LEGAL LOGIC

By

FRANCIS JULIUS N. EVANGELISTA
DAVID ROBERT C. AQUINO

ISBN 978-971-011-900-4

809

Published in 2015

By

Central Book Supply Inc.
927 Phoenix Building, Quezon Avenue, Quezon City

FOREWORD

It would be trite to stress the importance of logic in the study and practice of law. After all, as Sir Edward Coke has written, *"reason is the life of law."* It is quite surprising then that legal reasoning has received scant attention from our legal educators and scholars.

The tools of legal logic are indispensable for law students in analyzing cases and problems and in presenting their arguments. In taking the bar, examinees are exhorted to present their answers in a logical manner. In the practice of law and in the administration of justice, the advocate and the judge will soon realize that the persuasive power of trial and appellate arguments and of judicial decisions is rooted in their logical organization. In fine, legal logic is critical to success in law school, in the bar examination, and in legal practice.

The authors deserve strong commendation for their work which should be required reading for law students and professors as well as for the members of the bench and the bar. Legal education should place more emphasis on the acquisition of legal skills and competencies rather than on the rote memorization and regurgitation of legal rules. The publication of this book is a salient step in this direction.

Atty. MANUEL R. RIGUERA
Member, Legal Education Board

MESSAGE

Those who still believe that any legal reasoning should be guided by the principles of logic will benefit from this book.

With clear language, the book discusses and illustrates through actual Supreme Court decisions what makes any reasoning in law valid, invalid, or fallacious.

It teaches legal reasoning skills in a style far better than that of some law schools.

Prof. RENATO B. MANALOTO
Lawyer and Faculty, Department of Philosophy
University of the Philippines - Diliman

MESSAGE

Finally a textbook on legal logic that is specifically designed for Filipino law students. With its clear and organized presentation of the concepts and principles of legal logic and use of examples involving actual legal cases in the country, this work will surely make the study of legal reasoning more engaging, productive, and enjoyable for Filipino law students.

Congratulations to the authors of this textbook, Dr. Francis Julius Evangelista and Atty. David Robert Aquino, for a job well done! What they have accomplished is an inspiration to anyone thinking of making Philippine education more relevant and meaningful for Filipino students.

Dr. NAPOLEON M. MABAQUIAO, JR.
Associate Professor of Philosophy
De La Salle University - Manila

TABLE OF CONTENTS

FOREWORD

Atty. Manuel R. Riguera
Member, Legal Education Board

MESSAGES

Prof. Renato B. Manaloto
Lawyer and Faculty, Department of Philosophy
University of the Philippines - Diliman

Dr. Napoleon M. Mabaquiao, Jr.
Associate Professor of Philosophy
De La Salle University - Manila

INTRODUCTION

Chapter 1 01
Introduction

Logic and Law 01

Legal Reasoning 03

Argument as an Expression of Reasoning 03

Recognizing Arguments 05

Components of Legal Reasoning 09

Evaluating Legal Reasoning 17

Chapter 2 20
Fundamental Concepts in Legal Reasoning

Burden of Proof 20

Evidence 22

Relevance and Admissibility 22

Testimony of Witnesses 23

Expert Testimony 24

Examination 24

Dependence on Precedents 26

Chapter 3 31
Deductive Reasoning in Law

Deduction and Induction 31

Syllogisms 35

Types of Syllogisms 39

Categorical Syllogisms 40

Quantity of the Predicate 43

Parts of a Categorical Syllogisms 43

Rules for Validity of Categorical Syllogisms 45

Hypothetical Syllogisms 49

Conditional Syllogisms 50

Rules for Conditional Syllogisms 52

Enthymemes 54

Polysyllogisms 56

Chapter 4 58
Inductive Reasoning in Law

Inductive Generalizations 60

Evaluating Inductive Generalizations 62

Analogical Arguments 67

Evaluating Analogical Arguments 70

Chapter 5 78
Fallacies in Legal Reasoning

Formal and Informal Fallacies 80

Falacies of Ambiguity 82

Equivocation 82

Amphiboly 86

Improper Accent 87

Vicious Abstraction 89

Composition 90

Division 92

Fallacies of Irrelevance 92

Argumentum ad Hominem 92

Argumentum ad Misericordiam 100

Argumentum ad Baculum 102

Petitio Principii 104

Fallacies of Insufficient Evidence 110

Argumentum ad Amtiquum 110

Argumentum ad Vericundiam 111

Accident 114

Hasty Generalization 118

Argumentum ad Ignorantiam 120

False Dilemma 122

Chapter 6
Rules of Legal Reasoning 125

Rules of Collision 125

Rules of Interpretation and Construction 151

Rules of Judgment 165

Rules of Procedure 184

About the Authors *InsideBack Cover*

INTRODUCTION

"The scientist values research by the size of its contribution to that huge, logically articulated structure of ideas which is already, though not yet half built, the most glorious accomplishment of mankind."

- Sir Peter Brian Medawar
The Art of the Soluble

Most literature on the subject of legal logic come from foreign jurisdictions. The concepts, principles and more importantly the examples given are culled from experiences from legal systems that are not our own.

It was this situation that prompted us to undertake this humble work in order to present to the student of Legal Logic a wholly Filipino view of the subject.

This work discusses the fundamental points in logic or legal reasoning highlighting the concepts and principles at play. It also attempts to present to the student the rich dynamic involved in crafting a logical argument as well as appreciating the art of understanding its flaws and its strengths.

More importantly, this work works its way around domestic law and illustrates its salient point through the use of our own jurisprudence. While we still take our bearings on the

hallowed grounds of legal logic from Western thought, the application and presentation is Filipino.

Though legal logic is considered as a minor subject, we believe that the concepts, principles and discipline embodied in this very dynamic area would greatly strengthen and assist the student of law in areas of legal writing, debate and argumentation as well as in the interpretation and construction of laws.

As this will continuously be a work in progress, this work does not purport to be an exhaustive exposition on the subject but rather an attempt to help the student familiarize himself with the concepts and principles of legal logic.

May the darkness of sin and the night of unbelief, vanish before the light of the Word and the Spirit of Grace.

- The Authors
Quezon City

Chapter 1
Introduction

"Nature - that is, biological evolution - has not fitted man to any specific environment... Among the multitude of animals which scamper, fly, burrow, and swim around us, man is the only one who is not locked into his environment. His imagination, his reason, his emotional subtlety and toughness, make it possible for him not to accept the environment but to change it. And that series of inventions is a different kind of evolution - not biological, but cultural evolution. I call that brilliant sequence of cultural peaks."

- Jacob Bronowski
The Ascent of Man

Logic and Law

Logic is the study of the principles and methods of good reasoning. It is a science of reasoning which aims to determine and lay down the criteria of good (correct) reasoning and bad (incorrect) reasoning.

In line with this purpose, it probes into the fundamental concepts of argument, inference, truth, falsity and validity, among others. It is on this very purpose of undertaking this study where its practical value lies: it is by means of logic that we clarify our ideas, assess the acceptability of the claims and

beliefs we encounter, defend and justify our assertions and statements, and make rational and sound decisions.

Although psychology is also interested in and studies reasoning, it is primarily concerned with how people reason. This demands looking for patterns of behaviour, speech, or neurological activity that take place in the process of reasoning. Logic, on the other hand, studies the principles of good reasoning. Its task does not merely describe how people reason but to discover and make available those criteria that can be used to test arguments for correctness.[1]

Logic, being the science of correct and sound reasoning, is indispensable in the field of law. The efficiency of practicing law depends on the quality of legal reasoning. Legal reasoning is what we use when we apply laws, rules, and regulations to particular facts and cases; it is what we use when we interpret constitutions and statutes, when we balance fundamental principles and policies and when we evaluate evidences, and make judgments to render legal decisions.

By examining and evaluating the elements and structures of legal reasoning, our legal judgments and decisions will shift from mere subjective preference to objective rationale. Such kind of judgments and decisions can better serve the rule of law.

Given the prime importance of logical reasoning in the law practice, legal education should include the understanding and analysis of the fundamental principles and methodologies of legal reasoning that will enable the law students to discriminate between good and bad patterns of legal argumentation.

For a profession that relies so much on sound reasoning and valid argumentation in order to justify a claim, defend a proposition, assess the strength of evidences and render a

[1] Irving M. Copi & Carl Cohen, Introduction to Logic (9th ed. 1994).

judicious decision, legal logic should be placed at the center of our legal curriculum.

Legal Reasoning

Argument as an Expression of Reasoning

Legal reasoning, like any kind of reasoning, is expressed through arguments, and it is with arguments that logic is chiefly concerned. Thus, it is important in this introductory chapter to discuss the fundamental notion of argument, its basic elements and structures, and what makes it distinct from other verbal utterances and expressions.

When people hear the word *"argument,"* they usually think of some kind of quarrel or dispute. In *Logic*, however, an argument is a claim put forward and defended with reasons. To be more precise, an argument is a group of statements in which one statement is claimed to be true on the basis of another statement/s. The statement that is being claimed to be true is called the conclusion and the statement that serves as the basis or support of the conclusion is called the premise. Thus, when a lawyer attempts to prove, justify or defend a particular claim by connecting it to one or more claims, he/she is making an argument.

From the above explanation, we can see how valuable arguments are for lawyers. Lawyers become more persuasive and convincing if they develop the habit of speaking in arguments, that is, they do not just make assertions or claims that something is true (however confident and certain they are of the truth of their assertions), but support their assertions by providing justification, reasons or premises for their claims.

However, it is not enough that lawyers formulate arguments to persuade people, for not all arguments are correct and acceptable. In *Logic*, arguments are categorized as either

logical or illogical, valid or invalid, sound or unsound depending on the acceptability of the premises and the connection between the premise and the conclusion. To be able to construct, write and present acceptable and convincing arguments, lawyers must be skilled in determining the logic and soundness of arguments.

This skill of determining the logic of arguments demands the ability to analyze the structure and content of arguments – what are the issues and problems being raised, what is the chief claim of the argument, what are the bases and premises advanced to support the claim, and what are the crucial assumptions implicit in one's reasoning. Thus, it is fundamental that one can identify in a particular argumentative passage the two basic elements in an argument – the conclusion and the premises. To help us do this task, there are words or phrases that typically serve to indicate the premise or the conclusion of an argument. The presence of any of them often, though not always, signals that what follows is the premise or the conclusion. Some of the common conclusion indicators are therefore, so, thus, hence, etc. while the premise indicators we often use are because, since, for, inasmuch as, etc.

On first reading a passage, it is often useful to underline or highlight such indicator words when we run across them, especially if the passage is long and complex. Doing so alerts us to the crucial relationships of support within the passage and thus gives us *"landmarks"* to its argumentative structure.

> *The evidence presented by the prosecution was obtained through wiretapping. However, it is unlawful for any person, not being authorized by all the parties to any private communication, to tap any wire or cable to secretly overhear, intercept or record such communication. Therefore, such evidence will not be admissible in this particular judicial investigation.*

Noticing the word *"therefore"* in the last sentence helps us locate the argument's conclusion, "Such evidence will not be admissible in this particular judicial investigation." It also helps us recognize that the first two claims (sentences) are offered as reasons or premises in support of that conclusion.

> *Abortion should not be legalized even in cases of rape and incest because it is not morally permissible to kill an innocent, defenseless child due to someone else' fault.*

In this passage, the word *"because"* introduces the premise that supports the arguer's position against legalizing abortion.

A word of caution, however, must be added. Some of the arguments we will encounter contain no indicators. Sometimes we are just supposed to understand that an argument is being presented.

> *MMDA's campaign to get rid of sidewalk vendors is right. The proliferation of these sidewalk vendors slows down the movement of vehicles causing heavy traffic.*

Analyzing the content of this passage, we can see that the speaker is asserting the truth of the first statement and supporting it with the second statement. So, we have here an argument where the first statement is the conclusion and the second statement serves as its premise although we cannot see any premise or conclusion indicators in the passage.

Recognizing Arguments

As discussed in an earlier paragraph, an argument is a group of statements, but not all groups of statements are arguments. An argument always has a conclusion and a premise. Without one, a bunch of words is not an argument. It is on this basis that we can recognize when there is an argument and when

there is none. However, people often mistake arguments from passages that seem to be arguments but are not. Thus, it is imperative to be skilled in distinguishing arguments from non-arguments.

One passage that is often mistaken with arguments is explanation. An explanation is an attempt to show why something is the case, while an argument is an attempt to show that something is the case.[2] Although an argument and an explanation are both important in legal reasoning, the two have to be distinguished because, unlike arguments, explanations are not meant to prove or justify the truth of a particular claim.

> *Hubert Webb and company were acquitted by the Supreme Court because the court found inherent inconsistencies in the evidences provided by the prosecution.*

> *Any law that prohibits people from expressing their views is unconstitutional because our Constitution guarantees the freedom of speech.*

On the surface, these two passages look very much alike. Both give reasons, and both use the indicator word because. However, there is an important difference between the two. The first sentence is an explanation and the second sentence is an argument.

An explanation tries to show why something is the case. In our first example, for instance, it is clear that the speaker is not trying to prove the truth of the statement Hubert Webb and company were acquitted by the Supreme Court – it is a fact that is not contestable nor is a subject of controversy. Instead, the speaker is trying to explain why they were acquitted (or how come they were acquitted). Of course, you can argue about

[2] Gregory Bassham, et.al., Critical Thinking: A Student's Introduction (3rd ed. 2008)

whether a given explanation is correct or not. But that particular passage remains a mere explanation which is not meant to prove any claim.

Although both arguments and explanations give reasons, the nature of these reasons differs. In explanations, these reasons are usually the causes or factors that show how or why a thing came to exist. In arguments, they are intended to provide grounds to justify a claim, to show that it is plausible or true. Thus, in the other example above about the law prohibiting people from expressing their views, the speaker is making an argument because the second statement is intended to justify why such law is unconstitutional.

Typically, explanations are given by citing causes of the event to be explained. For example, the judge postponed the hearing because the defendant failed to appear in the court due to unstable health condition.

This is a causal explanation: the failure to appear brought about the postponement of the hearing. There is no attempt to prove that the judge indeed postponed the hearing. Such is assumed as a fact. The latter part of the passage offers information that would show how the fact came to be.

Thus, to distinguish arguments from explanations, we need to ask a key question: Is it the speaker's intent to prove or establish that something is the case – that is, to provide reasons or evidence for accepting a claim as true or is it his/her intent to explain why something is the case – that is, to offer an account of why some event has occurred or why something is the way it is? If the former, then the passage is an argument. If the latter, then the passage is an explanation.

Arguments should also be distinguished from unsupported opinions. Statements of belief or opinion are statements about what a speaker or writer happens to believe.

Such statements can be true or false, rational or irrational, but they are parts of arguments only if the speaker or writer claims that they follow from, or support, other claims. Here is an example of a series of unsupported belief or opinion:

> *I agree with the proposed Juvenile Justice and Welfare Act being discussed at present in a bicameral conference committee of the Congress. Republic Act 9344 must be amended. The minimum age of criminal liability must be lowered from 15 to 12.*

This cannot be considered an argument because actually there is no premise (or reason) given why the minimum age of criminal liability be 12 rather than 15. No basis or evidence was given to show that RA 9344 is wrong.

Arguments are also often confused with conditional statements. A conditional statement contains an if-then relationship. It is made up of two basic components: the first component is called the antecedent (or the if-clause) and the second component is called the consequent (or the then-clause). Conditional statements are not arguments because there is no claim that one statement is true because of the other statement. Consider the following conditional statement:

> *If the Philippines adopts a parliamentary government, then we will not elect a President anymore.*

Neither the first component (the Philippines adopts a parliamentary government) nor the other component (we will not elect a President anymore) is asserted to be true.

Thus, we basically have only one assertion in this sentence (thus, only one statement). What is only asserted is that the former component implies the latter (i.e., if the former will happen, the latter will also happen). But no premise is asserted,

no inference is made, and no conclusion is claimed to be true. Therefore, there is no argument here. But consider the following:

> *We will not elect a President anymore because the Philippines adopted a parliamentary government.*

Here we do have an argument as is suggested by the presence of the premise-indicator *because*. The statement the Philippines adopted a parliamentary government is asserted as a premise, and the statement we will not elect a President anymore is claimed to follow from that premise and is asserted to be true.

Components of Legal Reasoning

All legal reasoning follows a similar pattern in order to prove, defend or justify its claim. There are essential components that must be present in a legal argument for it to be successfully advanced. The first one is the ISSUE of the argument: What is being argued?

We engage in reasoning and construct arguments in order to respond to a particular issue. *"An issue is any matter of controversy or uncertainty; an issue is a point in dispute, in doubt, in question, or simply up for discussion or consideration."*[3] As such, it is always formulated in an interrogative sentence.

In the law, it specifically pertains to a legal matter; it is not just any controversial question. Is reusing one's own work that had been previously published a case of plagiarism? Is the accused guilty of online defamation? Does the defendant's conduct constitute an intentional infliction of emotional harm? The whole argument is basically directed by the issue at hand. This means that the relevance of the premises depends on the very issue the argument is addressing. And whatever answer we give to this question constitutes our position on the issue (which is reflected in the conclusion of our argument). It is also

[3] Brooke Noel Moore & Richard Parker, Critical Thinking (7th ed. 2005).

important to add that an issue is different from a topic of conversation or argumentation. Plagiarism and internet libel are topics, not issues.

Second is the **RULE** – What legal rules govern the issue?

To argue a legal case one must be able to cite a rule (a statute or an ordinance) and apply it to a set of facts. Richard Neumann has stated that rules have at least three parts: *"(1) a set of elements, collectively called a test; (2) a result that occurs when all the elements are present (and the test is thus satisfied); and (3) a causal term that determines whether the result is mandatory, prohibitory, discretionary, or declaratory."*[4] In addition, some rules have one or more exceptions that, if present would defeat the result, even if all the elements are present. An example of a rule would be that: violence against women and children occurred if a person acted against a women who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with who he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.

The existing rule governing the issue should be specifically cited. Even when a decision is based upon what is *"fair"*, it is because there is a rule that says that the decision of this type of issue will be based on fairness. Indeed, there are so many rules so an argument has no weight unless it says exactly which rule is being relied upon.

The rule can also take the form of cases or principles that courts have already decided. The reasoning here usually consists of arguing that the case under discussion is similar to that prior

[4]Richard K. Neumann Jr., Legal Reasoning and Legal Writing: Structure, Strategy, and Style (5th ed. 2005).]

case (*stare decisis*) or principle. On the issue of violence against women and children, the case of *People vs. Lambid*[5] or *People vs. Flores*[6] may be cited.

On the part of the judges, they should be fully guided by the rules in order to render a sound decision. Otherwise, the decision will be questioned as in the following case:

People vs. Cabral[7]

> Assailed before the High Court was the ruling of respondent judge in granting the application for bail which was affirmed by the appellate court. Petitioners allege and argue that despite strong evidence that corroborated the sworn statement of the victim, the respondent judge disregarded the same and granted bail.
>
> Moreover, the Solicitor General argued that the respondent judge misapplied some well-established legal doctrines in criminal law.
>
> *Was the order valid?*
>
> In reiterating the rules outlining the duties of a judge in determining the merit of an application for bail, it observed that respondent judge did disregard certain pieces of evidence for the prosecution which should have been considered. This is a clear case of non sequitur where the order of the respondent judge was not arrived at as a

[5] G.R. Nos. 133066-67, October 1, 2003, 412 SCRA 417, 431

[6] G.R. No. 141782, December 14, 2001, 372 SCRA 421, 430-431

[7] GR No. 131909 [1999]

product of a logical process as prescribed by the Rules.

The next essential component in legal reasoning is the **FACT** – What are the facts that are relevant to the rule cited?

There are a lot of facts that make up the client's story.

For the purpose of legal analysis, we look for "*material*" facts. These are the facts that fit the elements of the rule. The rule would be satisfied if the facts of the present case cover all the elements of the rule. For example, regarding the Intentional Infliction of Emotional Distress (IIED) case, an ex-boyfriend calls an ex-girlfriend several times in the middle of the night to harass her and this causes her severe emotional distress.

Sound reasoning demands that the facts to be considered should not be one-sided. Although certain facts can very well support and establish a particular legal claim (that the defendant is guilty of committing acts of violence against women and children), one must consider the facts to be presented by the defendant's counsel and be able to demonstrate that those facts fail to spare the defendant of the charges thrown at him. By putting into equation the facts that would possibly be presented by the other side and preparing to nail them down would give the legal counsel a greater chance of winning the case.

In the succeeding case, the lower court used the bad man model in which the bad man only cares for the consequences of the law, and what the courts will do to him. The RTC judge did not deduce his conclusions from facts. His decision was based on his idea of justice conditioned by his values, background, and acquaintance with social forces. The judge appreciated the facts and circumstances of the case based on his experience alone and it is enough for his standard that the accused is guilty beyond reasonable doubt.

People vs. Escobar[8]

Amadeo Abuyen alias Roberto Alorte, was formerly a security guard of appellant Juan Escober at the Bee Seng Electrical Supply, a family corporation owned by couple Vicente and Lina Chua. Abuyen was relieved by Domingo Rocero for being always absent and found sleeping while on duty. December 3, 1982, Rocero's tour of duty was from 7:00 in the morning to 7:00 in the evening. He left his post and that evening after he was relieved by appellant Juan Escober. After Rocero had, Vicente Chua went to his office at the Bee Seng Electrical Supply as he usually does after office hours, accompanied by his 13-year old son Irvin and 6-year old daughter Tiffany after which the two children watched television while their father proceeded to the bathroom.

Abuyen and his three companions rode a tricycle and proceeded to the Bee Seng Electrical and appellant Escober opened the door. Abuyen and his two other companions went inside and a gushot was fired. Vicente Chua saw his two children mortally wounded and observed that 5,000 pesos was missing from his drawer. Juan Escober, together with four unidentified persons was charged with the crime of Robbery with Homicide and found guilty thereof.

Accused-appellant Escober asserts that said decision is null and void for it does not conform to the requirement of Section 9, Article X of the 1973 Constitution and that it was rendered even before

[8] G.R. No. L-69564 [1988]

all the stenographic notes of the proceedings had been transcribed.

Is the assertion of Escober correct?

The Supreme Court said *"Every decision of a court of record shall clearly and distinctly state the facts and the law on which it is based"* and that the decision of the lower failed on this standard. *"The inadequacy stems primarily from the respondent judge's tendency to generalize and to form conclusions without detailing the facts from which such conclusions are deduced. Thus, he concluded that the material allegations of the Amended Information were the facts without specifying which of the testimonies or exhibits supported this conclusion. He rejected the testimony of accused appellant Escober because it was allegedly replete with contradictions without pointing out what these contradictions consist of or what 'vital details' Escober should have recalled as a credible witness."*

Another important component is **ANALYSIS** – How applicable are the facts to the said rule?

This is the part where our argumentation and illustration come out. This part is supposed to show the link between the rules and the facts we presented to establish what we are claiming in our argument. The concern here is whether the material facts truly fit the law.

Again, looking at the issue whether the defendant is guilty of VAWC, we must ask whether the series of overt acts made by the accused manifested an intentional or reckless conduct as well as an outrageous conduct. Analysis requires taking into account the basis when one could say the act is reckless or outrageous. An isolated incident of calling the plaintiff may not constitute an outrageous act, but if there is a pattern of conduct and the

plaintiff's vulnerability is known to the defendant, the act can be considered outrageous. How about if there is no intent on the part of the defendant to bring about emotional distress. A reckless disregard for the likelihood of causing emotional distress is sufficient. For example, if the defendant refused to inform the plaintiff of the whereabouts of the plaintiff's child for several years, though that defendant knew where the child was the entire time, the defendant could be held liable for VAWC even though the defendant had no intent to cause distress to the plaintiff. Regarding the fourth element, does the plaintiff's emotional experience satisfy this element? Analysis demands citing a standard to determine the degree of a person's distress which can be quantified by the intensity, duration and physical manifestations of this emotional experience.

In the following case, the High Court's analysis of the case is key in determining whether the CA and the RTC commited the fallacy of *argumentum ad elenchi.*

Gamido vs. CA[9]

Gamido was accused and convicted of forging the signature of the President of the Republic of the Philippines. The principal witness for the prosecution was the Director of the Malacanan Palace Records Office. Gamido assailed his conviction based on the testimony of the witness owing to the fact that the latter had never witnessed the President sign any document and therefore is not competent to testify regarding the same. He also argued that the Court of Appeals and the RTC committed the fallacy of *"argumentum ad ignoratio elenchi"* in concluding that the signatures in the documents were forgeries from the documents' *"unusual format and atrocious grammar"* when these

[9] 251 SCRA 101 [1995]

documents were not offered to prove their appearance and grammar.

The High Court noted that the witness, owing to his long position as custodian of the records of Malacanan Palace, is very well familiar not only of the signature of the sitting president but the signatures of previous presidents he had the privilege of serving under.

It also declared that under the Rules of Court, it is not required that the person identifying the handwriting of another must have seen the latter write the document or sign it, but it is enough, if the witness has seen writing purporting to be the subject's upon which it has acted or been charged.

As to the charge of the CA and RTC committing *argumentum ad ignoratio elenchi*, the High Court held that there is no merit in petitioner's claim that forgery could not be said to exist since the documents, because of their *"unusual format, atrocious grammar, and misspelled words"* could not have defrauded or deceived anyone, and that moreover they lack apparent legal efficacy. That is not so. If the documents were fanciful or whimsical, as for example, a commission appointing petitioner mayor of a mythical kingdom, the forgery could simply be dismissed as a spoof.

But as pointed out by the Solicitor General, the Office of the President had to issue a memorandum denouncing the legality of PRAMS because of the possibility that the less wary would be deceived, especially because that the documents pertaining to it bear the Great Seal and were typed

on stationary which have the appearance of official stationery of the Office of the President.

The final element of legal reasoning is the **CONCLUSION** – What is the implication of applying the rule to the given facts?

The conclusion is the ultimate end of a legal argument. It is what the facts, the rules and the analysis of the case amount to.

Evaluating Legal Reasoning

Given the different elements making up a legal argument, what criteria can we use to distinguish correct from incorrect legal reasoning? There are two general criteria: TRUTH and LOGIC. This can be explained by looking at the two main processes involved in legal reasoning: (1) presentation of facts which pertains to the question of truth and (2) inference (deriving a legal claim or judgment from the given laws and facts) which pertains to the question of logic.

The first process deals with the question Are the premises provided in the argument true or acceptable? It is necessary for the conclusion of a legal argument to be grounded on factual basis, for if the premises that are meant to establish the truth of the legal claim (conclusion) is questionable, the conclusion itself is questionable.

Oftentimes disputes in the court are not about laws but about matters of fact.[10] The opposing sides would present different, and sometimes contradictory, facts to support their case. Was the person accused present in this place where the crime was committed or was he in a different place as he is claiming? Did the act of A cause the injury of B? Did the plaintiff suffer severe emotional distress? These questions, which deal with the question which are the facts and which are not, are

[10] Irving M. Copi & Carl Cohen, Introduction to Logic (9th ed. 1994).

what judges have to decide after weighing the pieces of evidence and arguments of both sides.

Only after the facts have been determined can the legal rules (in the form of statutes, principles, administrative regulations or jurisprudence) be applied to those facts by the court. Therefore, determining what are the facts to be accepted is a principal objective when any case is tried in court. The legal reasoning that will prevail is that which is grounded on truth or genuine facts.

