perspective that the Court finds that the Congress, in enacting the first mode of designation as an acceptable counterterrorism measure, has a compelling state interest to achieve and only implements the obligations the country has assumed as a member of the international community.

. . .

WHEREFORE, the petitions in G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253124, 253242, 253252, 253254, 254191 (UDK No. 16714), and 253420 are GIVEN DUE COURSE and PARTIALLY GRANTED.

The Court declares the following provisions of Republic Act No. 11479 UNCONSTITUTIONAL:

1) The phrase in the proviso of Section 4 which states "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create serious risk to public safety";
2) The second mode of designation found in paragraph 2 of Section 25; and
3) As a necessary consequence, the corresponding reference/provisions in the Implementing Rules and Regulations of Republic Act No. 11479 relative to the foregoing items.

Moreover, pursuant to the Court's rule-making power, the Court of Appeals is DIRECTED to prepare the rules that will govern judicial proscription proceedings under Sections 26 and 27 of Republic Act No. 11479 based on the foregoing discussions for submission to the Committee on the Revision of the Rules of Court and eventual approval and promulgation of the Court *En Banc*.

The petitions in G.R. No. 253118 (*Balay Rehabilitation Center, Inc. v. Duterte*) and UDK No. 16663 (*Yerbo v. Office of the Honorable Senate President and the Honorable Speaker of the House of Representatives*) are DISMISSED.

SO ORDERED.