The second process – inference – is mainly about the question of logic – Is the reasoning of the argument correct or logical? Does the conclusion of the argument logically follow from its premises? These questions point to the second criterion of a sound legal argument: LOGIC. The premises of the argument must not only be factual but the connection of the premises to the conclusion must be logically coherent, that is, the movement from the facts, to the analysis, and to the main claim must be valid.

When can we say the conclusion follows from the premises? What basis can we use to judge their logical connection? There are different ways of addressing these questions as there are different forms of legal reasoning. We cannot answer these questions for that is what much of this book is all about.

Although this work will largely be addressing the question of logic or legal reasoning, it will also address the question of truth since there is a lot of legal reasoning involved in determining or establishing which facts are to be accepted by the court in rendering its decisions. In accepting the truth of a premise or evidence, one must consider its coherence to credible sources of information as well as to the general set of facts already presented. One must also consider whether the facts presented are clear and unambiguous or need more clarification.

Moreover, the admissibility of factual evidence offered in the court is also a significant issue of legal reasoning. Judgments on the relevance of the testimony, the credibility as well as the expertise of the witnesses, and other matters pertaining to the admissibility of the evidences demand logical argumentation.

Chapter 2
Fundamental Concepts in Legal Reasoning

> *"Freedom of men under government is to have a standing rule to live by, common to every one of that society, and made by the legislative power vested in it; a liberty to follow my own will in all things, when the rule prescribes not, and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man."*
>
> *- John Locke*
> *On Government Bk. X, ch. 4*

In this chapter we shall discuss often used concepts and principles in supporting an argument or position. These concepts and principles are principally found under the *Rules of Court* and highlighted in numerous decisions of the Supreme Court.

We shall therefore discuss often used concepts such as burden of proof, evidence, admissibility, relevance, testimony and examination of ordinary and expert witnesses and precedents.

Burden of Proof

Burden of proof is the duty of any party to present evidence to establish his claim or defense by the amount of evidence required by law, which is preponderance of evidence in

civil case.[11] Basic is the rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies, since by the nature of things, he who denies a fact cannot produce any proof of it.[12]

In civil cases, the specific rule as to the bruden of proof is that the plaintiff has the burden of proving the material allegations of the complaint which are denied by the answer; and the defendant has the burden of proving the material allegations in his answer, which sets up new matter as a defense.[13]

In administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant.[14] In medical negligence cases, it is settled that the complainant has the burden of establishing breach of duty on the part of the doctors or surgeons. It must be proven that such breach of duty has a causal connection to the resulting death of the patient.[15]

It is settled that the party alleging a fact has the burden of proving it and mere allegation is not evidence.[16] According to the equipoise doctrine, when the evidence of the parties are evenly balanced or there is doubt on which side the evidence preponderates, the decision should be against the party with the

---

[11] Penalber vs. Ramos, 577 SCRA 509

[12] MOF Company vs. Shin Yang Brokerage, 608 SCRA 521

[13] VSD Realty vs. Uniwide Sales, 684 SCRA 470 [2012]

[14] Monticalbo vs. Maraya, 648 SCRA 573 [2011]

[15] Cereno vs. CA, 682 SCRA 18 [2012]

[16] Claravall vs. Lim, 654 SCRA 301 [2011]

burden of proof.[17] The burden of proof is upon the party who alleges the truth of his claim or defense or any fact in issue.[18]

Evidence

Evidence is the means sanctioned by the *Rules of Court*, of ascertaining in a judicial proceeding the truth respecting a matter of fact.[19]

The *"best evidence rule"* as encapsulated in Rule 130, Section 3, of the Revised Rules of Civil Procedure applies only when the content of such document is the subject of the inquiry. Where the issue is only as to whether such document was actually executed, or exists, or on the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible. Any other substitutionary evidence is likewise admissible without need to account for the original. Moreover, production of the original may be dispensed with, in the trial court's discretion, whenever the opponent does not bona fide dispute the contents of the document and no other useful purpose will be served by requiring production.[20]

Admissibility and Relevance

Evidence is deemed admissible if it is relevant to the issue and more importantly, if it is not excluded by provision of law or by the *Rules of Court*. As to relevance, such evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence. Evidence to be believed must proceed not only from the mouth of a credible witness but must

[17] Aba vs. De Guzman, 662 SCRA 361 [2011]

[18] OCA vs. Gutierrez, 666 SCRA 29 [2012]

[19] Rule 128, Section 1, Rules of Court

[20] Gaw vs. Chua, 551 SCRA 505 [2008]

be credible in itself as to hurdle the test of conformity with the knowledge and common experience of mankind.[21]

Testimony of Witnesses

Testimony is generally confined to personal knowledge; and therefore excludes hearsay. Thus, a witness can testify only to those facts which he knows of his personal knowledge which are derived from his own perception, except as otherwise provided under the *Rules of Court*.

Section 36, Rule 130 of the Revised Rules on Evidence, states that a witness can testify only to those facts which he knows of or comes from his personal knowledge, that is, which are derived from his perception. A witness, therefore, may not testify as to what he merely learned from others either because he was told, or he read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned. This is known as the hearsay rule. The law, however, provides for specific exceptions to the hearsay rule. One of the exceptions is the entries in official records made in the performance of duty by a public officer. In other words, official entries are admissible in evidence regardless of whether the officer or person who made them was presented and testified in court, since these entries are considered prima facie evidence of the facts stated therein. Other recognized reasons for this exception are necessity and trustworthiness. The necessity consists in the inconvenience and difficulty of requiring the official's attendance as a witness to testify to innumerable transactions in the course of his duty. This will also unduly hamper public business. The trustworthiness consists in the presumption of regularity of performance of official duty by a public officer.[22]

[21] People vs. De Guzman, 676 SCRA 347 [2012]

[22] People vs. Ochoa, 656 SCRA 382 [2011]

Expert Testimony

Expert testimony refers to statements made by individuals who are considered as experts in a particular field. Note that under the *Rules of Court*, the opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.[23] Moreover, under the same Rule, a published treatise, periodical or pamphlet on a subject of history, law, science or art is admissible as tending to prove the truth of a matter stated therein if the court takes judicial notice, or a witness expert in the subject testifies, that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject.[24] The more common situation wherein expert testimony is resorted to by the courts when a holographic will is contested.

Examination

Please note that under the *Rules of Court* the order in which an individual witness may be examined is as follows:[25]

a) *Direct examination by the proponent* - refers to the examination-in-chief of a witness by the party presenting him on the facts relevant to the issue;[26]

b) *Cross-examination by the opponent* - Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue;[27]

c) *Re-direct examination by the proponent* - After the cross-examination of the witness has been concluded, he may be re-examined by the party calling him, to explain or supplement his answers given during the cross-examination. On re-direct examination, questions on matters not dealt with during the cross-examination, may be allowed by the court in its discretion;[28] and

d) *Re-cross-examination by the opponent* - Upon the conclusion of the re-direct examination, the adverse party may re-cross-examine the witness on matters stated in his re-direct examination, and also on such other matters as may be allowed by the court in its discretion.[29]

Note, however, that after the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of the court. The court will grant or withhold leave in its discretion, as the interests of justice may required.[30]

[23] Rule 130, Section 49.

[24] Rule 130, Section 46

[25] Rule 132, Section 4, Rules of Court

[26] Rule 132, Section 5, Rules of Court

[27] Rule 132, Section 6, Rules of Court

[28] Rule 132, Section 7, Rules of Court

[29] Rule 132, Section 8, Rules of Court

[30] Rule 132, Section 9, Rules of Court

Moreover, a witness may be impeached by the party against whom he was called, by contradictory evidence, by evidence that his general reputation for truth, honesty, or integrity is bad, or by evidence that he has made at other times statements inconsistent with his present testimony, but not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he has been convicted of an offense.[31]

Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them.[32]

Dependence on Precedents

"Stare decisis et non quieta movere"[33] This is the bedrock of what we now refer to as precedents.

It is a general rule that, when a point has been settled by a decision, it becomes a precedent which should be followed in subsequent cases before the same court. The rule is based wholly on policy, in the interest of uniformity and certainty of the law, but is frequently departed from.[34] The doctrine of adherence to precedents or *stare decisis* was applied by the English courts and was later adopted by the United States.[35] In our very own

[31] Rule 132, Section 11, Rules of Court

[32] Rule 132, Section 13, Rules of Court

[33] From settled precedents, there must be no departure.

[34] Cahill, Cyclopedic Law Dictionary [1922]

[35] Ting vs. Velez-Ting, 582 SCRA 694 [2009]

jurisdiction, the Civil Code echoes this by declaring that - *judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.*[36]

The doctrine of *stare decisis et non quieta movere* is embodied in Article 8 of the Civil Code of the Philippines.[37]

This is the doctrine that, when a court has once laid down a principle, and apply it to all future cases, where facts are substantially the same, regardless of whether the parties and properties are the same. Follow past precedents and do not disturb what has been settled. Matters already decided on the merits cannot be subject of litigation again. But note that this rule does not elicit blind adherence to precedents.[38]

It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[39] Only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, can the courts be justified in setting aside the same.[40]

The following case is a clear illustration of *stare decisis*:

PESCA vs. PESCA[41]

Petitioner Lorna Pesca and respondent Zosimo Pesca were a married couple. Initially, the

[36] Article 8

[37] Lazatin vs. Desierto, 588 SCRA 285 [2009]

[38] Chong vs. Secretary of Labor, 79 Phil. 249

[39] Fermin vs. People, 559 SCRA 132 [2008]

[40] Lazatin vs. Desierto, 588 SCRA 285 [2009]

[41] GR No. 136921 [2001]

young couple did not live together as petitioner was still a student in college and respondent, a seaman, had to leave the country on board an ocean-going vessel barely a month after the marriage.

After establishing their residence, the couple could only stay together for 2 months in a year – when respondent was on vacation. But despite this they begot four children.

It was only in 1988, when petitioner began to notice that respondent showed signs of *"psychological incapacity"* to perform his marital covenant.

He was emotionally immature, an irresponsible husband, cruel and violent, and was also a habitual drinker. Petitioner and their children was also treated with physical violence.

Loran filed a petition to the Regional Trial Court for the declaration of nullity of their marriage invoking psychological incapacity.

On November 15, 1995, the RTC declared the marriage null and void *ab initio*. This decision, however, was reversed by the Court of Appeals on the basis that Lorna failed to show proof that Zosimo was indeed suffering from psychological incapacity that would cause him to be incognitive of the basic marital covenant.

Appellant filed a petition for review with the Supreme Court contending that the doctrine laid out by *Santos v. CA*[42] and *Republic of the Philippines v. CA and Molina*[43] should have no retroactive application and on the assumption that the *Molina* ruling could be applied retroactively, the guidelines therein outlined should be taken to be merely advisory and not mandatory in nature.

The appellant further contends that the application of the *Santos* and *Molina* dicta should warrant only a remand of the case to the trial court for further proceedings and not its dismissal.

Did the CA err in giving retroactive application to the doctrine laid out in Santos v. CA and Republic vs. CA and Molina?

The High Court found no merit in the petition. The *"doctrine of stare decisis,"* ordained in Article 8 of the Civil Code, expresses that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines.

The rule follows the settled legal maxim – *"legis interpretado legis vim obtinet"* – that the interpretation placed upon the written law by a competent court has the force of law.

The interpretation or construction placed by the courts establishes the contemporaneous legislative intent of the law.

The latter as so interpreted and construed would thus constitute a part of that law as of the date the statute is enacted.

It is only when a prior ruling of this Court finds itself later overruled, and a different view is

[42] 1995

[43] 1997

adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith in accordance therewith under the familiar rule of *"lex prospicit, non respicit."*

To reiterate - burden of proof is the duty of the party alleging to prove his claim. Evidence, on the other hand, is the means sanctioned under the Rules of Court in order to prove or establish a fact in a judicial proceeding. In order for such evidence to be appreciated by the Court and admitted by the Court, it has to be relevant and material to the issue at hand.

Evidence may either be through testimony of a witness or through the presentation of an object or document. As far as presentation of witnesses are concerned, the Rules require that they and their testimonies undergo several examinations - a direct, cross, re-direct and re-cross examinations - with the end in view to ascertaining its truthfulness and veracity.

We also have what we call precedents which refer to issues that have been laid to rest by previous judicial decisions. This ensures not only the stability of the judicial process but also strengthens our justice system allowing for continuity.

Chapter 3
Deductive Reasoning in Law

"Had there been a lunatic asylum in the suburbs of Jerusalem, Jesus Christ would infallibly have been shut up in it at the outset of his public career. That interview with Satan on a pinnacle of the Temple would alone have damned him, and everything that happened after could but have confirmed the diagnosis."

- Havelock Ellis
The New Spirit

Deduction and Induction

Logicians usually distinguish deductive from inductive reasoning. Both of these forms of reasoning play important roles in our legal system. When appellate courts, for instance, would determine whether the correct rules of law were applied to the given facts or whether the rules of evidence were properly applied in establishing the facts, they employ deductive reasoning. In cases when we want to determine the facts of the case and to establish them through causal arguments, probability or scientific methods, the reasoning chiefly relied upon is inductive.

How are these two patterns of reasoning different? Although all reasoning or arguments attempt to provide support – that is, evidence or reasons – for their conclusions, they differ greatly in the amount of support they intend to provide. Some arguments try to prove the truth of their conclusions beyond any

doubt. Others merely try to show that their conclusions are plausible or likely or probable to be true given the premise(s). The first kind of argument is a deductive argument and the second kind is an inductive argument. In other words, we are reasoning deductively when our premises intend to guarantee the truth of our conclusion while we reason inductively when our premises are intended to provide good (but not conclusive) evidence for the truth of our conclusion.[44]

Here are some examples of deductive reasoning:

All misdemeanors are criminal offenses;
Driving under the influence of alcohol is a misdemeanor;
Hence, driving under the influence of alcohol is a criminal offense.

If quartz scratches glass, then quartz is harder than glass;
Quartz scratches glass;
Therefore, quartz is harder than glass.

Notice how the conclusions of these arguments are established by the premises with absolute certainty. Each conclusion flows from its premises with logical necessity; this means that, given the premises, the conclusion could not possibly be false.

There are times when we make an argument the conclusion of which is not certain. This is not necessarily a weakness for in many cases the most that we can expect of an argument is to support its conclusion with a degree of probability. Inductive arguments simply claim that their conclusions are likely or probable given the premises offered.

[44]Gregory Bassham, et.al., Critical Thinking: A Student's Introduction (3rd ed. 2008)

Consider this example:

Neil, a student in a Legal Logic class, has good study habits and is always attentive in class discussions;
He is a consistent dean's lister and has never failed in any subject he has taken in law school; and
Therefore, it is very probable that Neil will not fail in his Legal Logic class.

This is an inductive argument. Although it is a strong argument, it does not provide an absolute guarantee that Neil will not fail in his Legal Logic class. There is still a remote possibility that he will fail in the subject. If the premises are true then the conclusion will very likely, or probably, be true; but the truth of the premises cannot absolutely rule out the possibility that the conclusion will be false. In other words, the conclusion might turn out to be false even though the premises are true.

The following are some other examples of inductive arguments:

The car can't start even though there is plenty of gasoline in the tank; and
It is likely that the battery is already exhausted.

In the last five years, the passing rate in the bar exam has always been less than 25%; and
So we can say that this year's successful bar examinees will probably not go beyond 25%.

It is sometimes said that the basic difference between deduction and induction is that deduction moves from general premises to particular conclusions, whereas induction moves

from particular premises to general conclusions. Although this is generally the case, it is wrong to use this as a basis of distinguishing deduction from induction since there are deductive arguments that move from particular to general and inductive arguments that move from general to particular.[45]

Consider these two examples:

Three is a prime number;
Five is a prime number;
Seven is a prime number; and
Therefore, all odd numbers between two and eight are prime numbers.

All of J.K. Rowling's previous books have been bestsellers. (general premise); and
Therefore, her next book will probably be a bestseller. (particular conclusion)

The first is a deductive argument but the reasoning moves from particular premises to a general conclusion, while the second is an inductive argument but its reasoning flows from general to particular. Thus, what makes an argument deductive or inductive is not the pattern of particularity or generality in the premises and conclusion. Rather, it is the type of support the premises are claimed to provide for the conclusion.

To determine whether an argument is deductive or inductive, we can rely on indicator words that signal the kind of claim the argument makes. For example, a phrase such as "it necessarily follows that" almost always indicates that an argument is deductive. Here are some common deductive indicator words:

certainly	*it is logical to conclude that*
definitely	*this logically implies that*
absolutely	*this entails that*
conclusively	*it must be the case that*

[45] Irving M. Copi & Carl Cohen, Introduction to Logic (9th ed. 1994).

These are some common inductive indicator words:

probably	*one would expect that*
likely	*it is plausible to suppose that*
chances are	*it is reasonable to assume that*

When no indicator words are present to help us decide whether an argument is deductive or inductive, we just have to base our judgment on the content of the premises and conclusion of the argument – is the conclusion intended to follow with strict necessity from the premises or is it intended to simply follow from the premises with a degree of probability?

In this chapter, we will concentrate on deductive arguments and discuss inductive arguments in the next chapter.

Syllogisms

In logic, deductive arguments are often expressed in what we call *"syllogisms."* A syllogism is a three-line argument – that is, an argument that consists of exactly two premises and a conclusion. This form of reasoning is what is lurking below the surface of most judicial opinions and briefs. Gottfried Leibniz expressed the significance of the syllogism three hundred years ago, calling its invention *"one of the most beautiful, and one of the most important, made by the human mind."*[46] The value of syllogisms, particularly in legal reasoning, was also recognized by the eighteenth century reformer Cesare Beccaria who expressly advocated that, in the area of criminal law, judges should follow syllogistic line of arguing: *"In every criminal case, a judge should come to a perfect syllogism: the major premise should be*

[46] Gottfried Leibnitz, New Essays Concerning Human Understanding. (trans by A.G. Langley, 1916).

the general law; the minor premise, the act, which does or does not conform to the law; and the conclusion, acquittal or condemnation."[47]

But for all its power, the principle of the syllogism is surprisingly straightforward: What is true of the universal is true of the particular. If we know that all torts are civil wrongs and defamation is a tort, therefore defamation is a civil wrong. It is no exaggeration to say that the syllogism lies at the heart of legal writing. Consider these following examples:

The Constitution prohibits non-Filipinos to acquire or hold lands of the public domain;
Signing this deed of sale will enable Mr. Jackson, an American, to acquire the title of this land of the public domain; and
Therefore, signing this deed of sale is unconstitutional.

Judicial power includes the power to determine whether or not there has been a grave abuse of discretion on the part of any branch or instrumentality of the Government;
The Supreme Court is granted judicial power; and
Therefore, the Supreme Court has the power to determine whether or not there has been a grave abuse of discretion on the part of any branch or instrumentality of the Government.

The President can grant amnesty to the military mutineers if there is a concurrence of a majority of all the members of the Congress;
Less than half of the members of the Congress is in favor of granting amnesty to the military mutineers; and
Therefore, the President cannot grant the said amnesty.

[47] Cesare Beccaria, "On Crimes and Punishment" (trans. David Young, 1986.)

It is important that law students develop the habit of thinking in syllogisms. When briefing a case assigned in their class, the skeleton of the deductive syllogism must poke through in their description of the case's rationale. Lawyers, whenever possible, must make the arguments in their briefs and memos in the form of syllogisms. A clear, well-constructed syllogism ensures each conclusion is well-supported with evidence, and gives the judge a recognizable basis to evaluate the strength of the argument.

Being able to construct syllogisms is one skill, being able to form good syllogisms is another skill. Not all syllogisms are logical. Deductive arguments may either be valid or invalid. What do we mean by valid and invalid arguments?

We have seen that all deductive arguments claim, implicitly or explicitly, that their conclusions follow necessarily from their premises. However, some deductive arguments have conclusions which do not follow necessarily from their premises. These arguments are invalid deductive arguments. A valid deductive argument is an argument in which the conclusion really does follow necessarily from the premises. Put another way, a valid argument is an argument in which: if the premises are true, then the conclusion must be true or the truth of the premises guarantee the truth of the conclusion.

These are examples of valid arguments:

a. *Insulators are not electric conductors.*
Rubbers are insulators; and
Therefore, rubbers are not electric conductors.

b. *All wars the inflict more harm than good are unjust.*
All nuclear wars inflict more harm than good.
Therefore, all nuclear wars are unjust.

c. *Mammals have lungs.*
Fish are mammals.
Therefore, fish have lungs.

Below are examples of invalid arguments:

d. *Fraud is a criminal offense;*
Amalilio committed a criminal offense; and
Therefore, Amalilio committed fraud.

e. *All felonies are criminal offenses.*
All felonies are punishable by incarceration.
Therefore, all criminal offenses are punishable by incarceration.

f. *Chinese are Asians.*
Americans are not Chinese.
Therefore, Americans are not Asians.

As the examples above show, the validity (or invalidity) of arguments does not depend on the truth of the premises or the conclusion. Argument c has obviously false premises and false conclusion but it is valid. It should be emphasized, however, that no valid argument can have all true premises and a false conclusion. This important truth follows from the very definition of a valid argument. Since a valid argument, by definition, is an argument in which the conclusion must be true if the premises are true, no valid argument can have all true premises and a false conclusion.

Looking at the examples of invalid arguments, we can notice that invalid arguments may have true premises and a true conclusion as can be seen in argument f. Again, these examples show that what determines the validity (or invalidity) of the argument is not the truth (or falsity) of its premises or conclusion but the relationship between its premises and conclusion – that is, whether the conclusion follows necessarily from the premises (or put another way, whether the premises guarantee the truth of the conclusion).

Thus, the basic question in determining the validity of an argument is not: Is the premise true? Or is the conclusion true? The basic question is: Does the conclusion follow necessarily from the premises? (Or do the premises guarantee the truth of the conclusion?) If the answer is yes, then the argument is valid. If the answer is no, then the argument is invalid.

It should be noted that the terms *"valid"* or *"invalid"* do not apply to inductive arguments since inductive arguments, in the first place, do not claim that their conclusion follows from the premises with strict necessity (for that matter, all inductive arguments are technically invalid). Other terms of appraisal are used for inductive arguments such as *"strong"* and *"weak."* This will be discussed in the next chapter.

But how do we determine whether an argument is valid or invalid (that is, whether its conclusion necessarily follows from its premises)?

Types of Syllogisms

To address this question, we need to first understand the types of deductive arguments. Syllogisms are of two types: categorical and hypothetical. A categorical syllogism is a syllogism composed of categorical statements alone while a hypothetical syllogism includes both categorical and hypothetical statements.

A categorical statement is a statement that directly asserts something or states a fact without any conditions. Its subject is simply affirmed or denied by the predicate. The following are examples of categorical statements:

Senators are elected public officials.
The Philippines is not a communist state.
Some crimes are against national security.
The Supreme Court has the sole power to admit individuals to the practice of law.
Some offenses are not public wrongs.

A hypothetical statement is a compound statement which contains a proposed or tentative explanation. A compound statement consists of at least two clauses connected by conjunctions, adverbs, etc., which express the relationship between the classes as well as our assent to it. The clauses are simple statements or statements that contain one subject and one predicate. The following are examples of hypothetical statements:

If the country is in serious danger due to invasion or rebellion, the President can declare Martial Law.
If a party to a contract fails to perform its obligations in the contract, then there is a breach of contract.
The breach of contract is either actual or anticipatory.

Given the explanations of what categorical and hypothetical statements are, we can now understand better categorical and hypothetical syllogisms. The following is a categorical syllogism:

City councillors are elected public officials.

Jeremy is not an elected public official.
Therefore, Jeremy is not a city councillor

Notice that every statement in the above syllogism is a categorical statement. Hypothetical syllogisms, however, contain a hypothetical statement usually located in its first premise. The example below is a hypothetical syllogism:

If a false statement is not intended to deceive or mislead anyone, the statement is not fraudulent.
Mrs. Lim had no intention of deceiving her supervisor.
Therefore, Mrs. Lim's statement, though false, was not fraudulent.

We will first deal with categorical syllogisms and then with hypothetical syllogisms.

Categorical Syllogisms

Properties of a Categorical Statement

We can better understand categorical syllogisms and their validity if we understand well the nature of categorical statements. Every categorical statement has quality and quantity as its properties.

Quality: the quality of the statement may be affirmative or negative. A statement that has the terms *"no," "not," "none"* and *"never"* is negative. In the absence of such qualifiers, the statement is affirmative.

Here are some examples of affirmative statements:

Some crimes are punishable by imprisonment.
The accused denied the charges against him.

Here are some examples of negative statements:

No one is above the law.
The accused is not guilty of the crime.

Quantity: the quantity of a statement is either universal or particular. The statement is universal when what is being affirmed or denied of the subject term is its whole extension; the statement is particular when what is being affirmed or denied of the subject is just a part of its extension. Usually there are quantifiers that help determine the quantity of the statement. For universal statements we usually have:

all	*no*
every	*none*
each	

For particular statements we have:

some	*almost all*
most	*not all*
several	*many*
few	

The following are examples of universal statements:

All senatorial candidates must be at least 35 years of age on the day of the election.
All law students are holders of a bachelor's degree.
No statutes that are in conflict with the Constitution are valid.

The following are examples of particular statements:

Some acts of vigilantism are justified.

Not all senatorial candidates are eligible to run.
Some criminal offenses are heinous crimes.

Quantity of the Predicate

The predicate term has its own quantity, which is not identical to nor dependent on the quantity of the subject term. In determining the quantity of the predicate two rules must be observed.

Predicate of an affirmative statement is generally particular. However, in statements where the subject and the predicate are identical, the predicate is universal.

The predicate of a negative statement is always universal.

In the following statements, the predicates are particular:

The Philippines is a democratic country.
Some senators are oppositionists.

In the following statements, the predicates are universal:

Manny Villar did not win in the 2010 presidential election.
Some senators are not lawyers.
A mother is a female parent. (Although this statement is affirmative, the subject and the predicate are identical.)

Parts of a Categorical Syllogism

As mentioned earlier, a categorical syllogism is a deductive argument consisting of three categorical statements that together contain exactly three terms, each of which occurs in exactly two of the constituent statements. There are three kinds of terms in a categorical syllogism:

Minor term (S) – the subject of the conclusion (also called the subject term)

Major term (P) – the predicate of the conclusion (also called the predicate term)

Middle term (M) – the term found in both premises and serves to mediate between the minor and the major terms

There are three kinds of statements in a categorical syllogism:

Minor premise – the premise which contains the minor term

Major premise – the premise which contains the minor term

Conclusion – the statement the premises support

Here are two examples that illustrate the different terms and statements in a categorical syllogism:

M P
All torts are civil wrongs. (major premise)

S M
Negligence is a tort. (minor premise)

S P
Therefore, negligence is a civil wrong. (conclusion)

P M
All contracts with vague terms are void. (major premise)

S M
This contract is not void. (minor premise)

S P
Therefore, this contract does not contain vague terms. (conclusion)

Note that both syllogisms above are valid syllogisms. They will serve as our examples of valid categorical syllogisms for the next section which gives us the rules in determining whether the categorical syllogisms are valid or invalid.

Rules for the Validity of Categorical Syllogisms

Rule 1: The syllogism must not contain two negative premises.

No socialist country is capitalist.
The Philippines is not socialist.
Therefore, it is a capitalist country.

No military action whose harmful effects cannot be controlled is morally permissible.
All military uses of biological weapons are military actions whose harmful effects cannot be controlled.
Therefore, no military uses of biological weapons are morally permissible.

Civil offenses are not criminal offenses.
Slander is not a criminal offense.
Therefore, slander is a civil offense.

Are the three syllogisms valid? The only valid syllogism is the second. The other two violate the first rule and, thus, are invalid. It can be observed that both of the premises in each syllogism are negative statements. The rationale behind this rule is that when the premises are both negative, the middle term

fails to serve its function of mediating between the major and minor terms. The violation of this rule is called the fallacy of exclusive premises.

Thus, we can say that even if, in the first syllogism, both of the premises are true it does not follow that the Philippines is a capitalist country. It may have a mixed economy. In the same way, the line of reasoning in the third item is wrong because even if it is true that Civil offenses are not criminal offenses, and let us say Alms-giving is not a criminal offense, we cannot conclude that Alms-giving is a civil offense.

Rule 2: There must be three pairs of univocal terms.

The terms in the syllogism must have exactly the same meaning and must be used in exactly the same way in each occurrence. A term that has different meanings in its occurrences is an equivocal term. A univocal term has the same meaning in different occurrences. In our two examples of valid syllogisms, each pair of terms has the same meaning.

Examine the following examples:

What is natural is good.
To make a mistake is natural.
Therefore, to make a mistake is good.

The Congress can create or abolish laws.
The law of supply and demand is a law.
Therefore, the Congress can abolish the law of supply and demand.

Selling cigarettes to a person below 18 years of age is unlawful.
That store sold cigarettes to a student below 18 years of age.
Therefore, the store has violated the law.

Which syllogisms above are invalid? The first and the second. In the first argument, the term *"natural"* is used with two different meanings: as something pure (not artificial) and as something normal or usual. In the second example, the term *"law"* has two different usages in the first and second premises. In the third syllogism, each of the terms has been used in the same sense. What is meant by *"below 18 years of age"* in the first premise is the same as in the second premise.

The violation of the second rule is called the fallacy of equivocation. Equivocation usually occurs in the middle term.

Rule 3: The middle term must be universal at least once.

Most mayors have political parties.
Mr. Herras is a mayor.
Therefore, Mr. Herras has a political party.

Libel is a form of defamation.
Reyes' untrue accusation is a form of defamation.
Therefore, Reyes' untrue accusation is a libel.

No military actions that intentionally kill innocent civilians are just.
Some Malaysian military actions in Sabah intentionally killed innocent civilians.
Therefore, some Malaysian military actions were not just.

Which syllogisms here are invalid? The first two examples above since they both violate Rule 3. Notice that their middle terms are particular in both premises. The middle term in the first item is *"mayor"* and in the second it is *"form of defamation."* The reason for this rule is that when the middle term is

particular in both premises it might stand for a different portion of its extension in each occurrence and, thus, be equivalent to two terms, and, therefore, fail to fulfill its function of uniting or separating the minor and major terms. Such violation is called the fallacy of particular middle.

Notice that in the third syllogism which is a valid syllogism, the middle term (*"military actions the intentionally kill civilians"*) is universal in the first premise, although particular in the second premise. To determine if the middle term is universal or particular, refer to the discussion on the quantity of the statement and predicate.

However, there is an exception to this rule. Even if the middle term is particular in both premises, but it is quantified by *"most"* in both premises and the conclusion is quantified by *"some,"* the syllogism does not violate this third rule. This is so since the combined extension of the middle term is more than a universal.[48] For example:

Most mayors have political parties.
Most mayors are corrupt.
Therefore, some people who have political parties are corrupt.

Rule 4: If the term in the conclusion is universal, the same term in the premise must also be universal.

Examine the following arguments:
All lawyers read the Philippine Daily Inquirer.
All lawyers are literate.
Therefore, all who read the Philippine Daily Inquirer are literate.

All acts that inflict more harm than good are unjust.
All terrorist acts inflict more harm than good.
Therefore, all terrorist acts are unjust.

Felonies are criminal offenses.
Misdemeanors are not felonies.
Therefore, misdemeanors are not criminal offenses.

48 Edgardo A. Reyes, Logic: Simplified and Integrated (Rev. ed. 1988).

Only the second argument above is valid. In the first syllogism, the minor term "those who read the Philippine Daily Inquirer" is universal in the conclusion but particular in the premise. Such violation is called the fallacy of illicit minor.

In the third example, the major term "criminal offenses" is universal in the conclusion but particular in the premise. Such a violation is called the fallacy of illicit major.

The rationale behind this rule is that in a deductive argument the conclusion should not go beyond what the premises state. Thus, the conclusion must not be wider in extension than the premises.

Again, to determine if the major term or minor term is universal (or particular), refer to the discussion on the quantity of the statement and predicate.

Hypothetical Syllogisms

A hypothetical syllogism is a syllogism that contains a hypothetical statement as one of its premises. Hypothetical syllogisms are of three kinds:

conditional syllogism
disjunctive syllogism
conjunctive syllogism

Since in legal reasoning, we often encounter conditional arguments, we will focus on conditional syllogisms.

Conditional Syllogisms

The conditional syllogism is a syllogism in which the major premise is a conditional statement.

A conditional statement is a compound statement which asserts that one member (the then clause) is true on condition that the other member (the if clause) is true. For example, If it rains, then the ground will be wet. The if clause or its equivalent is called the antecedent, while the then clause or its equivalent is called the consequent.

What is important in the conditional statement is the sequence between the antecedent and the consequent, that is, the truth of the consequent follows upon the fulfillment of the condition stated in the antecedent. It does not matter whether individually the antecedent or consequent is true or false; what matters is the relationship between them.

The statement - If the Philippines is in Asia, then Melchora Aquino is a Filipina does not make sense although each clause, taken singly, is true. The Philippines is indeed in Asia and Melchora Aquino is a Filipina. But the fact that Melchora Aquino is a Filipina is not a consequent of the Philippines being in Asia. On the other hand, the statement If Melchora Aquino is not an Asian, then she is not a Filipino is a true statement although the clauses, taken singly, are false. The statement is true because being an Asian is essential to being a Filipino.

Conditional statements can be expressed not only in if-then clauses but also in a wide variety of different sentences. For example:

Being a teenager these days means that you have to face a tremendous amount of peer pressure.

The fact that she is a native of Bohol implies that she knows where the chocolate hills are.

Anyone who cheers for Ginebra must be a Mark Caguioa fan.

Unless you are born again by water and spirit, you will not enter the Kingdom of Heaven.

Whenever heavy rains pour in Sampaloc, Espana Avenue is flooded.

In case one of the grantees changes his/her mind, you will get the scholarship.

If we write these statements in the if-then forms, we can see that their meaning remains the same.

If you are a teenager these days, then you must face a tremendous amount of peer pressure.

If she is a native of Bohol, then she knows where the chocolate hills are.

If he cheers for Ginebra, then he must be a Mark Caguioa fan.

If you are not born again by water and spirit, then you cannot enter the Kingdom of Heaven.

If heavy rains pour in Sampaloc, then Espana Ave. is flooded.

If one of the grantees changes his/her mind, then you will get the scholarship.

The conditional syllogism can be symbolized by the following:

A – for the antecedent
C – for the consequent
~ – for the negation of the statement
> – for "implies"
– for "therefore"

Rules for Conditional Syllogisms

There are two valid forms of conditional syllogisms. When the minor premise affirms the antecedent, the conclusion must affirm the consequent. This form is called *modus ponens*.

If it rains, then the ground will be wet.	$A > C$
It rained.	A
Therefore, the ground it wet.	C

When the minor premise denies the consequent, the conclusion must deny the antecedent. This form is called modus tollens.

If it rains, then the ground will be wet.	$A > C$
The ground is not wet.	$\sim C$
Therefore, it did not rain.	$\sim A$

A conditional syllogism is invalid if the minor premise denies the antecedent. This invalid form is called the fallacy of denying the antecedent.

If it rains, then the ground will be wet.	$A > C$
It did not rain.	$\sim A$
Therefore, the ground is not wet.	$\sim C$

The minor premise affirms the consequent. This invalid form is called the fallacy of affirming the consequent.

If it rains, then the ground will be wet.	$A > C$
The ground is wet.	C
Therefore, it rained.	A

Examine the following conditional syllogisms. Which of these are valid, which are invalid?

If he fired the gun, then he should have gunpowder residue on his clothing or skin.
According to the medico-legal examination, there was no trace of gunpowder residue on any part of his body and clothing.
Therefore, he did not fire the gun.

If you are eligible to vote, then you must be 18 years and above,
My cousin is above 18 years of age.
Therefore, my cousin is eligible to vote.

If the defendant has no knowledge that his statement is untrue, he cannot be guilty of fraud.
The defendant knows that his statement is untrue.
Therefore, he is guilty of fraud.

If he was in the United States when the crime happened, then he cannot commit the crime.
It was proven that he was in the United States at that time.
Therefore, he cannot have committed the crime.

The first and the fourth syllogisms here are valid. The first follows the modus tollens form, and the fourth follows the modus ponens form.

However, the second and third syllogisms are invalid. In the second syllogism, where the fallacy of affirming the consequent is committed, even if both premises are true, we cannot be certain that the conclusion is also true since there are other prerequisites to be eligible to vote such as citizenship and having registered as a voter. Your cousin may have met the age requirement but he may have failed to register with the COMELEC. The third is also invalid having committed the fallacy of denying the antecedent. The defendant may know that the statement is untrue but the supposed victim did not actually rely on the statement that was made (which is another essential criterion to prove there was a fraud).

Enthymemes

We do not often find these syllogistic forms of arguing in legal writing. Legal opinions and memorandums are not written in such a formal structure consisting of two premises and a conclusion. However, most legal arguments actually follow the syllogistic reasoning; we only have to analyze deeper the arguments to excavate the syllogisms. One logician notes that "an argument's basic structure...may be obscured by an excess of verbiage...But an argument's structure may also be obscured for us... because it is too sparse and has missing components. Such arguments may appear sounder than they are because we are unaware of important assumptions made by them..."[49]

Consider this one-sentence argument penned by Justice Blackmun in his *Roe vs. Wade* opinion:

[49] S. Morris Engel, With Good Reason: An Introduction to Informal Fallacies 20 (1994).

> *"This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."*[50]

Lying below the surface of Justice Blackmun's argument is the following syllogism:

> *The right of privacy is guaranteed by the Fourteenth or Ninth Amendment.*
> *A woman's decision to terminate her pregnancy is protected by the right of privacy.*
> *Therefore, a woman's decision whether to terminate her pregnancy is protected by the Fourteenth or Ninth Amendment.*

Sometimes it is more than a matter of rearranging sentences and rephrasing statements to match up with the syllogistic form. Sometimes a legal writer doesn't mention all parts of the syllogism, leaving one to read between the lines. One may justify the conclusion that the Cybercrime Prevention Act is unconstitutional by mentioning only one premise: the Cybercrime Prevention Act infringes on our freedom of expression. The argument is incomplete, but it can easily be completed and assessed with regard to it validity by supplying the missing premise: a law is unconstitutional if it infringes on our freedom of expression.

Logicians are certainly aware that an argument can be founded on a syllogism although not all parts of the syllogism are expressed. This kind of argument that is stated incompletely,

[50] Ruggero J. Aldisert, Logic for Lawyers: A Guide to Clear Legal Thinking 62 (3rd ed. 1997) (quoting Justice Blackmun, 410 U.S. 113, 153 (1974)).

part being *"understood"* or only *"in the mind,"* is called an *"enthymeme."*

In ordinary legal discourse, arguments and inferences are expressed enthymematically. The reason is easy to understand. A large body of legal statements can be presumed to be common knowledge, and legal practitioners save themselves trouble by not repeating well-known and perhaps trivially true propositions that their listeners and readers can perfectly well be expected to supply for themselves.[51] Moreover, it is not at all unusual for a legal argument to be rhetorically more powerful and persuasive when stated enthememtically than when enunciated in complete detail. As Aristotle wrote in his *Rhetoric*, *"Speeches that ... rely on enthymemes excite the louder applause."*

In each of the following enthymemes, can you supply the missing premise:

> *Ramon has a fixed design to kill Karl as evidenced by Ramon's love letter to Karl's wife.*
> *Therefore, Ramon has probably killed Karl.*

> *Manuel has been seen running away from a building where a burglar alarm is ringing.*
> *Manuel is more likely to be the burglar.*

In the first passage, the missing premise is: *One who has a fixed design to kill is more likely to kill.* In the other argument, what was only implicitly stated was: People who flee from the scene of a crime are more likely guilty than if they did not flee.

Polysyllogisms

Aside from not explicitly expressing arguments and opinions in standard syllogisms, legal writers also have the

[51] Ruggero J. Aldisert, Logic for Lawyers: A Guide to Clear Legal Thinking (3rd ed. 1997).

tendency to pile one syllogism on top of another. We call these arguments as *"polysyllogisms."* A polysyllogism is a series of syllogisms in which the conclusion of one syllogism supplies a premise of the next syllogism. Typically, polysyllogisms are used because more than one logical step is needed to reach the desired conclusion. Be on the lookout for something like this as you pick apart a complex legal opinion:

> *Anything that contains information available for inspection by the public is a public document*
> *PDS contains information available for inspection by the public.*
> *Therefore, PDS is a public document.*

> *Vargas falsified her PDS.*
> *PDS is a public document*
> *Therefore, Vargas falsified a public document.*

> *Falsifying a public document is a criminal offense.*
> *Vargas falsified a public document.*
> *Therefore, Vargas committed a criminal offense.*

> *Anyone proven to commit a criminal offense should be dismissed from government service.*
> *Vargas committed a criminal offense.*
> *Therefore, Vargas ought to be dismissed from government service.*

Chapter 4
Inductive Reasoning in Law

"When you steal from one author, it's plagiarism; if you steal from many, it's research."

- Wilson Mizner

In the beginning of *Chapter Three*, we briefly discussed what inductive arguments are and differentiated them from deductive arguments. Now we can get a closer look at inductive arguments and how important are they in legal reasoning. Inductive arguments are arguments in which the premises are intended to provide support, but not conclusive evidence, for the conclusion.

Unlike deductive arguments which draw out truth or information already contained in the premises, inductive arguments give us truth or information more than what the premises are saying. In an inductive argument, what is claimed in the conclusion goes beyond the evidence found in the premises. It is for this reason that inductive arguments do not claim that their conclusion is certain or that their premises guarantee the truth of the conclusion. What inductive arguments claim is that their conclusion, based on the premises, is likely or probably true.

The absence of complete certainty, however, does not dilute the importance of induction in the law. Deductive reasoning is not applicable in cases where there is no established law, or binding precedent, or clear statute to provide the major

premise of our legal argument. And there are so many cases of this in law. Here, the lawyer must build the major premise himself. He has to draw upon the cumulative experience of the judiciary, the specific holdings of other cases. When he has gathered a sufficient case law, he will then formulate a general norm that supports his claim. It is inductive reasoning that is needed here.

Aside from enabling us to fashion a general rule when such is not readily available, inductive reasoning is what we chiefly employ in determining the facts of the case. Indeed, disputes in court are most often not about laws, but about matters of fact.[52] Was the person accused present in this place where the crime was committed or was he in a different place as he is claiming? Did the act of A cause the injury of B? The court must first determine the facts before rules or statutes are applied to those facts. To accomplish this, we primarily rely on inductive reasoning.

Decisions on cases are often derived from inductively inferring that given the truth of a set of particular circumstances a claim about the case is justified. Jurisprudence of recent vintage teach us that conviction can be had even upon circumstantial evidence given that the circumstances proven should constitute an unbroken chain which leads one to fair and reasonable conclusion pointing to the accused to the exclusion of all others, as the author of the crime.

People vs. Paguntalan[53]

> Charged with a crime, Paguntalan and his companions were convicted by the court based on bits and pieces of circumstances shown by the prosecution during trial. These pieces of evidence

[52] Irving M. Copi & Carl Cohen, Introduction to Logic (9th ed. 1994).

[53] GR No. 116272

collectively indicate that Paguntalan and his companions acted in concert, had a common design and understanding to kill the victim. Though no direct evidence of conspiracy was shown in the evidence, this did not detract from the fact, as argued by the prosecution, that the act of Paguntalan in killing his victim was also an act of his co-conspirators. The prosecution also argued that the time honored jurisprudence is that direct proof is not essential to prove conspiracy. It may be shown by a number of indefinite acts, conditions and circumstances which vary according to the purposes to be accomplished and from which may logically be inferred that there was.

Inductive Generalizations

There are many types of inductive reasoning, and the simplest and most common of these types is called *"inductive generalization."* An inductive generalization is *"an argument that relies on characteristics of a sample population to make a claim about the population as a whole."*[54] This claim is a general claim that makes a statement about all, most, or some members of a class, group, or set. The following are some examples of general claims:

All law students are required to study taxation.

Every performance-enhancing drug is banned in the Tour de France.

Hearsays are not admissible in courts.

Most congressmen are against the legalization of divorce.

[54] Gregory Bassham, et al., Critical Thinking: A Student's Introduction 296 (3rd ed. 2008).

Although the style of each of these four claims differ, all are general claims. Since the first two use the words *"all"* and *"every"*, we can recognize without much trouble that they refer to all members of a class, group, or set. The first refers to all members of the group law students; the second refers to all members of the group performance-enhancing drugs. Even though the third claim does not use the words every or all, it too is general claim. Further, this claim is no less general just because it tells us what hearsays are not rather than what they are. The final example specifically mentions most congressmen, but it should be understood to refer to the entire class of congressmen. It makes a general claim about the whole class of congressmen because it claims that most are against the legalization of divorce and implies that the remainder are not against it.

An inductive generalization uses evidence about a limited number of people or things of a certain type (the sample population), to make a general claim about a larger group of people or things of that type (the population as a whole). Inductive generalizations have the following form:

Z percent of observed F's are G.
It is probable, therefore, that Z percent of all F's are G.

For example, we want to know what percentage of students at a particular college are in favor of abolishing the death penalty. Clearly, it would be extremely difficult to ask every student at the college whether they favor abolishing the death penalty. What we can practically do is to select a sample of students and determine their position on the issue, and then to generalize the results to the whole student body. An inductive generalization could be written out as follows:

Sixty-five percent of students at X College who were questioned are in favor of abolishing the death penalty.

It is probable, therefore, that sixty-five percent of all students at X College are in favor of abolishing the death penalty.

Evaluating Inductive Generalizations

There are two important questions we must ask when it comes to determining whether inductive generalizations are strong or weak:

Is the Sample Large Enough?

The size of the sample population is an essential factor in determining whether the conclusion about the population as a whole is justified or not. A sample is *"large enough"* when it is clear that we have not rushed to judgment, that we have not formed a hasty generalization. Admittedly, this business of specifying what we mean by *"enough"* is not easy, but oftentimes our common sense can help us decide when the sample is large enough.

As a rule of thumb, the more examples you find, the stronger your argument becomes. In *O'Conner v. Commonwealth Edison Co.*, a federal judge in Illinois lambasted an expert witness for attempting to formulate a universal medical rule based on his observation of only five patients. Based on the five patients (Dr. Scheribel) has observed with cataracts induced by radiation therapy, he developed his *"binding universal rule"* that he applied to O'Conner, thus committing the logical fallacy known as *Converse Accident* (hasty generalization). It occurs when a person erroneously creates a general rule from observing too few cases.

Dr. Scheribel has illogically created a *"binding universal rule"* based upon insufficient data.[55]

One thing that we need to consider in determining the sufficiency of the quantity of the sample is the quantity of the whole population. In our example regarding the students' position on death penalty, we must know around how many students are there in the college. Suppose there are around three thousand students, a sample of twenty students is clearly insufficient. A hundred students, however, may already be enough. Adding fifty more will increase the strength of our argument.

Suppose we have three hundred students for our sample, will that make the conclusion of our generalization acceptable? Not necessarily. Although the sample is definitely large enough, there is another factor we need in evaluating the strength of inductive generalization. Thus, we need to ask another question.

Is the Sample Representative?

Although there were three hundred students who were interviewed for the survey, the generalization may be weak if the three hundred students only represent a particular portion of the whole student population. Suppose these three hundred students are all members of Christ Youth in Action (CYA), a Catholic organization of young people, they may not actually represent the whole student population if a significant number of students in that college is not a member of that organization. This will make our conclusion questionable since such membership to that organization greatly influences one's view on death penalty for the Catholic Church strongly opposes such kind of punishment. We call that kind of sample a biased sample.

[55] O'Conner v. Commonwealth Edison Co., 807 F. Supp. 1376, 1390-91 (C.D. Ill. 1992).

A sample is representative if there is diversity in our sample (that is, the various subgroups of the whole population are represented in the selected respondents). In the case of the students, the sample should reflect the same percentage distribution in the entire student body of X College as regards course, year, grade average, age, sex, organization, religion, to name a few variables. Thus, if our sample comes from the different subgroups, it is a representative sample. This basis for evaluating the strength of our generalization is especially important when the population we are dealing with is heterogenous.

One way to ensure sufficient relevant diversity is by making the sample random. A random sample is *"one in which all members of the target have an equal opportunity to be in the sample."*[56] For instance, you could interview members randomly by choosing every fifth or tenth name on the membership list. Another possibility would be to randomly interview people in a common meeting place. The aim of creating a random sample is to ensure that the diversity of the target is reflected by the sample. It will not be a random sample if it excludes part of the target. For example, a sample of college students in a particular university chosen from the students coming out from men's locker room would not include any female students in the sample.

This has been the problem in the classic polling blunder that happened in the United States. In 1936, Literary Digest magazine conducted a massive polling effort to predict the outcome of the Presidential election between Alf Landon and Franklin Roosevelt. The Digest polled well over two million people, and the vast majority indicated they would vote for Landon (keep in mind that modern news organizations base their polls on the responses of 1,000 people). In the actual election, however, Roosevelt won 523 electoral votes and Landon received only eight. How did Literary Digest get it so wrong

[55]Debra Jackson & Paul Newberry, Critical Thinking: A User's Manual 249 (2012).

when it had crafted its rule from a massive number of particular examples? The problem was the Digest composed its polling list from telephone directories. In 1936, only about 40% of households owned a telephone, usually those who are in the upper class. Thus, even if they used random sampling in picking the individuals to call and ask for their presidential preference, the sample population is an unrepresentative group of the American public at that time.[57]

Samples may also be biased when surveys require participants to initiate contact rather than using a survey taker to actively solicit responses. For example, surveys requiring that participants respond by sending a text message, going online, phoning in their response are likely to get unrepresentative results since the respondents are self-selected. Only people who are particularly interested in the issue are likely to respond to the survey. To make matters worse, unless surveys prevent respondents from contributing their answers more than once, the data is likely to be skewed by unscrupulous repeat respondents who are trying to influence the outcome.[58]

We can observe that when established survey companies in the Philippines (like SWS, Pulse Asia) conduct opinion polls, they usually have only around 1,000 to 1,200 respondents to represent the whole Filipino population (which is more than ninety million at present). But these surveys are usually reliable since the sample taken is random representing different sectors or groups of the whole population, that means, the respondents come from the different regions of the country, socio-economic classes, age groups, and so on.

When we cannot do much about our sample (such as increasing it), we can make our generalization acceptable by formulating an appropriate conclusion. A good inductive

[57]Debra Jackson & Paul Newberry, Critical Thinking: A User's Manual 249 (2012).

[58]Debra Jackson & Paul Newberry, Critical Thinking: A User's Manual 249 (2012).

argument should make a conclusion that is appropriate to the evidence offered by its premises. The conclusion should not claim more than its premises can support. For example:

All ten of the Malaysians I met are good in business.
So, most Malaysians are good in business.

Here the conclusion claims that most Malaysians are good in business. But its premise only cited ten Malaysians who are good in business. We could make the argument strong by making our conclusion less sweeping, that is, the conclusion could cover less ground. For example, if we instead say:

All ten of the Malaysians I met are good in business.
So, many Malaysians are good in business.

the argument would be strong. Given our premise, the conclusion is more likely to be true if its claim is more limited, restricting itself to many rather than most Malaysians. Other phrases that could soften the conclusion are possible, probably, and likely. Remember that inductive generalizations should not overstate their conclusions. Let us take another example:

None of the ten teachers I met in this school knows how to speak Spanish.
So, no teacher in this school knows how to speak Spanish.

We can see that the conclusion is so sweeping that the argument is not strong. After all, if there is just one teacher in that school who knows how to speak Spanish, the conclusion will easily be falsified. To play it safe, then, we might conclude instead that *"Very few, if any, teachers in this school know how to speak Spanish."* This is still a sweeping conclusion, but it allows for the possibility of a few exceptions. This makes the conclusion likely to be true, and thus the argument is strong.

Analogical Arguments

Another type of inductive argument most commonly used in law is analogical argument. Analogy is *"a comparison of things based on similarities those things share. We find analogies everywhere."*[59] In college entrance examination, analogies are often given. Brother is to sister as uncle is to? If your answer is "auntie," you are correct because the relationship is one of opposites. We also encounter analogies in poems and songs.

Perhaps love is like a resting place,
A shelter from the storm,
It exists to give you comfort,
It is there to keep you warm...

Indeed, most of our everyday reasoning is based on analogy. Joan reasons that her new pair of shoes will be durable on the grounds that her other shoes with the same brand and make have been durable. In the same way, Victor infers that he will enjoy the action movie he is going to watch tonight because it has the same director and leading actors as the past action movies he enjoyed. Analogy is at the basis of these simple, ordinary arguments we make.

It can be noticed that none of these arguments is certain or demonstratively valid. None of their conclusions follow with logical necessity from their premises. It is logically possible that Joan's new pair of shoes will not last long or Victor will not enjoy that action movie. Just like any inductive argument, there is no mathematical certainty in analogical arguments. However, the claims of these arguments may still be reasonably accepted.

What makes an argument by analogy? Analogical arguments depend upon an analogy or a similarity between two or more things. Analogies compare two or more things;

[59]Gregory Bassham, et.al., Critical Thinking: A Student's Introduction (3rd ed. 2008).

arguments by analogy go one step further. They claim that another similarity exists, given the similarities already recognized.[60] Whereas analogies simply point out a similarity, arguments by analogy claim that certain similarities are evidence that there is another similarity (or other similarities). This type of reasoning has a simple structure: A and B have characteristic X. A has characteristic Y. Therefore, B has characteristic Y.

Analogical reasoning is very useful in law particularly in deciding what rule of law to apply in a particular case and in settling disputed factual questions. Let us go to the first application of analogical reasoning in law. Legal counsels employ it in coming up with a new legal claim based on firmly established precedents. Typically, this means that a current case is compared to an older one, and the outcome of the new case is predicted on the basis of the other's outcome. Edward Levi, the foremost American authority on the role of analogy in the law, described analogical reasoning as a three step process: 1) establish similarities between two cases, 2) announce the rule of law embedded in the first case, and 3) apply the rule of law to the second case.[61] This form of reasoning is different from deductive logic or inductive generalization. Recall that deduction requires us to reason from universal principles to smaller, specific truths. And the process of generalization asks us to craft larger rules from a number of specific examples. Analogy, in contrast, makes one-to-one comparisons that require no generalizations or reliance on universal rules. In the language of logicians, analogy is a process of reasoning from the particular to the particular.

Let us look at an example to illustrate the distinction.

Suppose you are to defend a legal claim that the use of marijuana should be allowed by the state. The issue pertaining

[60] ibid.

[61] Edward H. Levi, An Introduction to Legal Reasoning (1949).

to this matter is hinged on two opposing legal opinions – one that asserts marijuana is a healing herb and the other that claims marijuana is a dangerous drug. Which of these two positions is to be followed? Without a clear universal rule or past cases on point, deductive logic and inductive generalizations are of little help. Instead, you must rely on the power of analogy to convince the court that marijuana is to be treated as a healing herb. To defend your stand, you must assert that marijuana, like other herbs that are not prohibited by law, is non-toxic. It does not contain substances that kill brain cells or increase risks of cancer. There have been no deaths associated with marijuana use. On the contrary, like legal herbs, marijuana provides more health benefits than risks. It helps in curing rheumatoid arthritis, diabetes, PTSD, epilepsy, antibiotic-resistant infections and neurological disorders. The process of drawing these comparisons and explaining why they are important is the heart of reasoning by analogy. The idea is to find enough similarities between the case at hand and existing rules or precedents to convince a court that the treatment or judgment must be the same.

Legal practitioners also rely heavily on analogical reasoning when settling disputed factual issues. Was an incorrect diagnosis, and subsequent injury to the patient, the result of the physician's carelessness? Other doctors may testify that the symptoms relied upon in that case almost invariably do lead, in other cases, to the diagnosis given; in this very similar case, it is concluded, the physician did precisely what is normally done, and what should have been done, in spite of the unfortunate result. Arguments having this analogical structure are also the ones presented by psychiatrists when testifying about what normally is the mental health condition of a person given the behaviours being exhibited. Most expert testimony has precisely this form: The expert would say: *"In my experience, circumstances of such-and-such kind have usually led (or rarely lead) to results of the kind encountered here. Therefore, as an expert in these matters, it is my judgment that in this case the result was (or was not) the probable*

effect of just such causes." The expert draws an analogy; an argument based upon that analogy leads to the conclusion about causal connection that aims to resolve the dispute at hand.[62] Analogical reasoning is also the basis of what we know as *"circumstantial evidence"*.

In prosecuting a defendant for a crime of theft, for instance, the legal counsel may not be able to provide direct evidence proving that the accused personally stole the item but he may present evidences that are entirely circumstantial such as the defendant' fingerprints at the scene of the crime and the fact that the defendant was found with a large amount of money without being able to give any acceptable reason. The judge will draw conclusion from such evidences about who has stolen the item based upon his/her knowledge of the history of people's actions in other cases.[63] Circumstantial evidence is sufficient for conviction if: a) There is more than one circumstance; b) The facts from which the inferences are derived are proven; and, c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[64]

Evaluating Analogical Arguments

Just as there are good or bad analogies, there are also good and bad analogical arguments. One of the fallacies of reasoning is called fallacy of false analogy (which will be discussed later in the chapter on fallacies). It results from comparing two (or more) things that are not really comparable. It is a matter of claiming that two things share a certain similarity on the basis of other similarities, while overlooking important dissimilarities.

[62] Irving M. Copi & Carl Cohen, Introduction to Logic (9th ed. 1994).

[63] Irving M. Copi & Carl Cohen, Introduction to Logic (9th ed. 1994).

[64] Rule 133, Section 4, Rules of Court

How can we determine if an analogical argument is good? There are certain criteria that can guide our evaluation of the argument's soundness.

The first criterion to be considered in the evaluation of an analogical argument is the relevance of similarities. Consider, for example, the following analogical argument:

> *Arizona signed into law the toughest bill on illegal immigration in generations, making the failure to carry immigration documents a crime. We can expect that New Mexico will soon pass a similar law. After all, New Mexico is a lot like Arizona, given that both have a large population of immigrants, and both are bordered by Mexico.*[65]

In this example, New Mexico is compared to Arizona. The arguer has identified two ways in which they are similar: they both have a large population of immigrants and are bordered by Mexico. In evaluating this analogical argument, we must consider whether the similarities cited between the two states are relevant or irrelevant to the conclusion of the argument. The issue is whether New Mexico will likely pass a similar immigration law. With respect to this issue, the similarities identified by the arguer are relevant to the conclusion of the argument. However, suppose one will make the same conclusion based on the premise that Arizona and New Mexico are both under a Republican governor and both have several national forests and parks. This will not be a good argument because, though there are cited similarities between the two states, these similarities have little bearing on the issue of passing a strict immigration law.

Consider another example. In a previous case (Case 1), Roger stole Sonny's bicycle and sold it to Cesar who know that it had been stolen. Sonny sued Cesar to recover the bicycle. Sonny

[65] Debra Jackson & Paul Newberry, Critical Thinking: A User's Manual (2012).

won. In a case at hand (Case 2), Giovanni bought Mike's bicycle giving as payment counterfeit money. Giovanni knew it was a phony money. Mike discovered the fraud and sued Giovanni for the return of the bicycle. Will Mike also win the case? Yes. What is the similarity in the two cases? The two persons being sued both dishonestly acquired possession of another's property. This similarity is relevant on the question of whether or not the defendant has acquired ownership rights of the property.

Another important criterion by which analogical argument may be judged has to do with the relevant dissimilarities between the entities being compared. Consider this example:

> President Clinton's actions are *"not just about sex,"* but constitute *"obstructions of justice,"* just as former President Nixon's actions were. Both Nixon and Clinton lied about their conduct in trying to cover up an improper conduct, and Clinton even did it under oath. If Nixon's actions were impeachable, Clinton's should also be.

This seems to be a good analogical argument as the similarity cited has a bearing on the issue of whether or not Clinton's actions are impeachable. However, one can refute an analogical argument by citing a relevant difference that exists between the entities compared which can weaken the argument's conclusion. In the case above, Clinton's side can argue that Nixon's lies were made in an attempt to cover up a criminal action, break-ins, destruction of property, and other acts related to abuses of presidential power or abuses of the presidential office, whereas Clinton's actions are related to consensual sex, were not an abuse of presidential power, and everyone lies about sex, so that his acts did not rise to an impeachable offense.

Let us put a twist regarding the issue of the bicycle owner's attempt to recover this property.

This will be Case 3. Quite similar to Case 2, suppose Giovanni obtained the bicycle by fraud, misrepresenting some important facts that induced Mike to transfer the title of the item, but before Mike can sue to recover the bicycle, Giovanni sold it to Mervin who did not know of Giovanni's fraud, and Mervin paid Giovanni the market value of the bicycle. Mike sued Mervin for the return of his property. Can an analogical argument succeed in defending the claim that Mike should win the case and recover the bicycle as in the two precedent cases. Comparing this present case with the previous cases, although there are similarities among the cases, the present case has a relevant difference from the previous cases – Mervin has no knowledge that the item was fraudulently acquired by Giovanni.

In the previous cases, the legal battle was between the innocent owner and the wrongdoer (the thief or the defrauder). But in the present case, the battle is between two innocent persons – it is between the innocent owner and the innocent buyer. That is a relevant difference that can justify the buyer's ownership of the bicycle.

Let us put another twist.

In Case 4, suppose that, like in Case 1, Roger stole Sonny's bicycle, except that, like in Case 3, before Sonny can sue for its return, Roger sold it to Cesar. Also like in Case 3, Cesar was unaware that it was stolen and paid Roger its full market value. Sonny sued to recover the bicycle. Will Cesar also be free of any liability or Sonny can win the case and recover the item? Although there are similarities between Cases 3 and 4, the outcome can be different. The original owner can recover the bicycle from the buyer despite the fact that the buyer had good faith in buying the item and was unaware of its dishonest acquisition.

What relevant difference do Cases 3 and 4 have?

The relevant difference was how the bicycle was acquired from the original owner – theft and fraudulent inducement. In the case of theft (Cases 1 and 4), the original owner (Sonny) never intended to transfer the title to Roger; the property was taken without Sonny's knowledge and without his intent to pass the title. That means that no title was ever passed, and Roger acquired no title.

Or stated differently, he acquired a void title. And he could not pass on to someone else a better title than he himself had.

In the case of fraudulent inducement (Cases 2 and 3), Mike did intend and act to transfer the title, although the owner was misled by Giovanni's fraudulent inducement. So, Giovanni did acquire the title, though it was a *"voidable"* (as opposed to *"void"*) title. This means that Mike can still recover the bicycle if he acted quickly while Giovanni still had the item because he could still *"avoid the title."*

But if, before Mike acted to avoid the title, Giovanni sold it to an innocent buyer who paid full value (a Bona Fide Purchaser), the title that he had transferred to the BFP became a good title. It no longer could be *"avoided."*

Here we see that in the examples given it is important in analogical reasoning to check how similar and how different the facts are in various cases. If the facts are substantially similar the outcome of the cases will not be different. But if the facts have relevant differences, the outcome in one case will not be the same in another case.

Arguing that the conclusion of the analogical reasoning follows despite relevant differences between the entities being

compared leads to the fallacy of false analogy as the following case example would show.

There is no ulterior motive as implied in the statement of the petitioner. There is conviction on the part of the five remaining justices who dissented on the first case, and the two new members that the previous ruling was erroneous. The question of the petitioners of *"why should this be so?"* is equally rebutted by the question *"Why should this not be so?"* because, as explained in the decision, the first decision was erroneous and no legal doctrine was in the way of its reexamination.

Kilosbayan vs. Morato[66]

> In 1995, PCSO and PGMC signed an Equipment Lease Agreement wherein PGMC leased online lottery equipment and accessories to PCSO wherein thirty percent of the net receipts is allotted to charity. Term of lease was for 8 years and PCSO was to employ its own personnel as well as responsible for the facilities.
>
> Upon the expiration of lease, PCSO may purchase the equipment for P25 million. The following month, a petition was filed to declare the agreement invalid because it is violative of PCSO's charter and the law regarding public bidding. More importantly, it violates Sec. 2(2) of Art. 9-D of the 1987 Constitution and that standing can no longer be questioned because it has become the law of the case.
>
> The respondent answered that the agreement is different from the Contract of Lease and there is no bidding required. The power to determine if the

[66] 246 SCRA 540 [1995]

agreement is advantageous is vested in the Board of Directors of PCSO.

Do petitioners have standing?

The High Court held in the negative declaring that *stare decisis* cannot apply. The previous ruling sustaining the standing of the petitioners is a departure from the settled rulings on real parties in interest because no constitutional issues were actually involved.

Moreover, the law of the case cannot also apply since the present case is not the same one litigated by the parties before in *Kilosbayan vs. Guingona* - the ruling cannot be in any sense be regarded as the law of this case. The parties are the same but the cases are not. Thus, the Rule on Conclusiveness cannot still apply.

The petitioners asked a question to which they made up an answer. Their attempt at psychoanalysis, detecting a Freudian slip where none exists, may be more revealing of their own unexpressed wish to find motives where there are none which they can impute to some members of the Court.

An issue actually and directly passed upon and determine in a former suit cannot again be drawn in question in any future action between the same parties involving a different cause of action.

But the rule does not apply to issues of law at least when substantially unrelated claims are involved. When the second proceeding involves an instrument or transaction identical with, but in a

form separable from the one dealt with in the first proceeding, the Court is free in the second proceeding to make an independent examination of the legal matters at issue.

Since the matter in question is a different contract, the previous decision does not preclude determination of the petitioner's standing. Standing is a concept in constitutional law and here no constitutional question is actually involved. The more appropriate issue is whether the petitioners are real parties in interest.

Chapter 5
Fallacies in Legal Reasoning

"When you steal from one author, it's plagiarism; if you steal from many, it's research."

- Wilson Mizner

In ordinary conversation, you may have heard someone refer to a false yet commonly accepted belief as a fallacy. The belief, for example, that sleeping while your hair is wet will lead to blindness is considered by others as a fallacy because there is no scientific basis for its truth. This is the lay sense in which the term is used. In logic, a fallacy is not a false belief but a mistake or error in thinking and reasoning. A passage may be composed of entirely true statements or beliefs but it is a fallacy if the kind of thinking or reasoning used in that passage is illogical or erroneous.

Judges and lawyers sometimes use the term in the lay sense to describe something that is not supported by the facts as shown in these statements from some cases cited by Aldisert.[67]

> *This court finds that the undisputed evidence established that Hinman is married to an Asian-American woman who was described as being strong willed. The court finds that this fact evidences the fallacy of the Plaintiff's theory that Hinman was biased against Asian-American women and expected them to be meek and subservient.*[68]
>
> *Respondent argues this interpretation permits deduction from the obligor parent's gross income of all taxes payable on the new spouse's income. The fallacy of this argument is obvious. All taxes payable on the combined income are not deducted from the income of the obligor parent.*[69]

Notwithstanding its popular or lay use, exemplified by the foregoing excerpts from legal cases, logicians and the legal profession generally use the term "fallacy" in a narrower sense to describe an error in reasoning rather than a falsity in a statement or claim. In this chapter, we will look into the nature of these illogical and incorrect ways of reasoning and their various kinds.

We encounter fallacies in political speeches, commentaries, newspaper editorials, legislative debates, advertisements, TV talk shows, class discussions and ordinary conversations. Fallacies are deceptive and misleading since, although they are illogical or incorrect, they seem to be correct and acceptable. Although they are not logically sound, they are often psychologically persuasive and, thus, tend to be followed or accepted by people.

In order not to be deceived by this kind of reasoning, we have to be aware what these fallacies are. If we do not know our opponents, we are more likely to be defeated by them. Same thing goes with fallacies, knowing them makes it easier for us to avoid them or attack them, and, thus, spares us from being fooled or misled.

[67] 1997

[68] Hashimoto v. Dalton, 870 F.Supp. 1544, D. Hawaii 1994

[69] County of Tulare v. Campbell, 50 Cal. App. 4th 847, 1996

FORMAL AND INFORMAL FALLACIES

Traditionally, fallacies are divided into two main groups: formal and informal fallacies. Formal fallacies are those that may be identified through mere inspection of the form and structure of an argument.[70] Fallacies of this kind are found only in deductive arguments that have identifiable forms. Chapter Three which is mainly concerned with deduction discussed these formal fallacies. For example, the deductive reasoning:

All turtles are reptiles.
All frogs are not turtles.
Therefore, all frogs are not reptiles.

This deductive argument has the following form:

All A are B.
All C are not A.
Therefore, all C are not B..

Through mere inspection of this form, one can see that the argument is illogical. The fact that All A are B and All C are not A are true does not guarantee that All C are not B is also true. As has been mentioned in Chapter Three this formal fallacy is called fallacy of illicit major. Regardless of the content of the argument, as long as its form violates the rules of logic, the argument commits a formal fallacy.

Informal fallacies are those that can be detected only through analysis of the content of the argument.[71] Consider the following example:

[70] Robert M. Johnson, A Logic Book: Fundamentals of Reasoning (5th ed. 2007).

[71] ibid.

It's just right to give this student a passing mark. You see, she is troubled by serious family problems at present.
Her family can't afford her education; it's her aunt who pays her tuition fee. If she fails in M-101, she might not be supported anymore by her aunt.

Examining this argument, we can simplify it in this way and put it in the following form:

All students with serious family problems should not be given a failing mark.
Q is a student with serious family problems.
Therefore, Q should not be given a failing mark.

Its symbolic form will be:

All A are B.
All C are A.
Therefore, all C are B.

Since this form is valid, one might conclude that the argument is logical. But the argument is not logical because of its content. Looking at the content of the argument (particularly in the first premise), one would find out the erroneous reasoning contained in the argument – which says that the basis in giving the student a passing or failing mark is his/her family situation rather than his/her performance in the class.

Since Chapter Three has already dealt with the various formal fallacies, this chapter will only focus on informal fallacies. The various informal fallacies accomplish their purpose of misleading or illogically persuading people to believe or accept something in so many different ways. This leads logicians to group informal fallacies into various categories. In this book, these fallacies will be discussed under three

categories: fallacies of ambiguity, fallacies of irrelevant evidence and fallacies of insufficient evidence.

We would like to add a caveat at this point. Since we are mainly analyzing legal reasoning, we will not attempt to discuss all the fallacies in each of the three categories. Rather, we will concentrate on those fallacies that often find expression in the law.

Fallacies of ambiguity are committed because of a misuse of language. They contain ambiguous or vague language which is deliberately used to mislead people. Fallacies of irrelevance do not have a problem with language but with the connection of the premise and conclusion. They occur because the premises are not logically relevant to the conclusion. They are misleading because the premises are psychologically relevant, so the conclusion may seem to follow from the premises although it does not follow logically. Fallacies of insufficient evidence, like the second category of fallacies, do not have a problem with language but with the connection of the premise and conclusion. The difference is that fallacies of insufficient evidence occur not because the premises are not logically relevant to the conclusion but because the premises fail to provide evidence strong enough to support the conclusion. Although the premises have some relevance to the conclusion, they are not sufficient to cause a reasonable person to accept the conclusion.[72]

FALLACIES OF AMBIGUITY

1. Equivocation

This fallacy consists in leading an opponent to an unwarranted conclusion by using a term in its different senses and making it appear to have only one meaning. In a good argument, the words or phrases used must retain the same

[72] Irving M. Copi & Carl Cohen, Introduction to Logic (9th ed. 1994); Gregory Bassham, et.al., Critical Thinking: A Student's Introduction (3rd ed. 2008).

meanings throughout the argument, unless we specify that we are shifting from one meaning of a word to another. One who commits this fallacy either intentionally or carelessly allowed a key word to shift in meaning in the middle of the argument, while giving the impression that all instances of the word have the same meaning. This kind of deception is particularly difficult to detect in long arguments, in which the transition in meaning is not noticeable.

The following is an example of this fallacy. Try to identify which term was used with different meanings.

> *Gambling should be legalized because it is something we can't avoid. It is an integral part of human experience; people gamble every time they get in their cars or decide to get married.*

The first use of *"gambling"* in this argument for legalized gambling refers to games of chance and/or the use of gaming devices, whereas the second refers to the risk feature of life itself. What the argument tries to do is to direct people into thinking that gambling is something unavoidable, and that being the case, it should be legal. But that conclusion does not follow since what is being argued to be legal is not the same sense of gambling which people naturally do.

> *Congressmen can create or abolish laws.*
> *The law of supply and demand is law.*
> *Therefore, congressmen can abolish the law of supply and demand.*

This argument also commits the fallacy of equivocation since the term *"law"* has been used in two different senses. In the first premise, it refers to *"rule binding in a particular community or society"*; while in the second premise, it refers to *"general principle deduced from facts."* Lumping these two

meanings of *"law"* into a single line of reasoning will lead to such absurd conclusion as the one above.

Due to the vulnerability of language to being interpreted in multiple ways, it is important for the court to always go back to the context in which the language in the law has been formulated. The problem of linguistic ambiguity in the law can be avoided by such approach.

Lambino vs. COMELEC[73]

The Lambino Group commenced gathering signatures for an initiative to change the 1987 Constitution and thereafter filed a petition with the COMELEC to hold a plebiscite for ratification under Sec. 5(b) and (c) and Sec. 7 of RA 6735. The proposed changes under the petition will shift the present Bicameral-Presidential system to a Unicameral-Parliamentary form of government. COMELEC did not give it due course for lack of an enabling law governing initiative petitions to amend the Constitution.

Is the initiative petition sufficient compliance with the constitutional requirement on direct proposal by the people?

The High Court held that Sec. 2, Art. XVII is the governing provision that allows a people's initiative to propose amendments to the Constitution. While this provision does not expressly state that the petition must set forth the full text of the proposed amendments, the deliberations of the framers of our Constitution clearly show that: (a) the framers intended to adopt relevant American jurisprudence on people's

[73] 505 SCRA 160 [2006]

initiative; and (b) in particular, the people must first see the full text of the proposed amendments before they sign, and that the people must sign on a petition containing such full text.

Moreover, *"an initiative signer must be informed at the time of signing of the nature and effect of that which is proposed"* and failure to do so is *"deceptive and misleading"* which renders the initiative void. That's why the Constitution requires that an initiative must be *"directly proposed by the people in a petition"* - meaning that the people must sign on a petition that contains the full text of the proposed amendments. A people's initiative to change the Constitution applies only to an amendment of the Constitution and not to its revision. In contrast, Congress or a constitutional convention can propose both amendments and revisions to the Constitution. By any legal test and under any jurisdiction, a shift from a Bicameral-Presidential to a Unicameral-Parliamentary system, involving the abolition of the Office of the President and the abolition of one chamber of Congress, is beyond doubt a revision, not a mere amendment.

The Lambino Group theorizes that the difference between amendment and revision is only one of procedure, not of substance. The Lambino Group posits that when a deliberative body drafts and proposes changes to the Constitution, substantive changes are called revisions because members of the deliberative body work full-time on the changes. The same substantive changes, when proposed through an initiative, are called amendments because the changes are made by ordinary people who do not make an occupation, profession, or vocation out of such endeavor. The

High Court, however, ruled that the express intent of the framers and the plain language of the Constitution contradict the Lambino Group's theory. Where the intent of the framers and the language of the Constitution are clear and plainly stated, courts do not deviate from such categorical intent and language.

2. Amphiboly

This fallacy consists in presenting a claim or argument whose meaning can be interpreted in two or more ways due to its grammatical construction. In equivocation, ambiguity comes from changing meanings of the word; in amphiboly, ambiguity comes from the way the sentence is constructed. The double meaning lies not in the word but in the syntax or grammatical construction. Below is a good example of this fallacy:

I give and bequeath the sum of Php 500,000 to my nieces Angeline Ramos and Rose Perez. The loot and the car were listed as stolen by the Manila Police District.

You know that counsel for the beneficiaries are going to claim that each is entitled to Php 500,000; the estate lawyer will argue that the total sum is not Php 1,000.000 but Php 500,000.

A statement is amphibolous when its meaning is indeterminate because of the loose or awkward way in which its words are combined. An amphibolous statement may be true in one interpretation and false in another. When it is stated as premise with the interpretation that makes it true, and a conclusion is drawn from it on interpretation that makes it false, then the fallacy of amphiboly has been committed.[74]

Check the following ambiguous sentence:

[74] Irving M. Copi & Carl Cohen, Introduction to Logic (9th ed. 1994).

The loot and the car were listed as stolen by the Manila Police District.

What makes this misleading is the uncertainly with regard to which of the two verbs in the sentence is modified by the prepositional phrase. The expression is presumably intended to indicate that the police listed the loot and car as stolen, not that they stole it.

Some of the most typical grammatical errors that render a claim ambiguous are unclear pronoun reference (*"The defendant never argues with his father when he is drunk"*); elliptical construction, where words are omitted but supposedly understood (*"John likes logic more than his wife"*); unclear modifier (*"Going up the stage, the crowd applauded the newly elected President"*) careless use of only (*"The company will accept male applicants only from Monday to Wednesday"*); and careless use of all (*"All of the bonuses given to the employees amount to five hundred thousand pesos"*).[75]

Some interesting ones might appear as newspaper headlines:

"CHR lawyers give poor free legal advice."
"Mayors can't stop gambling."
"Police help dog bite victim."

3. Improper Accent

This fallacy consists in misleading people by placing improper emphasis on a word, phrase or particular aspect of an issue or claim.

The fallacy of improper accent is found not only in advertisements and headlines but also in other very common

[75] T. Edward Damer, Attacking Faulty Reasoning: A Practical Guide to Fallacy-Free Arguments (4th ed. 2001).

forms of human discourse. A headline may cause the reader to infer a conclusion other than the one supported in the article that follows. An advertisement for a product may address the quality but not the exorbitant cost of a product or may focus on the advantages of a service but fail to mention an important downside of that service. A news article may tell us what one party in a court dispute said about the case but not what the other party said about the same aspect of the case. In all these cases, the writer or speaker places an accent on a selected feature of an issue that may cause another to come to an unwarranted conclusion about it.[76]

This this newspaper headline for example:

"President to Declare Martial Law"

This headline might lead one to infer that the President has immediate plans of declaring martial law whereas the article might simply be reporting an interview with the President in which she said she might declare martial law if military officials defy the chain of command, if bombings of government offices take place every day and if rallyists storm *Malacañan*, which when taken together these conditions are far from happening and, thus, declaring martial law is not in the immediate plan of the President which is contrary to what the headline suggests.

The fallacy of accent also includes the distortion produced by pulling a quoted passage out of context, putting it in another context, and then drawing a conclusion that is not drawn in the original context. For example:

> *This politician is really bent on amending the Constitution in order to extend his term of office. On one occasion he said: "There is a need to revise some provisions in the Constitution."*

[76] ibid.

In this example, the words of the politician were possibly taken out of context if the provisions in the Constitution which he wanted to change do not have anything to do with the extension of the term of office of government officials but those provisions which have something to do with electoral and economic policies. This kind of tactic is also employed in movie or book advertisements which pull quoted passages from different sources but we do not really know the entire context from which the passage is lifted.

4. Vicious Abstraction

This fallacy consists in misleading the people by using vague or abstract terms. There is nothing wrong with vague words per se as we often use them as a part of our linguistic style. This fallacy occurs when vague words are misused.

Vague words are misused when these words are very significant in the premises used to establish a conclusion. However, a premise that is not understood cannot be accepted as providing support for a conclusion. Such a premise cannot also be refuted. If we do not exactly the meaning of a term due to its vagueness, we cannot know at what point counter evidence may do some damage to the claim in which it appears. For example, if we wished to argue against an employee's claim that she is overworked, we must know precisely what it means to be overworked before we can know whether the counter evidence we might have weakens or refutes the claim.

Damer pointed out that legal concepts are often expressed in vague language, and those who apply them to particular situations sometimes cannot avoid assigning more specificity of meaning to those words. In doing so, however, one must not assign a meaning in a particular context that is more precise than the original language could possibly support.[77] For example, if

[77] T. Edward Damer, Attacking Faulty Reasoning: A Practical Guide to Fallacy-Free Arguments (4th ed. 2001).

one assumes that the specific meaning of the Supreme Court's notion of *"community standards"* can be reduced to a formula like *"whatever presently offends more than 50 percent of the people in the community"* and then uses that highly questionable assigned meaning of a term to draw a conclusion about the illegality of an act, then one can be said to be misusing a vague expression.

It would be as fallacious, according to Damer, to argue a case by means of an untranslated notion of *"community standards."*[78] For example, it would be a misuse of vague language to argue that *"since this act involving pornographic materials was not in accordance with 'community standards,' then this act should be regarded as against the law."* It would appear, then, that perhaps no effective use of the term *"community standards"* could be applied to any situation without misusing a vague expression.

How can we deal with this kind of fallacy? First, we need to sense if our opponent is attempting to support a particular claim with a statement containing a vague word. If this is the case, we must challenge the acceptability of the premises on the grounds that you cannot assess the evidential value of the support as long as the meaning of the vague term remains unspecified. You may disagree with your opponent about the appropriateness of the precision that he or she may assign to it, but you are at least in a position to evaluate the argument.

5. Composition

This fallacy consists in wrongly inferring that what holds true of the individuals automatically holds true of the group made up of those individuals. Although the assumption that what is true of the parts of a whole is true of the whole may apply in some cases, it does not merit our acceptance as a general claim. Thus, it is wrong to proceed from the attributes of

[78] ibid.

the individual members to attributes of the collection of those members.[79]

For example, it is fallacious to argue that, because a lawyer earns more than a secretary, therefore all lawyers earn more than all secretaries. This fallacy turns on a confusion between the *"distributive"* and the *"collective"* use of general terms. Thus, although college students may enroll in no more than six different classes each semester, it is also true that college students enroll in hundreds of different subjects each semester. This verbal conflict can be resolved. It is true of college students, distributively, that each of them may enroll in not more than six subjects every semester. This is a distributive use of the term *"college students"* in that we are speaking of college students taken singly. But it is true of college students, collectively, that they enroll a hundred of different classes each semester. This is a collective use of the term *"college students"* in that we are speaking of college students all together, a totality. Thus, lawyers earn more than secretaries, distributively, but collectively secretaries earn more than lawyers, because there are a lot more secretaries in the world than lawyers.[80]

Let us look at another example of this fallacy.

> *Roger Federer and Martina Hingis are two of the best tennis players in the world, so if these two Swiss players team up, they'd make one of the best mixed doubles teams.*

Indeed the two players are very difficult to defeat when they play individually, but it does not follow that they will also be very difficult to defeat when they play together as a team. The

[79] Robert M. Johnson, A Logic Book: Fundamentals of Reasoning (5th ed. 2007).

[80] T. Edward Damer, Attacking Faulty Reasoning: A Practical Guide to Fallacy-Free Arguments (4th ed. 2001).

skills and strategies in doubles matches in tennis are different from those in singles categories.

6. Division

This fallacy consists in wrongly assuming that what is true in general is true in particular. This is the reverse of the fallacy of composition. Here, the same confusion is present, but the inference proceeds in the opposite direction. Rather than assuming that a characteristic of the parts is therefore a characteristic of the whole, it makes the unwarranted assumption that a characteristic of the whole is therefore a characteristic of each of the parts.[81] However, as we have seen, a whole often represents something quite different from its parts.

To argue that, since PNP is one of the most corrupt agencies of the government, therefore these three policemen cannot be trusted, is to commit the fallacy of division. Although it is true that PNP as an agency gets a high rating in surveys in terms of incidence of corruption, it does not mean that the individual members of this agency, in particular, are corrupt. What is wrong in this kind of reasoning is that we proceed from the premise that a certain machine is heavy, or complicated, or valuable, to that conclusion that this or any other part of the machine must be heavy, or complicated, or valuable. As in the case of composition, this fallacy can be committed when one argues from the attributes of a collection of elements to the attributes of the elements themselves.

FALLACIES OF IRRELEVANCE

1. *Argumentum ad Hominem* (Personal Attack)

This fallacy ignores the issue by focusing on certain personal characteristics of an opponent. Instead of addressing the issue presented by an opponent, this argument makes the

[81] Robert M. Johnson, A Logic Book: Fundamentals of Reasoning (5th ed. 2007).

opponent the issue. It shifts attention from the argument to the arguer; instead of disproving the substance of what is asserted, the argument attacks the person who made the assertion. This fallacy is of two kinds:

A. Abusive

The first one is called abusive *argumentum ad hominem*. This fallacy attacks the argument based on the arguer's reputation, personality or some personal shortcoming. X's statement must be wrong because X is a socialist. The idea here is to win others' approval not on the basis of the merits of the case, but based on others' disdain of the character or position of those on the opposite side. This is very common in the courtrooms as well as in election campaigns where people employ techniques such as name calling and mudslinging to persuade others to their side.

Take the following example:

> *According to this action star, he supports the death penalty because it is an effective deterrence against murder. This is nonsense. He is just an actor and knows nothing about death penalty. Besides, he likes violence as shown by his many movies which depict a lot of killings.*

This argument commits the ad hominem fallacy since, instead of giving reasons why death penalty is not right or why death penalty is not an effective deterrence against murder, it focuses its attention on the character of the actor which is not the issue. Even if it is true that the actor starred in many violent movies, this does not mean that he cannot give good arguments in favor of death penalty. The attack on his character is simply irrelevant to the point at issue.

Just like the other fallacies of irrelevance, ad hominem fallacies attempt to persuade people by banking on the

psychological impact of their arguments. If people feel that those who espouse a particular idea have questionable character or background, they tend to consider their idea as erroneous or illogical. It is important to separate our evaluation of a person from our evaluation of the merit of that person's ideas or arguments.

However, in the law arguing against the character or background of the person can be valid in situations when the credibility of the witness is at issue. The counsel can raise previous records of the witness stating instances in the past when the witness falsified public documents. Such point is relevant in the judge's decision whether or not to give credibility to the witness.

But as explained by Damer,[82] it is important that a distinction be made between the argument and the testimony of the person. If a known liar or psychotic is testifying or giving an opinion, the fact that he or she is a liar or psychotic is indeed relevant to the credibility of such opinions or testimonials. However, if the liar or psychotic formulates or presents an argument, that argument can and should be evaluated independently of its source. It makes no difference whether it comes from a schizophrenic or a convicted felon; an argument can and must stand on its own. The personality, character or background of the person should not count when we assess the strength of his or her arguments.

B. Circumstantial

This fallacy consists in defending one's position by accusing his or her critic or other people of doing the same thing. This is also called *tu quoque* which means *"you're another"* or you yourself do it. But what is sauce for the goose in the law may not always be sauce for the gander. *"Jenny, don't have any romantic*

[82] T. Edward Damer. Attacking Faulty Reasoning: A Practical Guide to Fallacy-Free Arguments (4th ed. 2001).

relationship while you're still in college." "But Mom, you and dad were already in a relationship when you were college students."

It is not logical to absolve one's self of his or her own guilt by saying that the opponent has done the same thing nor to justify one's behavior on the basis that the other person or group exhibits the same behavior. As they say, *"two wrongs don't make a right."* But there is a tendency for people to feel better when their own action is questioned by pointing out that their critic or some other person acted in a similar way.

Examine the following argument:

> *I don't think the opposition party has a valid reason for criticizing the move of the present administration to privatize government-run industries. When the opposition party was in power in the previous regime, it sold several government companies like NAPOCOR and MWSS to the private sector.*

Here, the speaker committed *tu quoque* because instead of giving good reasons why the present administration is justified in its privatization move, he or she focused on what the opposition did when it was in power before which is not the issue in this case. Although, indeed, there is a point in criticizing the opposition party for being inconsistent with what it says and what it did, the action of the opposition party is in no way relevant to the merit of the criticism on the present administration's action. Counterarguments and criticisms deserve to stand on their own, and if the argument being criticized is to qualify as a good one, it must effectively blunt the force of those criticisms.

Aldisert pointed out, however, that in the law the *tu quoque* fallacy can sometimes be used to as an effective defense. *Tu quoque* is a valid defense in matters of provocation. If lawyer A moves the court for sanctions against lawyer B for delay in

responding to interrogatories, it is a good defense for B to show that A is constantly derelict in responding to B's request for answers to other sets of interrogatories. Moreover, under the common law, if a plaintiff in a negligence action was negligent at all, the defendant if negligent, could in effect cite the same shortcoming of the plaintiff and thus be able to defend himself or herself. The equitable defense of *in pari delicto* which literally means *"in equal fault,"* is rooted in the common-law notion that a plaintiff's recovery may be barred by his own wrongful conduct. Traditionally, the defense was limited to situations where the plaintiff bore *"at least substantially equal responsibility for his injury"* and where the parties' culpability arose out of the same illegal act.[83]

The fallacy occurs when the argument moves from in rem to an argument alleging wrongness or improper conduct on the party who has alleged wrongdoing on our part. We must confront the argument head on rather than attempting to refute it by attacking our opponent's circumstance.

In Re Borromeo[84]

Joaquin Borromeo is not a lawyer but he had read some law books. Because he became aware of a few substantive legal principles and procedural rules, he represented himself in several court proceedings where he took the opportunity to disrespect the Supreme Court alleging that it made erroneous decisions.

Not content in lambasting the High Court, he also made scurrilous statements against lower courts, judges, their employees, as well as his adversaries, for he was charged for such behavior and actions.

Should Borromeo be charged with constructive contempt?

The High Court held that Borromeo was guilty of constructive contempt of court for repeatedly disrespecting the decisions and resolutions issued by the courts, and by issuing a circular containing libelous and offending accusations (like whimsical,capricious, and tyrannical) against the Supreme Court justices and its employees.

It was discovered that his actions were retaliatory attacks against the courts for the series of dismissed complaints and appeals against 3 banks namely Traders Royal Bank, United Coconut Planters Bank, and Security Bank from which he obtained loans with unfulfilled mortgages.

In view of this, he filed cases against lawyers of these banks and clerks of court who signed the minute resolutions of these cases because he contended that minute resolutions must be signed by the justices. There were 50 cases varying from civil, criminal, to administrative cases.

Thus, the Court declared him guilty of contempt of court. His actions as well as allegations contained in his pleadings attacking the personalities involved are clear examples of what we call *argumentum ad hominem* - or what some would simply refer to as personal attacks and have no bearing on the merits of the issues whatsoever.

[83] Ruggero J. Aldisert, Logic for Lawyers: A Guide to Clear Legal Thinking (3rd ed. 1997).

[84] AM No. 93-7-669-0 [1995]

Mane vs. Judge Belen[85]

Atty. Mane, the complainant, charged Judge Belen of demeaning, humiliating, and berating him during a hearing of which he was counsel for one of the parties. Based on the transcript of stenographic notes, respondent judge criticized the complainant on the ground that he did not graduated from the UP College of Law. In addition to this, respondent made other insulting statements against complainant, and showed a conceited display of arrogance as to the complainant's motion.

Are the statements and actions made by the respondent judge during said hearing constitute conduct unbecoming of a judge and a violation of the Code of Judicial Conduct?

The Supreme Court held that respondent was guilty of conduct unbecoming of a judge and reprimanded him. The Code of Judicial Conduct mandates that a judge should be courteous to counsel, especially to those who are young and inexperienced and also to all those others appearing or concerned in the administration of justice in the court. He should be considerate of witnesses and others in attendance upon his court. He should be courteous and civil, for it is unbecoming of a judge to utter intemperate language during the hearing of a case.

In his conversation with counsel in court, a judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition.

[85] A.M. No. RTJ-08-2119

He should not interrupt counsel in their arguments except to clarify his mind as to their positions. Nor should he be tempted to an unnecessary display of learning or premature judgment.

A judge without being arbitrary, unreasonable or unjust may endeavor to hold counsel to a proper appreciation of their duties to the courts, to their clients and to the adverse party and his lawyer, so as to enforce due diligence in the dispatch of business before the court. He may utilize his opportunities to criticize and correct unprofessional conduct of attorneys, brought to his attention, but he may not do so in an insulting manner.

In addition to this, for a judge to determine the fitness or competence of a lawyer primarily on the basis of his *alma matter* is clearly an example of what we refer to as *argumentum ad hominem*. It is because if a law student passes the bar exams administered by the Supreme Court, a lawyer is presumed to be competent to discharge his duties, irrespective of where he obtained his law degree. Thus, the SC declared respondent guilty of conduct unbecoming of a judge and reprimanded for his acts.

Santos vs. Aranzanso[86]

Private respondents filed a civil case against petitioner praying that the decree of adoption entered into in the latter's favor be declared null and void *ab initio* on the ground that the application for adoption was not signed by both adopting

[86] GR No. L-26940 [1982]

parents, by the natural parents, and that the judgment was procured by means of fraud. Petitioner claimed that jurisdiction to try and decide the petition to annul the decree of adoption is vested not in the Court of First Instance of Manila but in the Juvenile & Domestic Relations Court. Also, she contended that if the spouses were alive, they would never question the adoption because what is more important for them is the welfare of their adopted daughters.

May we consider the statement of the petitioner as illustrative of what an argumentum ad hominem is?

While the High Court granted the petition due to jurisdictional grounds it observed that the statement is an *argumentum ad hominem* since it attributes, without basis, an attitude to someone long dead which cannot be verified. It does not deserve consideration.

2. *Argumentum ad Misericordiam* (Appeal to Pity)

The appeal to pity is familiar in many trials, whether they are civil or criminal. The judge is persuaded to accept an argument not for its strength but because of the counsel's emotional appeal to pity. This fallacy convinces the people by evoking feelings of compassion and sympathy when such feelings, however understandable, are not logically relevant to the arguer's conclusion.

Many trial lawyers have the tendency to resort to this fallacy in their closing speech to add persuasive force to their case. A classic example is the closing speech of Clarence Darrow when he defended Thomas Kidd, a union official on trial for criminal conspiracy:

> *I appeal to you not for Thomas Kidd, but I appeal to you for the long line – the long, long line reaching back through the ages and forward to the years to come – the long line of despoiled and downtrodden people of the earth. I appeal to you for those men who rise in the morning before daylight comes and who go home at night when the light has faded from the sky and give their life, their strength, their toil to make others rich and great. I appeal to you in the name of those women who are offering up their lives to this modern god of gold, and I appeal to you in the name of those children, the living and the unborn.*[87]

Another considerably more subtle example of *argumentum ad misericordiam* is reported by Plato in *The Apology*, which purports to be a record of Socrates' defense of himself during his trial:

> *Perhaps there may be someone who is offended at me, when he calls to mind how he himself on a similar, or even a less serious occasion, prayed and entreated the judges with many tears, and how he produced his children in court, which was a moving spectacle, together with a host of relations and friends; whereas I, who am probably in danger of my life, will do none of these things. The contrast may occur to his mind, and he may be set against me, and vote in anger because he is displeased by me on this account. Now if there be such a person among you – mind, I do not say that there is – to him I may fairly reply: My friend, I am a man, and like other men, a creature of flesh and blood, and not of "wood or stone," as Homer says; and I have a family, yes, and sons, O Athenians, three in number, one almost a man, and two others who are still young; and yet I will not*

[87] Irving M. Copi, Introduction to Logic 95 (7th ed. 1986) (quoting I. Stone, Clarence Darrow for the Defense (1941)).

bring any of them hither in order to petition you for acquittal.[88]

3. *Argumentum ad Baculum* (Appeal to Force)

This fallacy consists in persuading others to accept a position by using threat or pressure instead of presenting evidence for one's view. The strength of this fallacy lies on the fear that it creates to people which leads them to agree with the argument.

Cabinet secretary to a congressman: *"The President wants the Congress to pass this bill. I think you have to support it. Of course, you don't want Malacañan to reduce your Priority Development Assistance Fund which will finance your infrastructure projects in your town."*

This argument of the cabinet secretary used threat to persuade the congressman to support the president. This is fallacious since it ignores the real issue at hand which is whether the bill should be supported or not. The cabinet secretary should have explained how the bill can be beneficial for the country and, thus, has to be passed by the Congress, rather than threatening the congressman of fund reduction for his projects.

This fallacy appears in many personal injury cases. *"If the plaintiff prevails, insurance rates will go up all over."* The physician's attorney in the malpractice case argues the lawsuit will cause consultation fees and professional fees of doctors to rise which most people may not afford anymore.

Threats and other forms of intimidation can often bring about the acceptance of a conclusion, but not because good arguments were presented. There is no way that such arguments could qualify as good ones, because their premises have no bearing on the merit of their conclusions.

[88] *ibid.*

However, not all threats involve fallacies. There are times that it is just right to point out the dire consequences that a particular course of action can bring about. In fact, if certain consequences are a natural outcome of an action, calling attention to them might be very much appreciated.

Take the following examples:

Parent to a teen: "You must not stay late at the party. There is a lot of danger in traveling late at night. You might get raped or robbed."

United Nations to North Korea: "If you don't stop manufacturing nuclear missiles, then we will have no choice but to remove your nuclear facilities by force. If we use force to remove your facilities, that may provoke an all-out nuclear war. Neither of us wants an all-out nuclear war. Therefore, you should get rid of your nuclear missiles."

Sy vs. Fineza

Sy, who was then facing trial for estafa before Fineza's sala, accused the judge of bribery, grave misconduct, conduct unbecoming of a judge and conduct prejudicial to the best interest of the service.

Sy alleged that Fineza demanded money from her in exchange for dismissing the case against her. When she failed to pay the complete amount, Fineza began harassing her by raising her bail.

Fineza was also alleged to have called one of Sy's lawyers as a *"liar"* when he saw the lawyer in

the court's hallway and described another lawyer as gay in one of his written comments.

Was the judge administratively liable?

The high court suspended Fineza, his actions according to the Supreme Court, constituted abuse of authority.

Aside from his arrogant and intemperate language, which the high court stressed was not the proper decorum expected of judges, Fineza was suspended for acting with malice and bad faith when he raised the bail of an accused.

4. *Petitio Principii* (Begging the Question)

Some arguments are designed to persuade people by means of the wording of one of its premises. There are the arguments that are said to beg the question.

Even though the conclusion is clearly not justified by the premises, the listener is, in effect, *"begged"* to accept it. Somehow there appears to be evidential support, but what seems to be an evidence is actually a form of the conclusion in disguise. This fallacy has different types:

A. Arguing in Circle

This type of begging-the-question fallacy states or *"assumes as a premise the very thing that should be proven in the conclusion."*[89] This circular argument makes use of its conclusion to serve as its premise. In short, the argument presupposes the truth of its conclusion. Thus, its premise fails to provide

[89] Gregory Bassham, et.al., Critical Thinking: A Student's Introduction 137 (3rd ed. 2008).

evidence since it is not different from the conclusion and as questionable as the conclusion it purports to support.

The following conversation illustrates this:

Gina: This person has committed bribery.
Jeff: What reasons do you have that will convince me that your claim is true?
Gina: Because he tried to influence a public official by giving money.

In this argument, Gina may think that she is giving a reason for why the person has committed bribery, but at best she is only explaining what the act of bribery means.

But Jeff did not ask for a definition of bribery. He apparently knew what the term meant. He asked her for reasons for making the claim. Gina, however, gave no such reasons; she merely repeated her claim.

When the conclusion appears as a premise, it is usually stated in different words or in a different form.

The circularity of the argument is therefore not easy to detect. It is particularly difficult to detect if the questionable premise and the conclusion are widely separated in the argument. Imagine the difficulty of recognizing an instance of circular reasoning that is spread over the whole of an essay, a chapter, or even a book.

We can say that the circular argument simply pretends to establish a claim. But it really falls short of proving its conclusion since the strength of the premise depends on the truth of the conclusion which cannot be assumed.

Once you have analyzed the basic structure of a circular argument, you will see that it says nothing more than *"A is true, because A is true."*

B. Question-Begging Language

This fallacy consists in *"discussing an issue by means of language that assumes a position of the very question at issue, in such a way as to direct the listener to that same conclusion."*[90] Question-begging language prematurely assumes that a matter that is or may be at issue has already been settled. In such cases, the listener is subtly being *"begged"* to infer a particular conclusion, although no good reasons are presented for doing so.

Legal counsels may employ this technique of persuasion by using slanted or loaded language in their discourse.

But such language is logically objectionable when it assumes a position or attitude on an issue yet to be decided – without providing evidence for that position.

Because prejudicial language often influences the outcome of an inquiry by generating a response other than what the facts might support, we need to demand that the only language we use is descriptive or neutral when there is an important issue to be decided.

Prosecutor to witness: *"Would you tell us, Ms. Diaz, about the nature of your relationship with the rapist, Mr. Sanchez?"*

The prosecutor is using language in his question to Ms. Diaz that begs the very question at issue in the courtroom. An alert defense attorney would object vigorously to the implicit argument embedded in this question-begging language.

[90] T. Edward Damer, Attacking Faulty Reasoning: A Practical Guide to Fallacy-Free Arguments 100 (4th ed. 2001).

In a dispute whether abortion should be legalized or not, if the lawyer defending the case of the pro-life group would speak of abortion to be an act of killing an innocent, defenseless human being, he has begged the question on the very point at issue since his definition of abortion implies that it is an act of killing which is a criminal offense, as well as abortion is directed toward a human being when, in fact, it is still debatable when can we say that the entity in the womb of the woman is a human being.

It is for this reason that dictionaries give a neutral definition of abortion such as the removal of a fetus from a woman's uterus or simply the termination of pregnancy, both of which do not make a moral presupposition regarding abortion.

C. Complex Question

This fallacy consists in asking a question in which some presuppositions are buried in that question. Another term used to refer to this fallacy is loaded question, which suggests, like the term *"complex,"* that more than one question is being asked in what appears to be a single question.

In this deceptive way of arguing, one of the questions is explicitly expressed but the others are implicit. When the respondent answers a complex or loaded question, he or she somehow affirms a questionable assumption contained in the question. While nearly all questions can be considered as complex since they always have assumptions, a question does not commit this fallacy if the questioner has good reason to believe that the respondent would be quite willing to grant those assumptions. The complex question begs the question when the unasked question is still an open one or when the question improperly assumes that a series of different questions has the same answer.

Suppose a prosecutor would ask the judge or the jury, Would you allow a criminal to roam around your village? Or a defense counsel would ask the plaintiff, When did your grudge on the accused start?

In each case, the questioner has assumed a positive answer to an implicit question – namely, that the person accused is a criminal and that the plaintiff indeed has grudge on the accused.

Whatever answer the respondent would give to the questions will force him to agree with the assumed claim of the questioner though this is unsupported by evidence.

Were you and your brother went to the mall with the victim and gave him the drug?

The above question illustrates a different version of the fallacy of complex question which treats a series of questions as if it involved only one question. A closer look at the question would reveal that it involves at least four questions. It asks if the respondent went to the mall with the victim, if the respondent gave the drug to the victim, if the respondent's brother went to the mall with the victim, and if the respondent's brother gave the drug to the victim. It is possible that the respondent would answer positively to one or two questions but negatively to the other questions. Yet the question as initially posed is asked in such a way that either a simple *"yes"* or a simple *"no"* is called for. If the question is not divided, the questionable assumption that is granted to the questioner is that he same answer will be given to each of the questions.

D. Leading Question

This fallacy consists in directing the respondent to give a particular answer to a question at issue by the manner in which the question is asked. A leading question usually involves asking

only one question. This question contains an unsupported claim, in that it unjustifiably assumes a position on what is probably a debatable, or at least an open, issue. The questioner is, in effect, asking another to assume the same position on the issue, yet fails to provide any adequate justification for the respondent to do so. The questioner therefore is simply begging the respondent to come to the same conclusion.[91]

Just like the previous begging-the-question fallacies, the arguer makes us accept a conclusion based on a premise that is assumed by the conclusion.

Suppose that a longtime partnership between two companies is seriously threatened with dissolution because one of the companies has committed an act that the public considers very irresponsible. The corporate lawyer of the company who did the act asks, Do you want that the enduring partnership between these two great companies will end over something as trivial as this? The questioner has assumed that the matter in question is a trivial one, and is begging the other company to accept it as trivial, when the triviality or non triviality of the act is the very question at issue.

Consider the lawyer who leads her client in the following manner:

> *You were outside the country when the crime was committed, weren't you?*

In this case, the defense lawyer is *"leading"* the witness, by assuming a position on the very question at issue – namely, whether the defendant was in the country or outside the country when the crime happened. Even though the lawyer maybe convinced that the defendant was not in the country – that is, her client is innocent – a proper procedure for getting at the truth of

[91] T. Edward Damer, Attacking Faulty Reasoning: A Practical Guide to Fallacy-Free Arguments 100 (4th ed. 2001).

the matter would be to encourage the witness to explain the circumstances with regard to his whereabouts when the crime was committed. This explanation would presumably be evidence in support of the conclusion being argued – that is, the person was not in the country. In this way, the claim of the defense would be a supported one.

FALLACIES OF INSUFFICIENT EVIDENCE

1. *Argumentum ad Antiquum*
(Appeal to the Ages)

This fallacy attempts to persuade others of a certain belief by appealing to their feelings of reverence or respect for some tradition, instead of giving rational basis for such belief.[92] This is illogical since pointing out that a particular practice has the status of a tradition sheds no light on whether it should be followed or not. This is especially true in cases when holding to a tradition threatens to prevent a solution that enlightened reflection supports. Any positive aspects that a tradition may embody must be weighed against the damage that it may inflict.

Take the following examples:

I don't understand why the Church allowed cremation of the dead. In our time, we have not been taught to burn the bodies of our dead loved ones. It was not done when my lolo and lola died, as well when tatay and nanay died. We should not also do that to any of our relatives.

There is nothing wrong with kaingin. Our forefathers have practiced it since time immemorial. Do you mean to tell me that they were wrong all the while?

[92] T. Edward Damer, Attacking Faulty Reasoning: A Practical Guide to Fallacy-Free Arguments 100 (4th ed. 2001).

In the first example, the speaker argues that cremation is wrong on the grounds that such practice is not in accordance with the traditional beliefs. In the second example, the practice of *kaingin* is defended on the basis of what was traditionally done. The reasoning is fallacious because what was true before may not be true at present. Given the social, cultural and even physical changes in our society and the world at large, what may be acceptable in the past may not be acceptable today, just as what was not acceptable then may be acceptable now.

Examine the next example:

When I was child studying in public school, we practiced saying a prayer before classes begin. It was a very meaningful thing for me. We must continue with this practice to give our children this enriching experience.

We cannot find any argument here that addresses an important principle at stake which was brought up by a court's argument which stated that required prayer in public schools constitutes an *"establishment of religion"*; it only appealed to the comfortableness of a tradition.

2. *Argumentum ad Verecundiam*
(Appeal to Inappropriate Authority)

This fallacy consists in persuading others by appealing to people who command respect or authority but do not have legitimate authority in the matter at hand.[93] An authority in a particular field is one who has sufficient knowledge of the matters belonging to that field, is qualified by training or ability to draw appropriate inferences from that knowledge, and is free from any prejudices or conflicts of interest that would prevent him or her from formulating sound judgments.

[93] Irving M. Copi & Carl Cohen, Introduction to Logic (9th ed. 1994).

There is nothing wrong with appealing to the judgment of qualified authorities in a field of knowledge as a means of supporting some particular claim related to that field. When a psychiatrist or a clinical psychologist is called upon to shed light on the state of sanity of the accused, there is nothing inappropriate about relying on their authority. But when the *"authority"* on whose judgment the argument rests fails to meet the stated criteria, the argument should be regarded as fallacious.

The fallacious appeal to authority occurs most frequently in the form of a transfer of an authority's competence from one field to another like the examples above. An entertainer, for example, is appealed to as an authority on dairy products; or a sports star is treated as an expert on appliances. The convincing power of this kind of appeal lies on the fact that the people cited command respect or strong following, so even if the issue at hand is not within the parameters of their expertise, people tend to believe them.

For example:

> *The doctrine of biological evolution cannot be true, for it contradicts the biblical account of creation; the church fathers never accepted it and the fundamentalists explicitly condemn it.*

The main issue in this argument is scientific in nature – is the theory biological evolution true or false? If that is the case, the arguments of both sides should have scientific bases. If one is against the theory, one may use the *"missing link"* argument to show why the phenomenon of evolution cannot be scientifically acceptable.

What is wrong in the above argument is its reliance on certain influential authorities who, although respected and looked upon by many people, are not the appropriate authority

on this matter as the issue is not about morals and religion but about science.

Another type of inappropriate authority is a biased one. Some people may be qualified in a particular field by training, ability and position, yet they are so vitally *"interested"* in or affected by the issue at stake that there would be good reason to treat their testimony with suspicion. A good example of this is a portion of a news program of the TV network NBN or the National Broadcasting Network. This portion named *"Legal Opinion"* features a well-known lawyer giving his views and insights on certain legal issues confronting the country. At the outset, there seems to be nothing logically wrong with this set-up. The lawyer definitely is an expert authority on the matter being talked about – the legality of particular actions, policies or practices.

However, since many of the issues being presented in this portion have to do with government decisions and policies, the lawyer has the tendency to make a biased or partial opinion on these matters since he is working under a government-run TV network. Given his circumstance, he cannot render an objective judgment or express an unbiased view lest he put himself in danger of losing his job in the TV program.

Thus, in determining whether the fallacy of inappropriate authority is present, one has to pay attention on the background or circumstances of the supposed authority being relied on with regard to a particular issue.

Check the following argument:

> *Jose Javier Reyes, director of the movie 'Live Show,' said in a press conference that MTRCB has unjustly banned the movie from being shown. According to Reyes, the movie is not pornographic since it has a very relevant plot and a well-written story line. Since*

Reyes is a veteran in Philippine cinema, we can say that indeed MTRCB acted wrongly in banning the said movie.

What is the main issue here? Does the figure being cited have a legitimate authority on the matter at hand? Why?

3. Accident

This fallacy consist in applying a general rule to a particular case when circumstances suggest that an exception to the rule should apply.

General rules usually have their exceptions. This is especially true in the law. This fallacy occurs when such general rules are applied to special circumstances. The application of the general rule is inappropriate because of the situation's *"accidents,"* or exceptional facts. Aldisert noted that in the law of evidence there are many exceptions to the hearsay rule: a dying declaration, a statement against interest or a statement of personal or family history. To apply the general hearsay rule to these exceptions is to commit the fallacy of accident or *dicto simpliciter*.[94]

Another example is the following:

Freedom of speech is a constitutionally guaranteed right. Therefore, Leo Beltran should not be arrested for his speech that incited the riot last week.

In this argument, the general rule is that freedom of speech is normally guaranteed, and the specific case is the speech made by Leo Beltran. Because the speech incited a riot, the rule does not apply.

[94] Ruggero J. Aldisert, Logic for Lawyers: A Guide to Clear Legal Thinking (3rd ed. 1997).

The following case also illustrates this failure to recognize exceptions in general rules.

TBAP vs. COMELEC[95]

All broadcasting, whether by radio or by television stations, is licensed by the government. Airwave frequencies have to be allocated as there are more individuals who want to broadcast than there are frequencies to assign. A franchise is thus a privilege subject, among other things, to amendment by Congress in accordance with the constitutional provision that *"any such franchise or right granted . . . shall be subject to amendment, alteration or repeal by the Congress when the common good so requires."*

TBAP is an organization of lawyers of radio and television broadcasting companies while GMA Network operates radio and television broadcasting stations throughout the Philippines under a franchise granted by Congress. The petitioners in this case challenged the validity of BP 881 "which requires radio and television broadcast companies to provide free air time to COMELEC for the use of candidates for campaign and other political purposes" arguing that it takes the property without due process of law and without just compensation as well as denying radio and television broadcast companies the equal protection of the laws. Moreover, they argue that this is in excess of the power given to the COMELEC to supervise or regulate the operation of media communication or information during the period of election.

Is the contention valid?

[95] 289 SCRA 337 [1989]

In ruling that the contentions are without merit, the High Court observed that all broadcasting entities, whether by radio or television, are licensed by the government and the franchise granted to them are mere privileges.

As regards the contention that the law singles out radio and television stations to provide free air time rests on the fallacy that broadcast media are entitled to the same treatment under the free speech guarantee of the Constitution as free media. Their plea to invalidate said law would pave the way for a return to the old regime where moneyed candidates could monopolize media advertising to the disadvantage of candidates with less resource.

One way of pointing out the fallacious character of a particular misapplication of a principle or rule is to examine very carefully the purpose of the principle or rule and then to discuss how exceptions would be in order when that purpose is not being violated or when it is superseded by more important, conflicting principle. Then try to show in the particular case that either the exception is not inconsistent with the purpose of the principle or that there is more important principle at stake.

However, exceptions to the rules are sometimes explicitly stipulated in the law. Thus, the lawyer must become familiar with exceptions (or *"accidents"*) in the application of the law. He or she must meticulously check the quotations in his or her opponent's brief, because it may set forth a general rule, but omit the central conditional clause: *"Except for circumstances A, B and C, the general rule is ..."*

To avoid committing the fallacy of accident, it is very important to understand the nuances of the law to determine

what are the cases where a certain provision applies and the cases it is not applicable of.

People vs. Gacott[96]

For failure to check the citations of the prosecution, the order of respondent Judge Gacott dismissing a criminal case was annulled by the Supreme Court. The respondent judge was also sanctioned with a reprimand and fine for gross ignorance of the law.

Does the Second Division of the SC have the competence to administratively discipline respondent judge?

To support the Court's ruling, Justice Regalado relied on his recollection of a conversation with former Chief Justice Roberto Concepcion who was the Chairman of the Committee on the Judiciary of the 1986 Constitutional Commission of which Regalado was also a member. It held that the very text of the present Sec. 11, Art. VIII of the Constitution clearly shows that there are actually two situations envisaged therein. The first clause which states that *"the Supreme Court en banc shall have the power to discipline judges of lower courts,"* is a declaration of the grant of that disciplinary power to, and the determination of the procedure in the exercise thereof by, the Court *en banc*. It was not therein intended that all administrative disciplinary cases should be heard and decided by the whole Court since it would result in an absurdity.

The second clause, which refers to the second situation contemplated therein and is intentionally

[96] 242 SCRA 514

separated from the first by a comma, declares on the other hand that the Court *en banc* can *"order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted therein."* In this instance, the administrative case must be deliberated upon and decided by the full Court itself.

Pursuant to the first clause which confers administrative disciplinary power to the Court *en banc*, a decision *en banc* is needed only where the penalty to be imposed is the dismissal of a judge, officer or employee of the Judiciary, disbarment of a lawyer, or either the suspension of any of them for a period of more than 1 year or a fine exceeding P10, 000.00 or both.

Indeed, to require the entire Court to deliberate upon and participate in all administrative matters or cases regardless of the sanctions, imposable or imposed, would result in a congested docket and undue delay in the adjudication of cases in the Court, especially in administrative matters, since even cases involving the penalty of reprimand would require action by the Court *en banc*.

4. Hasty Generalization (Converse Accident)

This fallacy consists in drawing a general or universal conclusion from insufficient particular case. As such it is also known as converse accident because its reasoning is the opposite of the fallacy of accident – we take a particular case (which may be an exception) and make a general rule or truth out of that.

Like other fallacies of insufficient evidence, the premises used to support its conclusion may be acceptable and relevant but they are not enough or adequate to establish it. It is called

hasty generalization since it moves carelessly or too quickly from the insufficient evidence to the conclusion. It is not uncommon for an arguer to draw a conclusion based on cases that are limited or unrepresentative of the class or group that it makes a generalization about.

> *A survey of the members of the Moro Islamic Liberation Front (MILF) and their families showed that more than 85% of them favor the proposal to have a separate independent government in Mindanao, 10% disapprove of it while 5% are undecided. These survey results clearly show that majority of Filipino Muslims supports the said proposal.*

Here, our basis for claiming that majority of Filipino Muslims supports the proposal is not adequate to support this claim since it only pertains to the MILF members and their families which do not represent the general Filipino Muslim population. This group, in fact, is a minority of the population being talked about. Thus, we cannot establish any conclusion regarding the whole because of the insufficiency of the particular cases we have.

However, as we have learned in the chapter on Inductive Reasoning, it is not necessarily wrong to make generalizations since such way of arriving at a conclusion can be a logical and effective means of drawing inferences as long as the sample cases or supporting facts we have are representative of the whole. We simply have to observe the criteria when our premises can be said to be sufficient to support the generalization we make.

Saunders also pointed out that committing the fallacies of accident or converse accident must be understood in the proper perspective:

It is important to remember that the application of a general rule to a specific situation is a fallacy only when the rule is inappropriate because of the accidents of the specific situation. Similarly the formulation of a general rule is a hasty generalization only when the situations leading to the formulation of a general rule are special, not general. When the court applies a general rule to a specific situation, however, it does not always commit a fallacy. To avoid the fallacy of accident, a court must consider whether the facts of the case sub judice can be distinguished from the situations that gave rise to the general rule. Courts regularly extends rules to encompass a wider variety of situations, thereby creating a more general rule. Such generalization is hasty only if the original rule was based on specifics not present in the case to which the rule is being extended.

Wariness of the fallacies of accident and hasty generalization should not handcuff the courts or prevent the evolution of the law. Rather, an understanding of the fallacies aids in the identification of situations in which a court could stumble into a fallacy and counsels' caution and insistence on a full exploration of relevant similarities and differences when a general rule is applied.[97]

5. *Argumentum ad Ignorantiam* (Arguing from Ignorance)

This fallacy consists in assuming that a particular claim is true because its opposite cannot be proven.

Arguing from ignorance means using the absence of evidence against a claim as justification that it is true or using the

[97] Kevin M. Saunders, Informal Fallacies in Legal Argumentation, 44 S. Car. L. Rev. 343, 369 (1993) (in Ruggero J. Aldisert, Logic for Lawyers: A Guide to Clear Legal Thinking (3rd ed.1997)).

absence of evidence for a claim as evidence that it is false. In short, it is treating the absence of evidence as if it were the presence of evidence.

For example, if one were to argue that the lack of evidence against the claim that Judge Garcia is well respected is positive evidence that he is, the arguer is committing this fallacy. In such an argument, the alleged *"evidence"* for the claim that Judge Garcia is well respected is actually no evidence at all.

Such conclusion would be supported by the arguer's ignorance or lack of evidence, rather than by his or her knowledge or positive evidence. New knowledge must emanate from some measure of knowledge rather than from ignorance. It is basic hornbook law of logic that one must have knowledge or positive evidence to draw any conclusion.

Take this example:

Since science cannot prove that breathing the same air as an AIDS victim will not result in the spread of the virus, children with AIDS should not be allowed to attend public schools.

The premises of an argument are supposed to provide positive evidence for the conclusion. The premise of this argument, however, tells us nothing about any kind of proof or basis for its claim. This argument actually has what is called the burden of proof – that is, it has the task of giving evidence why we should not allow children with AIDS to attend public schools – that is, to give evidence that breathing the same air will result in the spread of the virus. The error it does is passing the burden of proof to its opponent. But it is not the task of the other side to provide it because it is not the one making any proposition. The one proposing that a particular action should be followed has the burden of providing positive basis why it should be the case.

However, this way of arguing seems to be logical when we apply it in the case of the defendant claiming one's innocence due to lack of evidence that can prove it. Indeed, in our judicial procedure, a defendant is assumed to be innocent unless proven guilty. But if we analyze well the line of reasoning here, we will see that this is not really a case of *argumentum ad ignorantiam*. As pointed out by Damer, the principle of innocent until proven guilty is not actually a claim. It is a highly technical judicial construct that actually means not proven guilty. For legal purposes, it has been determined that a person should be regarded *"as if"* he or she were innocent unless evidence beyond reasonable doubt exists to the contrary. The situation is also not a case of shifting the burden of proof, for the burden of proof rests appropriately on the shoulders of the one who makes the positive claim – the prosecutor who says that the defendant is guilty.[98]

6. False Dilemma

This fallacy arises when the premise of an argument presents us with a choice between two alternatives and assumes that they are exhaustive when in fact they are not. Alternatives are exhaustive when they cover all the possibilities (meaning, these are the only choices we have). Being pregnant and not being pregnant are exhaustive alternatives, for there is no other possibility. By making the non-exhaustive alternatives appear exhaustive, the arguer is able to force the person to choose the alternatives presented in the argument.

Analyze the following argument:

> *Many people are protesting the implementation of warrant-less arrest. I think it is just right for that can facilitate the military's crackdown on terrorist groups. You surely don't want terrorism to prevail in our country.*

[98] T. Edward Damer, Attacking Faulty Reasoning: A Practical Guide to Fallacy-Free Arguments 136 (4th ed. 2001).

The arguer presupposes that there are only two alternatives in this case: implement warrant-less arrest and get rid terrorism or not implement it and terrorism prevails. What is wrong here is that it overlooks the fact that there can be other ways of dealing with terrorism.

The fallacy of false dilemma often derives from the failure to distinguish contradictories from contraries. Contradictories exclude any gradations between extremes. There is no middle ground between a term and its negative – for example, between black and non-black. Contraries, on the other hand, allow a number of gradations between their extremes. There is plenty of middle ground between a term and its opposite – for example, between hot and cold, or black and white.[99]

A common way to commit false dilemma is to treat contraries as if they were contradictories. In the case of contradictories (a term and its negative), one of the two extremes must be true and the other is false. The color is either black or non-black; the act is either fraudulent or not fraudulent. In the case of contraries (a term and its opposite), it is possible for both extremes to be false. The color could be neither black nor white; it could be yellow. The evidence could be neither useless nor necessary; it could be significant. To assume the a color must be either black or white, or that an evidence must be either necessary or useless, would be to treat contraries as if they were contradictories and thereby commit false dilemma – that is, to assume too few alternatives and to assume that one of the alternatives must be true.

Suppose that Professor Martinez claims that abortion is either morally right or morally wrong, and goes on to say that very few people, if any, would argue that abortion is something

[99] ibid.

that we should do, so abortion must be wrong. Since Professor Martinez is defining *"morally right"* as morally obligatory and *"morally wrong"* as morally prohibited, he has committed the fallacy of false dilemma, because there is at least one other morally relevant alternative – to treat abortion as morally permissible. The terms right and wrong then should be treated as contraries or opposites. The professor's treatment of them as contradictories resulted in his unwarranted either-or.

Chapter 6
Rules of Legal Reasoning

"Faithfulness to the truth of history involves far more than a research, however patient and scrupulous, into special facts. Such facts may be detailed with the most minute exactness, and yet the narrative, taken as a whole, may be unmeaning or untrue. The narrator must seek to imbue himself with the life and spirit of the time. He must study events in their bearings near and remote; in the character, habits, and manners of those who took part in them. He must himself be, as it were, a sharer or a spectator of the action he describes."

- Francis Parkman
Pioneers of France
in the New World (1865)

Rules of Collision

"The essence of a free government consists in an effectual control of rivalries."[160]

In some instances, one would be faced with a single or two laws dealing with the same subject matter but with conflicting provisions as far as the treatment and application of a right.

[160] John Adams

These laws are then said to be incompatible with each other and it is therefore the task of the judiciary to first attempt to reconcile or harmonize them with each other and if that doesn't work, uphold one over the other. *But even granted that conflict exist and provides more than one interpretation, which as provided in the court must provide a beneficial and effective construction as will render the provision operative, effective and harmonious."*[101]

In such a case, it is very important to first remember that the first order of business is to find ways in which one can reconcile these conflicting provisions in order to arrive at a proper application of the law with the end in view of ensuring that justice and quity is upheld. *Interpretare et concordare legis legibus est optimus interpretandi.*[102]

Provisions vis-a-vis Provisions

It may happen that in a statute, conflicting clauses and provisions may arise. If such situation may occur, the statute must be construed as a whole and attempts must first be made to reconcile these conflicting provisions in order to attain the intent of the law.

To reiterate, in construing a statute, courts should adopt a construction that will give effect to every part of a statute, if at all possible, expressed in the maxim, *ut magis valeat quam pereat* or that construction is to be sought which gives effect to the whole of the statute - its every word.[103]

[101] Javellana vs Tayo, 6 SCRA 1042

[102] To interpret and to harmonize laws with laws is the best method of interpretation.

[103] Tadiola-Toshiba Philippines vs. IAC, 199 SCRA 373 [1991]

The clauses and phrases of a statute must not be taken separately but in relation to the statute's totality. Unless clearly repugnant, provisions of statutes must be reconciled.[104]

As for codes, the High Court had the occasion to declare that - a code should be construed as a whole and as a comprehensive statute, and not as a series of disconnected articles or statutes.[105]

Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.[106]

Where the instrument is susceptible of two interpretations, one which will make it invalid and illegal and another which will make it valid and legal, the latter interpretation should be adopted.[107]

In this illustrative case, the High Court held that - *Legislative intent must be ascertained from a consideration of the statute as a whole. The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. The meaning of the law, it must be borne in mind, is not to be extracted from any single part, portion or section*

[104] Sajonas vs. CA, 258 SCRA 79 [1996]

[105] Baking vs. Director of Prisons, 28 SCRA 851 [1969]

[106] Manila Railroad vs. Collector of Customs, 52 Phil 950 [1929]

[107] Lao Lim vs. CA, 191 SCRA 150 [1990]; Chavez vs. PEA, 415 SCRA 403 [2003]; Luna vs. Linatoc, 74 Phil. 15

or from isolated words and phrases, clauses or sentences but from a general consideration or view of the act as a whole.

Aisporna vs. Court of Appeals[108]

A petition for certiorari was filed by petitioner for the reversal of the Decision dated August 14, 1974. In said Decision, the Court of Appeals affirmed the judgment of the City Court of Cabanatuan which found petitioner guilty for having violated Section 189 of the Insurance Act.

Petitioner was said to have willfully, unlawfully, and feloniously acted as an agent in the procurement of an insurance by soliciting therefor the application of Isidro for and in behalf of *Perla Compania de Seguros*, in the amount of Php 5, 000.00, without having been licensed to do so.

Rodolfo Aisporna, petitioner's husband, was duly licensed by the Insurance Commission as agent to *Perla Compania de Seguros*.

Petitioner helped her husband in his work by being the clerk. According to her, the insurance was renewed because she received a call from Isidro requesting it.

During that time, Rodolfo was not around so she just left a note on the latter's desk to remind him of the said renewal.

Was there a violation of Section 189 of the Insurance Act, and can a person can be convicted of having violated the first paragraph of Section 189 of the Insurance Act without reference to the second paragraph of the same section?

[108] 113 SCRA 446, G.R. No. L-39419 [1982]

The High Court held that petitioner did not violate Section 189 of the Insurance Act.

Note that two of the essential principles in statutory construction are: 1) that a statute is to be read as a whole; 2) All efforts must be made in order to harmonize seemingly conflicting provisions.

"Applying the definition of an insurance agent in the second paragraph to the agent mentioned in the first and second paragraphs would give harmony to the aforesaid three paragraphs of Section 189. Legislative intent must be ascertained from a consideration of the statute as a whole. The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce harmonious whole.

"A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. The meaning of the law, it must be borne in mind, is not to be extracted from any single part, portion or section or from isolated words and phrases, clauses or sentences but from a general consideration or view of the act as a whole. Every part of the statute must be interpreted with reference to the context.

"This means that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment, not separately and independently. More importantly, the doctrine of associated words (Noscitur a Sociis) provides that where a particular word or phrase in a statement is

ambiguous in itself or is equally susceptible of various meanings, its true meaning may be made clear and specific by considering the company in which it is found or with which it is associated."

In another case, the Supreme Court had the occasion to declare that a harmonious construction of these two apparently conflicting provisions in R.A. No. 6770 leads to the inevitable conclusion that Congress had intended the Ombudsman and the President to exercise concurrent disciplinary jurisdiction over petitioners as Deputy Ombudsman and Special Prosecutor, respectively. Indubitably, the manifest intent of Congress in enacting both provisions

Gonzalez vs. Office of the President[109]

The case involved two petitions consolidated by the Supreme Court into one not because they stem from the same factual milieu but because they raise a common issue relating to the President's exercise of the power to remove from office a member of the Office of the Ombudsman, which is guaranteed by the Constitution as independent.

Section 8(2) of Republic Act No. 6770 gave the Office of the President the power to investigate and remove from office the Deputies Ombudsman and the Special Prosecutor who work directly under the supervision and control of the Ombudsman.

Using this power, the OP investigated and found petitioner Emilio Gonzales III, Deputy I Ombudsman for the Military and Other Law Enforcement Offices, guilty of gross neglect in handling the pending case against a police officer who subsequently hijacked a tourist bus.

[109] 679 SCRA 614 [2012]

Using the same power, the Office of the President initiated a similar investigation of a case against petitioner Wendell Barreras-Sulit, the Special Prosecutor, for alleged corruption, she having allowed her office to enter into a plea-bargaining agreement with Major General Carlos F. Garcia who had been charged with plunder.

Gonzales and Sulit filed separate petitions - Gonzales assails the correctness of the OP decision that dismissed him from the service. Both challenges the constitutionality of Section 8(2) of R.A. 6770 which gave the President the power to investigate and remove them.

Does the Office of the President has jurisdiction to exercise administrative disciplinary power over the Deputy Ombudsman and a Special Prosecutor who belong to the constitutionally-created Office of the Ombudsman?

The High Court ruled in the affirmative.

The Ombudsman's administrative disciplinary power over a Deputy Ombudsman and Special Prosecutor is not exclusive.

While the Ombudsman's authority to discipline administratively is extensive and covers all government officials, whether appointive or elective, with the exception only of those officials removable by impeachment such authority is by no means exclusive.

Petitioners cannot insist that they should be solely and directly subject to the disciplinary

authority of the Ombudsman. For, while Section 21 of R.A. 6770 declares the Ombudsman's disciplinary authority over all government officials, Section 8(2), on the other hand, grants the President express power of removal over a Deputy Ombudsman and a Special Prosecutor.

A harmonious construction of these two apparently conflicting provisions in R.A. No. 6770 leads to the inevitable conclusion that Congress had intended the Ombudsman and the President to exercise concurrent disciplinary jurisdiction over petitioners as Deputy Ombudsman and Special Prosecutor, respectively.

Indubitably, the manifest intent of Congress in enacting both provisions - Section 8(2) and Section 21 - in the same Organic Act was to provide for an external authority, through the person of the President, that would exercise the power of administrative discipline over the Deputy Ombudsman and Special Prosecutor without in the least diminishing the constitutional and plenary authority of the Ombudsman over all government officials and employees.

Such legislative design is simply a measure of *"check and balance"* intended to address the lawmakers' real and valid concern that the Ombudsman and his Deputy may try to protect one another from administrative liabilities.

It is also important to note that in instances where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect

only such cases within its general language as are not within the provisions of the particular enactment, as seen in this next case.

Manila Railroad
vs. Collector of Customs[110]

Dust shields are manufactured of wool and hair mixed. The component material of chief value is the wool. They are used by the Manila Railroad Company on all of its railway wagons.

The purpose of the dust shield is to cover the axle box in order to protect from dust the oil deposited therein which serves to lubricate the bearings of the wheel. *"Dust guard,"* which is the same as *"dust shield,"* is defined in the work Car Builders' Cyclopedia of American Practice, 10th ed., 1922, p. 41, as follows: *"A thin piece of wood, leather, felt, asbestos or other material inserted in the dust guard chamber at the back of a journal box, and fitting closely around the dust guard bearing of the axle. , Its purpose is to exclude dust and to prevent the escape of oil and waste. Sometimes called axle packing or box packing."*

Based on these facts, it was the decision of the Insular Collector of Customs that dust shields should be classified as *"manufactures of wool, not otherwise provided for."*

That decision is entitled to our respect. The burden is upon the importer to overcome the presumption of a legal collection of duties by proof that their exaction was unlawful. The question to be

[110] 52 Phil/ 950 [1929]

decided is not whether the Collector was wrong but whether the importer was right.[111]

On the other hand, Judge del Rosario, took an opposite view, overruled the decision of the Collector of Customs, and held that dust shields should be classified as *"detached parts"* of vehicles for use on railways. This impartial finding is also entitled to our respect. It is the general rule in the interpretation of statutes levying taxes or duties not to extend their provisions beyond the clear import of the language used. In every case of doubt, such statutes are construed most strongly against the Government and in favor of the citizen, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import.[112]

The question involved in this appeal is the following: How should dust shields be classified for the purposes of the tariff, under paragraph 141 or under paragraph 197 of section 8, of the Tariff Law of 1909?

There are present two fundamental considerations which guide the way out of the legal dilemma. The first is by taking into account the purpose of the article and then acknowledging that it is in reality used as a detached part of railway vehicles.

The second point is that paragraph 141 is a general provision while paragraph 197 is a special provision. Where there is in the same statute a

[111] Erhardt vs. Schroeder [1894], 155 U. S., 124; Behn, Meyer of Co. vs. Collector of Customs [1913], 26 Phil., 647

[112] U. S. vs. Wigglesworth [1842], 2. Story, 369; Froehlich of Kuttner vs. Collector of Customs [1911], 18 Phil., 461.

particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.[113]

The High Court then concluded that the trial judge was correct in classifying dust shields under paragraph 197 of section 8, of the Tariff Law of 1909, and in refusing to classify them under paragraph 141 of the same section of the law.

Laws vis-a-vis the Constitution

Statutes should be given, whenever possible, a meaning that will not bring them in conflict with the Constitution.[114] It bears repeating that whenever a law is in conflict with the Constitution, the latter prevails.

As the fundamental law of the land, all laws must take its cue from the Constitution, Moreover, the power to enact laws is a grant by the Constitution to the legislative branch of government pursuant to the sovereign will of the people which ratified it.

This next case, the heart of this controversy brought to the High Court by way of a petition for prohibition under Rule 65 of the Rules of Court is the right of the people to directly propose amendments to the Constitution through the system of initiative under Section 2 of Article XVII of the 1987 Constitution. Undoubtedly, this demands special attention, as this system of initiative was unknown to the people of this country, except

[113] 25 R. C. L., p. 1010, citing numerous cases

[114] Noblejas vs. Teehankee, 23 SCRA 680 [1994]

perhaps to a few scholars, before the drafting of the 1987 Constitution.

The High Court in this case declared that - *The 1986 Constitutional Commission itself, through the original proponent and the main sponsor of the proposed Article on Amendments or Revision of the Constitution, characterized this system as "innovative." Indeed it is, for both under the 1935 and 1973 Constitutions, only two methods of proposing amendments to, or revision of, the Constitution were recognized, viz., (1) by Congress upon a vote of three-fourths of all its members and (2) by a constitutional convention. For this and the other reasons hereafter discussed, we resolved to give due course to this petition.*

Defensor-Santiago vs. COMELEC[115]

The issue began when Atty. Delfin, President of PIRMA filed with the COMELEC a petition to amend the fundamental charter anchoring the same on Article XVII, Sec. 2 of the 1987 Constitution, which provides for the right of the people to exercise the power to directly propose amendments to the Constitution.

His petition sought to lift the term limits of elective officials. Said petition was thereafter given due course by the COMELEC and set for public hearing. It was during the public hearing that several intervenors appeared seeking to stop the proceedings and dismiss the instant petition arguing, inter alia, that the constitutional provision on people's initiative to amend the constitution can only be implemented by law to be passed by Congress to which there is none and the initiative is limited to amendments to the Constitution, not to

[115] G.R. No. 127325 [1997]

revision thereof considering that term limits constitutes a revision and therefore beyond the scope of what is granted under the initiative.

Did the law provide for direct initiative to propose amendments to the Constitution?

While the High Court agreed that the law intended to cover initiative to propose amendments to the Constitution, upon closer scrutiny showed that the statutory enactment was not a full implementation of that right.

Moreover, the Supreme Court noted that the inclusion of the word *"Constitution"* therein was a delayed afterthought. The word is neither germane nor relevant to said section, which exclusively relates to initiative and referendum on national laws and local laws, ordinances, and resolutions.

That section is silent as to *amendments* on the Constitution. As pointed out earlier, initiative on the Constitution is confined only to proposals to amend. The people are not accorded the power to *"directly propose, enact, approve, or reject,* in whole or in part, the Constitution" through the system of *initiative*. They can only do so with respect to *"laws, ordinances, or resolutions."*

The foregoing conclusion is further buttressed by the fact that this section was lifted from Section 1 of Senate Bill No. 17, which solely referred to a statement of policy on local initiative and referendum and appropriately used the phrases *"propose and enact," "approve or reject"* and *"in whole or in part."*

The use of the clause *"proposed laws sought to be enacted, approved or rejected, amended or repealed"* only strengthens the conclusion that Section 2, quoted earlier, excludes initiative on amendments to the Constitution.

While the Act provides subtitles for National Initiative and Referendum (Subtitle II) and for Local Initiative and Referendum (Subtitle III), no subtitle is provided for *initiative* on the Constitution. This conspicuous silence as to the latter simply means that the main thrust of the Act is initiative and referendum on national and local laws.

If Congress intended R.A. No. 6735 to fully provide for the implementation of the *initiative* on amendments to the Constitution, it could have provided for a subtitle therefor, considering that in the order of things, the primacy of interest, or hierarchy of values, the right of the people to directly propose amendments to the Constitution is far more important than the *initiative* on national and local laws.

The High Court also declared that it cannot accept the argument that the *initiative* on amendments to the Constitution is subsumed under the subtitle on National Initiative and Referendum because it is national in scope.

Our reading of Subtitle II (National Initiative and Referendum) and Subtitle III (Local Initiative and Referendum) leaves no room for doubt that the classification is not based on the scope of the initiative involved, but on its *nature* and *character*.

It is *"national initiative,"* if what is proposed to be adopted or enacted is a *national law*, or a law which only Congress can pass.

It is *"local initiative"* if what is proposed to be adopted or enacted is a *law, ordinance, or resolution* which only the legislative bodies of the governments of the autonomous regions, provinces, cities, municipalities, and barangays can pass.

Finally - bluntly stated, the right of the people to directly propose amendments to the Constitution through the system of initiative would remain entombed in the cold niche of the Constitution until Congress provides for its implementation. Stated otherwise, while the Constitution has recognized or granted that right, the people cannot exercise it if Congress, for whatever reason, does not provide for its implementation.

Laws vis-a-vis Laws

In our system of government, Congress oftentimes enacts laws whose provisions, at first glance, are seemingly in in opposition to previously enacted laws. Where two statutes are of contrary tenor or of different dates but are of equal theoretical application to a particular case, the case designed therefor specially should prevail over the other.[116]

Every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[117] Thus, courts are often asked to resolve conflicting provisions between similar statutes that relate to the same subject matter, or to the same class of persons or things, or have the same purpose

[116] Teves vs. Sandiganbayan, 447 SCRA 309 [2004]

[117] Republic vs. Asuncion, 231 SCRA 211 [1994]

or object. Similarly, every new statute should be construed in connection with those already existing in relation to the same subject matter and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation[118] As such, laws considered as in *pari materia* are, as a rule, read side by side or construed together. Simply put, each legislative act is to be interpreted with reference to the other law relating to the same matter or subject.

This was the case when the High Court was faced with two seemingly conflicting treatment of the computation of time by the Civil Code and the Revised Administrative Code in *CIR vs. Primetown.* In this case the High Court observed that - Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter—the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant. There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.*[119]

Special mention should be made as regards common law principles - it has been settled that *"between a common law principle and a statutory provision, the latter must prevail in this jurisdiction".*[120]

[118] Akbayan-Youth vs. COMELEC, 355 SCRA 318 [2001]

[119] 531 SCRA 436 [2007]

[120] Aznar vs. Yadiangco, 13 SCRA 486 [1965]

In the case of amendatory laws whose repealing clauses are not clear or vague as to its effect to its predecessor law, the Supreme Court held that *"rudimentary is the principle in legal hermeneutics that changes made by the legislature in the form of amendments to a statute should be given effect, together with other parts of the amended act. It is not to be presumed that the legislature, in making such changes, was indulging in mere semantic exercise. There must be some purpose in making them, which should be ascertained and given effect."*[121] An amended act is ordinarily to be construed as if the original statute has been repealed, and a new and independent act in the amended form had been adopted in its stead. The amendment becomes part of the original statute as if it had always been contained therein, unless such amendment involves the abrogation of the contractual relations between the state and others.[122]

Interpretare et concordare legibus est optimus interpretandi, which means that the best method of interpretation is that which makes laws consistent with other laws. Accordingly, courts of justice, when confronted with apparently conflicting statutes, should endeavor to reconcile them instead of declaring outright the invalidity of one against the other. Courts should harmonize them, if this is possible, because they are equally the handiwork of the same legislature.[123]

Where it is possible to do so, it is the duty of courts, in the construction of statutes, to harmonize and reconcile them, and to adopt a construction of a statutory provision which harmonizes and reconciles it with other statutory provisions. The fact that a later enactment may relate to the same subject matter as that of an earlier statute is not of itself sufficient to cause an

[121] Akbayan-Youth vs. COMELEC, 355 SCRA 318 [2001]

[122] People vs. Garcia, 85 Phil. 651 [1950]

[123] Akbayan-Youth vs. COMELEC, 355 SCRA 318 [2001]

implied repeal of the latter, since the law may be cumulative or a continuation of the old one.[124]

However, if attempts to reconcile these conflicting provisions fail, then the rule of thumb to follow is to uphold the statute of later date, being a later expression of legislative will.

Leges posteriores priores contrarias abrogant. The rationale is simple: a later law repeals an earlier one because it is the later legislative will. It is to be presumed that the lawmakers knew the older law and intended to change it.[125]

The succeeding case illustrates a situation where a manifest incompatibility exists in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. In holding that Section 31, Chapter VIII, Book I of the Administrative Code of 1987 governs, the High Court held that this was the more recent law. Lex posteriori derogat priori.

CIR vs. Primetown[126]

In 1999, Primetown applied for the refund or credit of income tax paid in 1997 explaining that the increase in the cost of labor and materials and difficulty in obtaining financing for projects and collecting receivables caused the real estate industry to slowdown. As a consequence, while business was good during the first quarter of 1997, respondent still suffered losses that year. It was due to these losses, that Primetown claimed it was not liable for income taxes. Nevertheless, respondent paid its quarterly corporate income tax and remitted creditable withholding tax from real estate sales to

[124] Philippine International Trading Corporation vs. Angeles, 236 SCRA 421 [1996]

[125] David vs. COMELEC, 271 SCRA 90 [1997]

[126] 531 SCRA 436 [2007]

the BIR and was therefore entitled to tax refund or tax credit.

In 2000, however, the CTA dismissed the petition as it was filed beyond the two-year prescriptive period for filing a judicial claim for tax refund or tax credit. It invoked Section 229 of the National Internal Revenue Code (NIRC): *"Sec. 229. Recovery of Taxes Erroneously or Illegally Collected.— No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."*

The CTA found that respondent filed its final adjusted return on April 14, 1998. Thus, its right to claim a refund or credit commenced on that date applying Article 13 of the Civil Code which states: *"Art. 13. When the law speaks of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours, and nights from sunset to sunrise. If the months are designated by their name, they*

shall be computed by the number of days which they respectively have. In computing a period, the first day shall be excluded, and the last included."

The CTA ruled that the two-year prescriptive period under Section 229 of the NIRC for the filing of judicial claims was equivalent to 730 days. Because the year 2000 was a leap year, respondent's petition, which was filed 731 days after respondent filed its final adjusted return, was filed beyond the reglementary period. Primetown moved for reconsideration but it was denied and thereafter filed an appeal in the CA.

In 2003 the CA reversed and set aside the decision of the CTA ruling that Article 13 of the Civil Code did not distinguish between a regular year and a leap year. It observed that - *"The rule that a year has 365 days applies, notwithstanding the fact that a particular year is a leap year."* In other words, even if the year 2000 was a leap year, the periods covered by April 15, 1998 to April 14, 1999 and April 15, 1999 to April 14, 2000 should still be counted as 365 days each or a total of 730 days. A statute which is clear and explicit shall be neither interpreted nor construed.

Petitioners contend that tax refunds, being in the nature of an exemption, should be strictly construed against claimants.

Section 229 of the NIRC should be strictly applied against respondent inasmuch as it has been consistently held that the prescriptive period (for the filing of tax refunds and tax credits) begins to run on the day claimants file their final adjusted returns. Hence, the claim should have been filed on

or before April 13, 2000 or within 730 days, reckoned from the time respondent filed its final adjusted return.

How do we properly compute as regards period of time?

The High Court held that the conclusion of the CA that respondent filed its petition for review in the CTA within the two-year prescriptive period provided in Section 229 of the NIRC is correct. Its basis, however, is not.

The High Tribunal noted that Article 13 of the Civil Code provides that when the law speaks of a year, it is understood to be equivalent to 365 days. Quoting a previous case,[127] it ruled that a year is equivalent to 365 days regardless of whether it is a regular year or a leap year.

However, in 1987, EO 292 or the Administrative Code of 1987 was enacted. Section 31, Chapter VIII, Book I thereof provides: *"Sec. 31. Legal Periods.—"Year" shall be understood to be twelve calendar months; "month" of thirty days, unless it refers to a specific calendar month in which case it shall be computed according to the number of days the specific month contains; "day," to a day of twenty-four hours and; "night" from sunrise to sunset."*

Moreover, the Court observed that a calendar month is *"a month designated in the calendar without regard to the number of days it may contain."* It is the *"period of time running from the beginning of a certain numbered day up to, but not including, the corresponding numbered day of the next month, and if there is not a sufficient number of days in the next*

[127] National Marketing Corporation v. Tecson, 139 Phil. 584; 29 SCRA 70 [1969]

month, then up to and including the last day of that month."

To illustrate, one calendar month from December 31, 2007 will be from January 1, 2008 to January 31, 2008; one calendar month from January 31, 2008 will be from February 1, 2008 until February 29, 2008.

A law may be repealed expressly (by a categorical declaration that the law is revoked and abrogated by another) or impliedly (when the provisions of a more recent law cannot be reasonably reconciled with the previous one). Section 27, Book VII (Final Provisions) of the Administrative Code of 1987 states: *"Sec. 27. Repealing clause.—All laws, decrees, orders, rules and regulation, or portions thereof, inconsistent with this Code are hereby repealed or modified accordingly."*

A repealing clause like Sec. 27 above is not an express repealing clause because it fails to identify or designate the laws to be abolished.

Thus, the provision above only impliedly repealed all laws inconsistent with the Administrative Code of 1987.

Implied repeals, however, are not favored. An implied repeal must have been clearly and unmistakably intended by the legislature. The test is whether the subsequent law encompasses entirely the subject matter of the former law and they cannot be logically or reasonably reconciled.

Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code

of 1987 deal with the same subject matter—the computation of legal periods.

Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant.

There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.*

General Laws vis-a-vis Special Laws

Generalia specialibus non derogant.[128] Sometimes we find statutes treating a subject in general terms and another treating a part of the same subject in particularly detailed or specialized manner.

Generalis clausula non porrigitur ad ea quae antea specialiter sunt comprehensa.[129] If both statutes are irreconcilable, the general statute must give way to the special or particular provisions as an exception to the general provisions. Basic is the rule in statutory construction that where two statutes are of equal theoretical application to a particular case, the one

[128] A general law does not nullify a specific or special law

[129] A general clause does not extend to those things which are previously provided for specially

designed therefore should prevail.[130] In case of conflict between a general provision of a special law and a particular provision of a general law, the latter will prevail.[131] It is a finely-imbedded principle in statutory construction that a special provision or law prevails over a general one.[132]

The enactment of a later legislation which is general law cannot be construed to have repealed a special law.[133] It is a settled principle of construction that, in case of conflict between a general law and a special law, the latter must prevail regardless of the dates of their enactment.[134] This holds true even if the general statute is of a later enactment of the legislature and broad enough to include the cases in the special law unless there is manifest intent to repeal or alter the latter. It is a well-settled rule in statutory construction that a subsequent general law does not repeal a prior special law on the same subject matter unless it clearly appears that the legislature has intended by the latter general act to modify or repeal the earlier special law. This is so even if the provisions of the general law are sufficiently comprehensive to include what was set forth in the special act. Moreover, the special act and the general law must stand together, one as the law of the particular subject and the other as the law of general application.[135]

In this next case, the High Court held that general laws are universal in nature, it is the sole basis for it speaks for the common good, unless it is otherwise stated; and special laws are

[130] Laureano vs. CA, 324 SCRA 414 [2000] citing Leveriza vs. IAC, 157 SCRA 282

[131] Republic vs. Asuncion, 231 SCRA 211 [1994]

[132] Disomangcop vs. Datumanong, 444 SCRA 203 [2004]

[133] Recana vs. CA, 349 SCRA 24 [2001]; National Power Corporation vs. City of Cabanatuan, 401 SCRA 259 [2003]

[134] Manzano vs. Valera, 292 SCRA 66 [1998]

[135] Heirs of Aurelio Reyes vs. Garilao, 605 SCRA 294 [2009]

said to have exception and not everyone can adhere to its provisions also unless otherwise stated. It is a rule in general that the special provision of the law must prevail over the general.

Duque vs. Veloso[136]

Veloso who was then the district supervisor of Quedan and Rural Credit Guarantee Corporation was administratively charged with three counts of dishonesty connection with unauthorized withdrawals of money. The respondent was found guilty of the charges and dismissed from the service. The respondent appealed citing the following mitigating circumstances: (1) The respondent's length of service was 18 years; (2) The prompt admission of culpability; (3) The return of money; (4) The respondent's status as a first time offender. Thus, the Court of Appeals considered and just dismissed him to (1) year of service without pay. The Civil Service Commission argued that there is no mitigating circumstance to warrant reduction of penalty.

Does Section 53 of Rule IV of the Uniform Rules, pertaining to the general provision of appreciation of mitigating, aggravating or alternative circumstance apply to administrative cases?

The High Court ruled in the negative. General laws are universal in nature, it is a sole basis for it speaks for the common good, unless it is otherwise stated; and special laws are said to have exception and not everyone can adhere to its provisions also unless otherwise stated.

[136] 673 SCRA 676 [2012]

It is a rule in general that the special provision of the law must prevail over the general. The offense made by the respondent is a betrayal of public trust and considered a social injustice which cannot be defended with mitigating circumstances, for dishonesty for a public office is also dishonesty for from the government and there is no excuse to any necessary punishment provided to it.

Laws vis-a-vis Ordinances

As previously stated, an ordinance is the local legislative measure passed by the local legislative body of a local government unit. Examples of local legislative bodies are the *Sanguniang Panlunsod* and *Sanguniang Panlalawigan*. As such their power to legislate is delegated to them by the Local Government Code.

The test of a valid ordinance is well established. A long line of decisions including *City of Manila* has held that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and pass according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.[137] An essential requisite for a valid ordinance is that it must not contravene the statue, for it is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state.[138]

[137] White Light Corporation vs. City of Manila, 576 SCRA 416 [2009]

[138] Primicias vs. Municipality of Urdaneta, Pangasinan, 93 SCRA 462 [1979]

It is basic that in case of conflict between an administrative order and the provisions of the Constitutions, the latter prevails.[139] It is an elementary principle in statutory construction that a statute is superior to an administrative directive and the former cannot be repealed or amended by the latter.[140] A law, in the grand scheme of things, is considered higher than an ordinance, thus the later cannot repeal nor amend the former. An administrative rule of regulation cannot contravene the law on which it is based.[141]

In case of conflict between a statute and an administrative order, the former must prevail.[142] If there is conflict an ordinance and a statute, the ordinance must give way observing the well-settled rule that a substantive law cannot be amended by a procedural law. In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law.[143]

Rules of Interpretation and Construction

Interpretation, in the legal sense, refers to how a law or more importantly a provision thereof, is to be properly applied. Thus, we refer to principles and concepts under statutory construction to aid us in the proper interpretation and construction of statutes.

As a basic rule, if the language of the law is clear, then there is no need for either interpretation nor construction. This is what

[139] DAR vs. Uy, 515 SCRA 376 [2007]

[140] Hijo Plantation vs. Central Bank, 164 SCRA 192 [1988]

[141] Fort Bonifacio Development Corporation vs. CIR, 602 SCRA 159 [2009]

[142] China Banking Corporation vs. CA, 265 SCRA 327 [1996]; KMU vs. Garcia, 239 SCRA 386 [1994]

[143] CIR vs. Bicolandia Drug Corporation, 496 SCRA 176 [2006]

we normally refer to as *verba legis* - or the word of the law. It refers to the plain meaning of the law. This simply means that the law is couched in simple and understandable language that a normal person would understand.

If, on the other hand, the law admits of two or more interpretation, then we need to first interpret the law. If interpretation is not enough, this is the time when we attempt to construe the meaning of the law.

There is a marked difference between interpretation and construction. The former simply relies on the contents of the law while the latter relies on material that is extant from the law itself. We refer to materials utilized in interpretation as intrinsic aids while that of construction as extrinsic aids.

Note that before one can construe, one must first interpret. It is only when interpretation falls short of your goal of ascertaining the meaning of the statute where you may now engage in construing the same.

To elaborate, interpretation refers to the drawing of the true nature, meaning and intent of the law through an examination of its provisions while construction is the process of using tools, aid, references extant from the law in order to ascertain its nature, meaning and intent.

Simply put, in interpreting a law, one does not go outside of the context of the statute, while in construction, one has to go outside of the language of the statute and resort to extrinsic aids. Although there is a fine distinction between the two, foreign jurisdictions have deemed this vague distinction as of little or no practical value - treating these two terms as synonymous.[144]

[144] U.S. vs. Keitel, 211 U.S. 370

In a sense, interpretation limits the person to what the law itself provides through an examination of its language, words, phrases and style.

Construction, on the other hand, allows the person to utilize other reference materials or tools in order to ascertain the true meaning of the law. It is important to note that construction may only be allowed if the process of interpretation fails or is inadequate to thresh out the meaning of the law.

It is important to note, however, that before one can proceed to construe the provisions of a statute, one must first interpret the same. It is only when the process of interpretation fails or is found to be inadequate when one can proceed to initiate the process of construing the law.

As held by the Supreme Court in an earlier case - *it is a cardinal principle of statutory construction that where the words and phrases of a statute are not obscure or ambiguous, its meaning and the intention of the legislature must be determined from the language employed, and where there is no ambiguity in the words, there is no room for construction.*[145]

To reiterate - it is important to remember that if the law is clear and unequivocal, there is no need for interpretation, much more for construction.

It is only when the law admits of two or more interpretations or when by its very nature it is vague, when the need for either interpretation or construction arises. If the law is clear and unequivocal, the court has no other alternative but to apply the law and refrain from interpreting it.

Construction and interpretation of law comes only after it has been determined that its application is impossible or inadequate without them.

[145] Provincial Board of Cebu vs. CFI, 171 SCRA 1

Moreover, words should be read and considered in their natural, ordinary, commonly accepted and most obvious signification, according to good and approved usage and without resorting to forced or subtle construction.

Semper in dubiis benigniora praeferenda.[146] For words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation.[147]

In statutory construction, if the words of statute are clear, plain and free from ambiguity, whatever is written under the law will be given its literal meaning without an attempt for interpretation as can be seen from the case below:

Vicencio vs. Villar[148]

On October 30, 2003, the *Sanguniang Panglunsod* of Malabon presided over by Galuran, who was then the acting mayor, adopted and approved City Ordinance No. 15-2003 granting authority to the City Vice-Mayor to engage in a contract for Consultancy Services for the *Sangunian* Secretariat.

Few months later, the City of Malabon represented by Hon. Galuran entered into separate contracts for Consultancy Services with consultants. Subsequently, the petitioner, Vicencio was elected Vice-Mayor of Malabon and by virtue of this he also became the Presiding Officer of the *Sangunian* and, at the same time, the head of the *Sangunian* Secretariat.

[146] In doubtful matters the more liberal (constructions) are to be preferred

[147] People v. Kottinger, 45 Phil. 352 [1929]

[148] 675 SCRA 468 [2012]

On February 2005, the petitioner representing the City Government of Malabon entered a contract for the Consultancy Services with consultants who will rendered their service to the *Sangunian*.

Upon disbursing the funds of the project, a memorandum was issued disallowing the amount for being an improper disbursement - providing that the petitioner has no authority on the said ordinance for it was supposed to be during the former Vice Mayor Yambao's incumbency and according to them from the provisions of Article II of R.A 7610 or the Local Government Code, which states the duty of a vice mayor, it cannot be construed that a former vice mayor as for the phrase *"continuing authority"* cannot presumed as all contracts made during the former term be continued unless otherwise provided by law and under the provision of this code, there is no inherent authority on the part of the vice-mayor to enter into contracts in behalf of the local government unit unlike as provided for the city mayor and it is strictly prohibited by law.

Can Article II of R.A 7610 or the Local Government Code, pertaining to the duty of a vice mayor, be construed to facilitate the petitioner's act of good faith in engaging into contracts during his term?

The High Court ruled in the negative stating that in statutory construction, if the words of statute are clear, plain and free from ambiguity, whatever is written under the law will be given its literal meaning without an attempt for interpretation.

Unless the law is impossible, absurd or unjust, it will be given its literal meaning.

The Local Government Code pertaining to the duty of a vice mayor clearly states that *"be the vice mayor and presiding officer of the sanguniang panglunsod and signal warrants drawn on the city treasury for all expenditures appropriated for the operation of the sanguniang panglunsod."*

Thus, the law is clear, there is no provision stating a *"continuous authority"* of contracts as from the former vice mayor.

Note also that the Supreme Court has consistently held that if the law is clear and unequivocal there is no need for interpretation much more for construction, the following case elucidates this point.

Silva vs. Cabrera[149]

June 1, 1949, respondent Belen Cabrera applied for installation of a 15 ton ice plant in the City of Lipa covering ice supply for several municipalities of Batangas.

Petitioner Eliseo Silva and Opulencia and Lat, holders of certificates of Public Convenience to operate each a 15-ton Ice plan opposed the application to the ground that their service is adequate for the needs of the public.

July 14, 1949 Commissioner Ocampo, by order, commissioned Atty. Aspillera, chief of the Legal Division *"to take the testimony of the Witnesses"*

[149] G.R. No. L-3629 [1951]

who then conducted hearings, received extensive evidences, oral and documentary.

From the notes taken by Atty. Aspillera, the Commission *en banc* rendered the Decision allowing Cabrera be issued a certificate of public convenience to operate a 10-ton ice plant in the City of Lipa overruling the oppositions Silva and Opulencia and Lat.

Was delegation made by the Commission to Atty. Aspillera illegal and contrary to law?

It is contrary to law under the provisions of Section 3 of the Public Service Act as amended by Republic Act No. 178, the reception of evidence in a contested case may be delegated only to one of the Commissioners and to no one else, it being understood that such reception of evidence consists in conducting hearings, receiving evidence, oral and documentary, passing upon the relevancy and competency of the same, ruling upon petitions and objections that come up in course of the hearings, and receiving and rejecting evidence in accordance with said rulings.

If the law is clear and unequivocal there is no need for interpretation much more for construction. The proceedings and the decision thereof, were declared null and void and the case was remanded to the Public Service Commission.

The next case clearly illustrates the well known rule of statutory construction to the effect that a statute clear and unambiguous on its face need not be interpreted.

The rule is that only statutes with an ambiguous or doubtful meaning may be the subjects of statutory construction.

Daoang vs. Municipal Judge of San Nicolas[150]

This cases involves a petition for review on certiorari of the decision rendered by the respondent judge. On March 23, 1971, respondent spouses Antero and Amanda Agonoy filed a petition with the Municipal Court of San Nicolas, Ilocos Norte, seeking the adoption of the minors Quirino Bonilla and Wilson Marcos.

On April 22, 1971, the minors Roderick and Rommel Daoang, assisted by their father and *guardian ad litem*, the petitioners herein, filed an opposition to the petition for adoption, claiming that the spouses Antero and Amanda Agonoy had a legitimate daughter named Estrella Agonoy, oppositors' mother, who died on March 1, 1971, and therefore, said spouses were disqualified to adopt under Art. 335 of the Civil Code.

This article provides that those who have legitimate, legitimated, acknowledged natural children or children by legal fiction cannot adopt.

Are spouses Antero Agonoy and Amanda Ramos disqualified to adopt under paragraph 1 of Article 335 of the Civil Code?

The words used in paragraph (1) of Article 335 of the Civil Code, in enumerating the persons who cannot adopt, are clear and unambiguous. When the New Civil Code was adopted, it changed

[150] G.R. No. L-34568 [1988]

the word *"descendant,"* found in the Spanish Civil Code to which the New Civil Code was patterned, to *"children."*

The children thus mentioned have a clearly defined meaning in law and do not include grandchildren. Well known is the rule of statutory construction to the effect that a statute clear and unambiguous on its face need not be interpreted. The rule is that only statutes with an ambiguous or doubtful meaning may be the subjects of statutory construction.

In the present case, Roderick and Rommel Daoang, the grandchildren of Antero Agonoy and Amanda Ramos-Agonoy, cannot assail the adoption of Quirino Bonilla and Wilson Marcos by the Agonoys. The Supreme Court denied the petition, and affirmed the judgment of the Municipal Court of San Nicolas, Ilocos Norte.

It should also be underscored that the first and fundamental duty of courts is to apply the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them. This is the point driven home by the court in the case below:

National Federation of Labor vs. Eisma[151]

On 5 March 1982, the National Federation of Labor filed with the Ministry of Labor and Employment, a petition for direct certification as the sole exclusive collective bargaining representative of the monthly paid employees at the Lumbayao

[151] GR L-61236, 127 SCRA 419 [1984]

manufacturing plant of the Zamboanga Wood Products (Zambowood).

On 17 April 1982, such employees charged the firm before the same office for underpayment of monthly living allowances.

On 3 May 1982, the union issued a notice of strike against the firm, alleging illegal termination of Estioca, president of the said local union; unfair labor practice; nonpayment of living allowances; and employment of oppressive alien management personnel without proper permit.

The strike began on 23 May 1982. On 9 July 1982; Zambowood filed a complaint with the trial court against the officers and members of the union, for *"damages for obstruction of private property with prayer for preliminary injunction and/or restraining order."*

The union filed a motion for the dismissal and for the dissolution of the restraining order, and opposition to the issuance of the writ of preliminary injunction, contending that the incidents of picketing are within the exclusive jurisdiction of the Labor Arbiter pursuant to Batas Pambansa 227 (Labor Code, Article 217) and not to the Court of First Instance. The motion was denied. Hence, the petition for certiorari.

Is construction of the law required to determine jurisdiction?

The first and fundamental duty of courts is to apply the law. Construction and interpretation come only after it has been demonstrated that

application is impossible or inadequate without them.

Jurisdiction over the subject matter in a judicial proceeding is conferred by the sovereign authority which organizes the court; and it is given only by law.

Jurisdiction is never presumed; it must be conferred by law in words that do not admit of doubt. Since the jurisdiction of courts and judicial tribunals is derived exclusively from the statutes of the forum, the issue should be resolved on the basis of the law or statute in force.

Therefore, since (1) the original wording of Article 217 vested the labor arbiters with jurisdiction; since (2) Presidential Decree 1691 reverted the jurisdiction with respect to money claims of workers or claims for damages arising from employer-employee relations to the labor arbiters after Presidential Decree 1367 transferred such jurisdiction to the ordinary courts, and since (3) Batas Pambansa 130 made no change with respect to the original and exclusive jurisdiction of Labor Arbiters with respect to money claims of workers or claims for damages arising from employer-employee relations; Article 217 is to be applied the way it is worded. The exclusive original jurisdiction of a labor arbiter is therein provided for explicitly.

Aside from laws, the rules may also apply to contracts. In this next case, the High Court held that a contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will

interpret the contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.

Abad vs. Goldloop Properties[152]

Petitioners Abad, owners of 13 parcels of titled agricultural land entered into a Deed of Conditional Sale with Goldloop based on certain terms such as the payment of earnest money of Php 1 million, a first payment in the amount of Php 6,765,660.00 and a final payment of the balance in the amount of Php 27,049,640.00.

In the event of failure by Goldloop to make good its payments, Paragraph 8 of the Deed, however, provided the forfeiture of the earnest money but allowed the return of the first payment.

Due to economic downturns Goldloop was prevented from securing its needed bank financing.

It informed the Petitioners that it would no longer push through with the sale and requested for the refund of its first payment which the latter refused arguing that the same was already forfeited in their favor along with the earnest money.

Petitioners argue that respondent failed to satisfy the three suspensive *"conditions"* under the disputed provision. Thus, they are not obliged to return the first payment (and respondent's correlative right to demand the performance of the obligation) never arose.

[152] G.R. No. 168108, 521 SCRA 131 (2007)

The High Court observed that Paragraph 8 of the Deed is clear and unambiguous.

As the trial and appellate courts ruled, unlike the Php 1 million earnest money which would be forfeited in favor of petitioners in case of respondent's failure to deliver the balance of the total consideration, the first payment would be returned to respondent.

This obligation to return the first payment can be gleaned from the second part of the disputed provision, which states in part - *but the first payment check of Php 6,765,660.00 shall be returned to the buyer without any additional charges to the seller.*

The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: *"[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."*

This provision is akin to the *"plain meaning rule"* applied by Pennsylvania courts, which assumes that the intent of the parties to an instrument is *"embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement."*

It also resembles the *"four corners"* rule, a principle which allows courts in some cases to search beneath the semantic surface for clues to meaning.

A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them.

The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations.

Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law.

If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.

The High Court then reiterated an old ruling[153] where it stated that - *"The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the*

[153] Bautista vs. CA, penned by Chief Justice Reynato C. Puno, 379 Phil. 386, 399; 322 SCRA 365, 376 (2000)

detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not."

Rules of Judgment

As the constitution vests judicial power in one Supreme Court and in such lower courts as may be established by law - judicial power, by its nature, is the power to hear and decide causes pending between parties who have the right to sue and be sued in the courts of law and equity.[154]

Although holding neither purse nor sword and so regarded as the weakest of the three departments of the government, the judiciary is nonetheless vested with the power to annul the acts of either the legislative or the executive or of both when not conformable to the fundamental law.

Hence, the only entity empowered by the Constitution to interpret and construe laws is the judicial branch of government.[155] Thus, we often encounter the adage that *judicial power is vested in one Supreme Court and in such lower courts as may be established by law.*[156] Supreme Court and all other lower courts have the power to construe and interpret the law.

This is the reason for what some quarters call it the doctrine of judicial supremacy. Even so, this power is not lightly assumed or readily exercised. The doctrine of separation of powers imposes upon the courts a proper restraint, born of the nature of their functions and of their respect for the other

[154] Lamb v. Phipps, 22 Phil. 559

[155] Article VIII, Sec. 1, 1987 Philippine Constitution

[156] Section 1, Article VIII, 1987 Philippine Constitution

departments, in striking down the acts of the legislative and the executive as unconstitutional.[157]

Note, however, that the Court may exercise its power of judicial review only if the following requisites are present: (1) an actual and appropriate case and controversy exists; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question raised is the very *lis mota* of the case.[158]

A justiciable controversy involves a definite and concrete dispute touching on the legal relations of the parties having adverse legal interest.[159] As for the third requisite for judicial review, it should not be taken to mean that the question of constitutionality must be raised immediately after the execution of the state action complained of – that the question of constitutionality has not been raised before is not a valid reason for refusing to allow it to be raised later.[160]

The conclusions of the Supreme Court in any case submitted to it for decision *en banc* or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Member who took no part, or dissented, or abstained from a decision or resolution must state the reason and the same requirements shall be observed by all lower collegiate courts.

---

[157] Association of Small Landowners v. Secretary of Agrarian Reform; G.R. No. 78742. July 14, 1989

[158] Arceta v. Mangrobang, 432 SCRA 136

[159] Sanlakas v. Executive Secretary, 421 SCRA 656

[160] La Bugal-B'Laan Tribal Association, Inc. v. Ramos, 421 SCRA 148

Finally, no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based nor shall a petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating its legal basis.

A justiciable controversy involves a definite and concrete dispute touching on the legal relations of the parties having adverse legal interest.[161]

As for the third requisite for judicial review, it should not be taken to mean that the question of constitutionality must be raised immediately after the execution of the state action complained of – that the question of constitutionality has not been raised before is not a valid reason for refusing to allow it to be raised later.[162]

The proper forum, therefore, for interpretation and construction of a law to take place is within the halls of the judiciary. No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.[163]

Stated differently, it is the duty of the judiciary to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.[164]

In the course of our nation's political and legal history, our Supreme Court had the occasion to promulgate decisions that

---

[161] Sanlakas v. Executive Secretary, 421 SCRA 656

[162] La Bugal-B'Laan Tribal Association, Inc. v. Ramos, 421 SCRA 148

[163] Article 9, Civil Code

[164] Section 1, Article VIII, 1987 Constitution

provided for guidelines on how courts - be it judicial or quasi-judicial - formulate and arrive at its judgment.

This is therefore a good time to revisit the landmark case of *Ang Tibay vs. CIR*,[165] wherein the Supreme Court had the occasion to lay down the cardinal requirements of due process in administrative proceedings.

These cardinal requirements, as we call them, are as follows:

a) there must be a right to a hearing, which includes the right to present one's case and submit evidence in support thereof;

b) the tribunal must consider the evidence presented;

c) the decision must have some basis to support itself;

d) the evidence must be substantial;

e) the decision must be based on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected;

f) the tribunal or body or any of its judges must act on its own independent consideration of the law and the facts of the controversy, and not simply accept the views of a subordinate; and

[165] GR No. 46496 (1940)

g) the board or body should, in all controversial questions, render its decision in such a manner as would allow the parties to know the various issues involved and the reason for the decision rendered.

Note that there have been instances wherein the High Court has cautioned against evisceration - it declared that - *there is need of confining- familiar language of a statute to its usual signification. While statutory construction involves the exercise of choice, the temptation to roam at will and rely on one's predilections as to what policy should prevail is to be resisted. The search must be for a reasonable interpretation. It is best to keep in mind the reminder from Holmes that "there is no canon against using common sense in construing laws as saying what they obviously means."*[166] *To paraphrase Frankfurter, interpolation must be eschewed but evisceration avoided. Certainly, the utmost effort should be exerted lest the interpretation arrived at does violence to the statutory language in its total context.*

This is the focus of the next case:

Republic Flour Mills
vs. Commissioner of Customs & CTA[167]

Petitioner, is a domestic corporation, primarily engaged in the manufacture of wheat flour, and produces pollard (*darak*) and bran (*ipa*) in the process of milling. During a certain period in question, petitioner exported pollard and/or bran which was loaded from lighters alongside vessels engaged in foreign trade while anchored near the breakwater.

[166] Roschen v. Ward, 279 US 337, 339 [1929]

[167] 39 SCRA 269

The Commissioner of Customs assessed the petitioner by way of wharfage dues on the said exportations which assessment was paid by petitioner under protest. The only issue is whether or not such collection of wharfage dues was in accordance with law.[168]

The main contention of petitioner was *"that inasmuch as no government or private wharves or government facilities were utilized in exporting the pollard and/or bran, the collection of wharfage dues is contrary to law."*

On the other hand, the stand of respondent Commissioner of Customs was that petitioner was liable for wharfage dues *"upon receipt or discharge of the exported goods by a vessel engaged in foreign trade regardless of the non-use of government-owned or private wharves."*

Respondent Court of Tax Appeals sustained the action taken by the Commissioner of Customs under the appropriate provision of the Tariff and Customs Code, relying on the decision laid down in *Procter & Gamble vs. Commissioner of Customs.*[169]

[168] Section 2802 of the Tariff and Customs Code (1957) reads in full: "Schedule of Dues.—There shall be levied, collected and paid on all articles imported or brought into the Philippines, and on products of the Philippines except coal, lumber, creosoted and other pressure treated materials as well as other minor forest products, cement, guano, natural rock asphalt, the minerals and ores of base metals (e.g., copper, lead, zinc, iron, chromite manganese, magnesite and steel), and sugar molasses exported from the Philippines, a charge of two pesos per gross metric ton as a fee for wharfage: Provided, That in the case of logs, or flitches twelve inches square or equivalent cross-sectional area, or over, a charge of sixty centavos per cubic meter shall be collected."

[169] 19 SCRA 883 (1967)

The sole error assigned by petitioner is that it should not, under its construction of the Act, be liable for wharfage dues on its exportation of bran and pollard as they are not *"products of the Philippines"*, coming as they did from wheat grain which were imported from abroad, and being *"merely parts of the wheat grain milled by Petitioner to produce flour which had become waste."*

In sustaining the decision of the Court of Appeals, the High Court found such contention unpersuasive and found the language of the provision under review to be quite explicit - *"There shall be levied, collected and paid on all articles imported or brought into the Philippines, and on products of the Philippines exported from the Philippines, a charge of two pesos per gross metric ton as a fee for wharfage."* One category refers to what is imported. The other mentions products of the Philippines that are exported.

Even without undue scrutiny, it does appear quite obvious that as long as the goods are produced in the country, they fall within the terms of the above section.

Moreover, the Court noted that petitioner appeared to have entertained such a notion. In its petition for review before respondent Court, it categorically asserted: *"Petitioner is primarily engaged in the manufacture of flour from wheat grain. In the process of milling the wheat grain into flour, petitioner also produces 'bran' and 'pollard' which it exports abroad."*

It does take a certain amount of hairsplitting to exclude from its operation what petitioner calls

"*waste*" resulting from the production of flour processed from the wheat grain in petitioner's flour mills in the Philippines.

It is always timely to remember that, as stressed by Justice Moreland: *"The first and fundamental duty of courts, in our judgment, is to apply the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them."*

Petitioner ought to have been aware that deference to such a doctrine preclude an affirmative response to its contention. The law is clear; it must be obeyed. It is as simple as that.

In the next case, the High Court issued a reminder that - *it is important to note that only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent. Ambiguity is a condition of admitting two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time. A statute is ambiguous if it is admissible of two or more possible meanings, in which case, the Court is called upon to exercise one of its judicial functions, which is to interpret the law according to its true intent.*

RCBC vs. IAC[170]

The case stemmed from the foreclosure of the mortgage of certain titles belonging to BF Homes in favor of RCBC, which, despite an action by the former for rehabilitation filed with the SEC, was transferred by the Register of Deeds to the latter.

The Supreme Court, however, invalidated the transfer holding that - *whenever a distressed corporation asks the SEC for rehabilitation and suspension of payments, preferred creditors may no longer assert such preference, but . . . stand on equal footing with other creditors.* Foreclosure shall be disallowed so as not to prejudice other creditors, or cause discrimination among them. If foreclosure is undertaken despite the fact that a petition for rehabilitation has been filed, the certificate of sale shall not be delivered pending rehabilitation. Likewise, if this has also been done, no transfer of title shall be effected also, within the period of rehabilitation.

The rationale behind PD 902-A, as amended, is to effect a feasible and viable rehabilitation. This cannot be achieved if one creditor is preferred over the others.

In this connection, the prohibition against foreclosure attaches as soon as a petition for rehabilitation is filed. Were it otherwise, what is to prevent the petitioner from delaying the creation of a Management Committee and in the meantime dissipate all its assets. The sooner the SEC takes over and imposes a freeze on all the assets, the better for all concerned.

In its Motion for Reconsideration before the Court, RCBC submitted that the restraining order and the writ of preliminary injunction issued by the SEC enjoining the foreclosure sale of the properties of respondent were issued without or in excess of its jurisdiction because it was violative of the clear provision of the law and are therefore null and void and that being a mortgage creditor, is entitled to rely solely on its security and to refrain from joining the unsecured creditors in the SEC Case.

[170] 320 SCRA 279 [1999]

In sustaining the Motion, the High Court then held that - *The issue of whether or not preferred creditors of distressed corporations stand on equal footing with all other creditors gains relevance and materiality only upon the appointment of a management committee, rehabilitation receiver, board, or body.* Insofar as petitioner is concerned, the provisions of the law[171] are not yet applicable and it may still be allowed to assert its preferred status because it foreclosed on the mortgage prior to the appointment of the management committee.

The Court, therefore, grants the motion for reconsideration on this score. It is thus adequately clear that suspension of claims against a corporation under rehabilitation is counted or figured up only upon the appointment of a management committee or a rehabilitation receiver.

More importantly, the High Court observed, that the holding that suspension of actions for claims against a corporation under rehabilitation takes effect as soon as the application or a petition for rehabilitation is filed with the SEC may, to some, be more logical and wise but unfortunately, such is incongruent with the clear language of the law.

To insist on such ruling, no matter how practical and noble, would be to encroach upon legislative prerogative to define the wisdom of the law - plainly judicial legislation.

In ascertaining the intent of the lawmakers, the next case succinctly drives home the point that - *the intent of the Legislature*

[171] Paragraph (c), Section 6 of Presidential Decree 902-A

to be ascertained and enforced is the intent expressed in the words of the statute.

It further declared that - *If legislative intent is not expressed in some appropriate manner, the courts cannot by interpretation speculate as to an intent and supply a meaning not found in the phraseology of the law. In other words, the courts cannot assume some purpose in no way expressed and then construe the statute to accomplish this supposed intention.*

Regalado vs. Yulo[172]

This involved an action for *quo warranto* to determine the respective rights of the petitioner Regalado from that of his replacement, Villar, in connection to the office of justice of the peace of Malinao, Albay.

The issue in the case is whether or not under the provisions of section 203 of the Administrative Code, as amended by Act No. 3899, the justices of the peace and auxiliary justices of the peace appointed prior to its approval who reached the age of sixty-five years shall cease to hold office upon reaching the age of sixty-five years.

Regalado first qualified and assumed the office of justice of the peace of Malinao, Albay, prior to the effectivity of the law in question. When Regalado became sixty-five years of age, however, and upon instructions from the Secretary of Justice, Villar was appointed as his replacement.

The text of the provision in question reads in Spanish, the language in which this Act was enacted as follows:

[172] 61 SCRA 173 (1935)

"ART. 203. Nombramiento y distribución de jueces de paz.—El Gobernador General nombrará, con el consejo y consentimiento del Senado de Filipinas, un juez de paz y un juez de paz auxiliar para la Ciudad de Baguio y para cada municipio, township y distrito municipal de las Islas Filipinas y si el interés público así lo exigiere para cualquier otra división política de menos importancia y territorio no organizado en dichas Islas: Entendiéndose, Que los jueces de paz y jueces de paz auxiliares serán nombrados para servir hasta cumplir sesenta y cinco años de edad: Entendiéndose, además, Que los actuales jueces de paz y jueces de paz auxiliares que al tiempo de la vigencia de esta Ley hayan cumplido sesenta y cinco años de edad, cesarán el primero de enero de mil novecientos treinta y tres en sus cargos; y el Gobernador General, con el consejo y consentimiento del Senado de Filipinas, hará nuevos nombramientos para cubrir las vacantes que habrán de ocurrir por ministerio de esta Ley."

The English version of the same section, as amended, reads as follows:

"SEC. 203. Appointment and distribution of justices of the peace.—One justice of the peace and one auxiliary justice of the peace shall be appointed by the Governor General, with the advise and consent of the Philippine Senate, for the City of Baguio, and for each municipality, township, and

municipal district in the Philippine Islands, and if the public interests shall so require, for any other minor political division or unorganized territory in said Islands: Provided, That justices and auxiliary justices of the peace shall be appointed to serve until they have reached the age of sixty-five years: Provided, further, That the present justices and auxiliary justices of the peace who shall, at the time this Act takes effect, have completed sixty-five years of age, shall automatically cease to hold office on January first, nineteen hundred and thirty-three; and the Governor-General, with the advise and consent of the Philippine Senate, shall make new appointments to cover the vacancies occurring by operation of this Act."

Petitioner Regalado insists that the law is clear and accordingly needs no interpretation.

The meaning of the law according to him is that only those justices of the peace and auxiliary justices of the peace ceased to hold office who had completed sixty-five years of age on or before the law took effect.

On the other hand, the Solicitor-General, admits that the provisions of the second *proviso* added to the law are not very specific, but that according to the real intention of the law the only sensible and proper construction that could be placed on the *proviso* in question is that under its provisions all justices of the peace and auxiliary justices of the peace, whether appointed prior to the

approval of the law or subsequent thereto, who had completed the age of sixty-five years of age at the time of its approval and those who shall complete that age thereafter, shall cease to hold office.

First things first, everyone agreed that the language which should prevail in the interpretation should be Spanish, but the English text may be consulted to explain the Spanish.

The English text, however, is deficient in that it includes the word *"automatically"*, the equivalent of which does not appear in the Spanish.

Also, in the Administrative Code containing a compilation of section 203, as amended, the word *"office"* was omitted after the word *"hold"*. Finally, the Spanish uses the term *"al tiempo de la vigencia de esta ley"*, translated into English as *"at the time this Act takes effect"*. But the Solicitor-General insists that the equivalent of the term *"al"* is *"at"* and that *"at"* can be construed as equivalent to *"during"*.

Moreover, the Solicitor-General submitted that an examination of the history of the law would deduce its legislative intent - originally judges of first instance and justices of the peace had no age limits on their tenures of office but eventually the Philippine Legislature provided that they shall serve until they have reached the age of sixty-five years.

It further provided that the present judges of Courts of First Instance vacate their positions upon the effectivity of the law and the Governor-General, with the advice and consent of the Philippine

Commission, shall make new appointments of judges of the Courts of First Instance.

Subsequently the Administrative Code, was amended by adding at the end thereof the following proviso: *"Provided, That justices and auxiliary justices of the peace shall be appointed to serve until they have reached the age of sixty-five years."* It was held that the law should be given prospective effect only and was not applicable to justices and auxiliary justices of the peace appointed before it went into effect.

Thereafter the matter again came before the Philippine Legislature and apparently it was in the mind of certain members of the Legislature to make the law fixing the age limit for justices of the peace retroactive in nature.

At least the bill as introduced in the Senate, and providing: *"Entendiéndose, además, Que los actuales jueces de paz y jueces de paz auxiliares que al tiempo de la vigencia de esta Ley hayan cumplido sesenta y cinco años de edad, cesarán automáticamente en sus cargos; y el Gobernador General, con el consejo y consentimiento del Senado de Filipinas, hará nuevos nombramientos para cubrir las vacantes que habrán de ocurrir por ministerio de esta ley,"* - appears to have had this purpose both because of the language used and because of what can be gleaned from the debates on the bill while it was under consideration in the Senate.

But when the bill left the Philippine Legislature it was in a different form, for the word *"automáticamente"* had been omitted and instead there was to be found the words *"el primero de enero de mil novecientos treinta y tres"*.

The Solicitor General finally points out that the Secretary of Justice had consistently interpreted the proviso in question as meaning - *that all justices of the peace and auxiliary justices of the peace no matter when appointed who had completed the age of sixty-five years prior to the approval of the law and those who shall complete that age thereafter, shall cease to hold office upon their attaining that age.*

It is of course a cardinal rule that the practical construction of a statute by the department whose duty it is to carry it into execution is entitled to great weight.

Nevertheless the court is not bound by such construction and the rule does not apply in cases where the construction is not doubtful.

In deciding the case, the Supreme Court observed that - *the fundamental purpose in enacting Act No. 3899, it is argued, was to correct the phraseology of the first proviso to section 203 of the Administrative Code added thereto by Act No. 3107, and to place justices of the peace and auxiliary justices of the peace on the same footing as regards their cessation from office by reason of age.*

It held that - *We are asked to effectuate this legislative purpose. We would accede if that result was obtainable by any logical construction of the law whether strict or liberal. But we cannot reach that result when to do so compels us to rewrite a law and to insert words or phrases not found in it. If the court should do that it would pass beyond the bounds of judicial power to usurp legislative power.*

Delving a little more deeply into the meaning of the law as applied to the case, at the time the law took effect Regalado was one of the *"actuales jueces de paz."*[173] Giving the term *"al tiempo de la vigencia de la ley"* the ordinary meaning of *"at the time this Act takes effect"*, on that date the petitioner was not sixty-five years of age.

Proceeding further, the phrase *"hayan cumplido sesenta y cinco años de edad"*, appearing in English as *"have completed sixty-five years of age"*, is of the past tense and could not regularly be taken to contemplate the future.

Finally the phrase *"el primero de enero de mil novecientos treinta y tres"*, in English *"on January first nineteen hundred and thirty-three"*, is also a date in the past, for on that date the petitioner had not yet reached the age of sixty-five.

In this case, it is important to note the declaration of the Court when it said - *Before we conclude, let us again return to the consideration of the law and see if it would be possible under any logical interpretation, to give the law the meaning which the Government insists it should have.*

It continued - Supposing we give to the phrase *"al tiempo de la vigencia de esta ley"* the unusual meaning of *"within the time this Act is effective"*, but having done so, we then reach the barrier that the petitioner within the time this Act is effective must have completed sixty-five years of age and cease to hold office on January 1, 1933.

[173] incumbent justice of the peace

The petitioner having become sixty-five years of age on September 13, 1934, could not be included under a law which required justices of the peace 65 years of age to cease to hold office on January 1, 1933.

Thus, for the above reasons given, the High Court arrived at the opinion that the natural and reasonable meaning of the language used left no room for any other deduction than that a justice of the peace appointed prior to the approval of the law and who completed sixty-five years of age subsequent to its approval is not affected by the said law.

As can be gleaned from the Supreme Court's disquisition and rationalization in the next case - it held that the respondent court unduly stretched and broadened the meaning of *"foreshore lands,"* beyond the intendment of the law, and against the recognized legal connotation of *"foreshore lands."*

Republic vs. Court of Appeals[174]

This case involved the attempt by the Pasay City Council to reclaim certain submerged areas within its territory relying on their own definition of foreshore lands under an old law.

This reclamation project was opposed by the Government stating that Pasay City had no foreshore lands to speak of and that the law and other administrative issuances they relied on are not applicable.

[174] 299 SCRA 199 [1998]

The Court of Appeals, however, upheld the position of the City of Pasay to which the issue was thereafter elevated to the High Court.

Was the Court of Appeals correct in construing the phrase "foreshore lands" to include those submerged areas within the peripheral territory of Pasay City?

The High Court ruled in the negative.

Well entrenched, to the point of being elementary, is the rule that when the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application.

So also, resort to extrinsic aids, like the records of the constitutional convention, is unwarranted, the language of the law being plain and unambiguous. Then, too, opinions of the Secretary of Justice are unavailing to supplant or rectify any mistake or omission in the law.

To repeat, the term *"foreshore lands"* refers to - *"The strip of land that lies between the high and low water marks and that is alternately wet and dry according to the flow of the tide"* and *"a strip of land margining a body of water (as a lake or stream); the part of a seashore between the low-water line usually at the seaward margin of a low-tide terrace and the upper limit of wave wash at high tide usually marked by a beach scarp or berm."*[175]

The duty of the court is to interpret the enabling Act, RA 1899. In so doing, we cannot

[175] Citing Words and Phrases, "Foreshore"; and Webster's Third New International Dictionary

broaden its meaning, much less widen the coverage thereof.

> If the intention of Congress were to include submerged areas, it should have provided expressly. That Congress did not so provide could only signify the exclusion of submerged areas from the term *"foreshore lands."*

Rules of Procedure

Rules of procedure, be it at the judicial or quasi-judicial level refers to the process of how a litigant would protect his right through the intervention of the court or any other administrative body.

Depending on which fora one goes to would determine how the rules of procedure would be interpreted - either liberally or strictly. Note that - administrative rules of procedure are generally given a liberal construction.

This is due to the fact that administrative proceedings are generally summary in nature. Suffice it to say that technical rules of procedure are liberally applied to administrative agencies exercising quasi-judicial functions. The intention is to resolve disputes brought before such bodies in the most expeditious and inexpensive manner possible.[176]

In civil proceedings, the rules are different and even more so in criminal actions. Note that the nature of the action determines the kind of proceedings it will follow.

Yet, be it an administrative, civil or criminal proceeding - the rules should be read and interpreted first in their natural and common acceptation.

[176] Dela Cruz v. DECS, GR 146739, 16 January 2004

As once held by the High Court - *words should be read and considered in their natural, ordinary, commonly accepted and most obvious signification, according to good and approved usage and without resorting to forced or subtle construction. For words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation.*[177]

Note that a statute or an administrative rule oftentimes defines words and phrases as they are used within a statute or rule. Otherwise put, where a statute defines a word or phrase employed therein, the word or phrase should not, by construction, be given a different meaning.[178]

Yet regardless of where one elevates his grievance or complaint, all rules of procedure takes its cue or its bearings, so to speak, from the Rules of Court. Moreover, most rules of procedure in administrative bodies include the provision that allows the suppletory application of the Rules of Court if their internal rules are silent on a particular procedure or action.

Rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice.[179]

When strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction.[180]

[177] People v. Kottinger, 45 Phil. 352 [1929]

[178] Kuenzle & Steiff v. Collector of Customs, 31 Phil. 510

[179] Ginete v. CA, 296 SCRA 38

[180] Al-Amanah Bank v. Celebrity Travel Tours, 436 SCRA 356

Simply phrased – rules of procedure must be faithfully followed in the absence of persuasive reason to deviate therefrom.[181]

A word of caution, though, the Supreme Court has declared that – *the liberality in the application of rules of procedure may not be invoked if it will result in the wanton disregard of the rules or cause undue delay in the administration of justice. Indeed, it cannot be gainsaid that obedience to the requirements of procedural rule is needed if we are to expect fair results therefrom.*[182]

Indeed, it is not totally uncommon that a government agency is given wide latitude in the scope and exercise of its investigative powers.

After all, in administrative proceedings, technical rules of procedure and evidence are not strictly applied.[183]

Qui gratus futurus est, statim, dum accipit, de reddendo cogitet - Seneca, De Beneficiis Bk. Ii, ch. 25, sec. 3

---

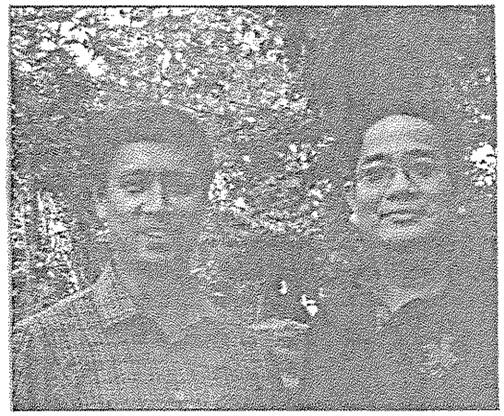
[181] Flores v. Bercasio, 437 SCRA 464

[182] Pet Plans v. CA, 99 SCRA 236

[183] Gaoiran v. Alcala, GR 150178, 26 November 2004

Of all the ways of acquiring books, writing them oneself is regarded as the most praiseworthy method... Writers are really people who write books not because they are poor, but because they are dissatisfied with the books, which they could buy but do not like. – *Walter Benjamin, Unpacking My Library [1931]*

ABOUT THE AUTHORS



e were fellow
hrist the King
y under the
Divine Word
along E.
Boulevard in
The idea to
his book was
ieir December
on when they
could combine
lds of expertise
erent from the
market. They
light – in the

cr
ew
avis
onte

ervices of the
hilosophy and
of Philosophy
naster's degree

ran
igh
luc
the
Ph

ts with several
rnal as well as
rial Board and
te practice, he

ave
w s
me
mo
rve

his work is their first of many more future collaborations.