CONCLUSION

To go back then to our original question: May President Corazon Aquino run for re-election in 1992 or even 1991? Let me simply conclude by saying that the prohibition against re-election is meant for humans. And our Constitution envisions that all our Presidents, present and future, are and will be humans.

STATE IMMUNITY FROM SUIT

JACINTO D. JIMENEZ*

I. INTRODUCTION

To many, the doctrine of State immunity from suit is an anachronistic remnant of the days of monarchy which continues to bedevil modern democracies. However, this principle has been inscribed in the 1987 Constitution. Adopting Section 16, Article XV of the 1973 Constitution, Section 3, Article XVI of the 1987 Constitution provides: "The State may not be sued without its consent."

The prior Organic Acts of the Philippines from the Instructions of President William McKinley to the Second Philippine Commission to the 1935 Constitution did not contain a similar provision. However, Section 16, Article XV of the 1973 Constitution did not introduce any change in constitutional principles. It merely made explicit in the Constitution what had been settled in Philippine jurisprudence. As early as March 1, 1922, the Supreme Court held in *L.S. Moon & Co. v. Harrison*[1] that the State cannot be sued without its consent.

II. HISTORICAL BACKGROUND

A. England

The origin of the doctrine of sovereign immunity from suit is enveloped in uncertainty. Some legal historians believe it evolved because of the structure of the English feudal system. The lord of each manor held court for his subjects. However, he himself was not subject to the jurisdiction of his own court but was subject only to the court of a higher noble. Since the king was at the pinnacle of the feudal structure, he was not subject to any court and was immune from suit. There was no court above him. The immunity of the king from suit was not due to the belief that he was above the law but was

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[1] 43 Phil. 27, 39 (1922).

due to the fact that there was no court above him.[2] Thus, in the thirteenth century, Henry de Bracton, the English judge and writer on English law, believed that the maxim "the king can do no wrong" meant that the king was not entitled to do wrong.[3]

With the collapse of the feudal system, the idea of a nation-state developed. As the king retained his superior position he became identified with the sovereignty of the State.[4] The maxim "the king can do no wrong" came to mean that the king was incapable of doing wrong.[5]

Even when the power of the king declined, the fiction of the unity between the king and State persisted. The fact that the king traditionally had not been sued in court provided a foundation for the doctrine of immunity from suit.[6]

The immunity of the king from suit created the need to redress the grievances of the people.

Upon the death of Henry III, his eldest son, Edward I, ascended to the English throne in 1274. To give everybody the chance to approach him, he ordered that those who had complaints or requests should come to court when Parliament convened and petition for relief. Out of this grew the practice of submitting petitions of right. The petitions were studied by special commissions, the Privy Council, or the Chancellor. If the Chancellor decided that the petitioner had a right, he ordered that justice be done. If determination of the claim involved ascertainment of facts, the petition was tried by a commission of a department and, if necessary, was sent to the Court of Exchequer, the Chancery, or the King's bench.[7]

A petition rather than a writ was required because it would have been absurd for the king to issue a writ against himself. Since the king could not be

[2] Pugh, *Historical Approach to the Doctrine of Sovereign Immunity*, 13 LA. L. REV. 447-478 (1953) [hereinafter cited as *Approach*]; *Immunity*, 15 CLEV. MAR. L. REV. at 259 (1966); *Remedies against the United States and its Officers*, 70 HARV. L. REV. at 829 (1957) [hereinafter cited as *Remedies*].

[3] Pugh, *Approach, Supra* note 2 at 478; *Remedies, Supra* note 1, at 829; Jaffe, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 199 (1965) [hereinafter cited as CONTROL].

[4] Jaffe, CONTROL at 199

[5] Pugh, *Approach, Supra* note 2 at 479; *Remedies, Supra* note 2, at 830; 1 BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, at 246-247 (1915).

[6] *Remedies, Supra* note 1, at 830.

[7] JAFFE, CONTROL, *Supra* note 3, at 200-201; Pugh, *Approach, Supra* note 2, at 479.

sued, he would empower his courts to proceed by indorsing on the petition, "Let justice be done."[8]

At the same time, private individuals were allowed to sue officers who had committed a wrong. Since the king was incapable of doing wrong and could not have authorized it, it was presumed that the officer who committed the wrong was acting on his own accord and could be held liable for it.[9]

As early as the reign of Henry III, at the instance of private suitors, the King's Exchequer could order sheriffs and bailiffs to desist from and answer to private individuals for their trespasses. However, the king could shield an officer from liability by claiming the act as his own. Thus, while an action could be brought against an officer, no judgment would be given unless the king disclaimed the act.[10]

In the reign of Edward I, by virtue of the Statute of Westminster I,1275, a writ of novel disseisin was issued against the officers who if "attainted" were to pay double damages and be "grievously amerced unto the king". Thus, one who had been disseised in the name of the king could recover his land by bringing an action against the erring officer. By the Statute of Westminster II,1287, sheriffs who imprisoned a person for a felony without indictment could be sued for false imprisonment. The permission of the king to sue officers outside the Courts of Exchequer was still needed, but the privilege was gradually waived as to lower officers.[11]

B. America

Although the State has replaced the English King as sovereign, the idea that the State is immune from suit was transplanted in American jurisprudence.[12]

The remedy of petition of right was never introduced in the Thirteen Colonies. Instead, claims upon the government were commonly presented by petitions to the legislature.[13]

[8] JAFFE, CONTROL, *Supra* note 3, at 198-199; U.S. v. Lee, 16 Otto 196, 229-238 (1882).

[9] JAFFE, CONTROL, *Supra* note 3, at 198-199; *Remedies, Supra* note 2, at 830.

[10] JAFFE, CONTROL, *Supra* note 3, at 204.

[11] *Id.*

[12] PROSSER AND KEETON, THE LAW ON TORTS, at 1033 (5th ed., 1987).

[13] United States v. Lee, 16 Otto 196, 238-39 (1882).

After the United States wrested its independence from England, the States were worried during the adoption of the United States Constitution that they would be financially ruined if they would be sued before the federal courts for the payment of the huge debts they had incurred in prosecuting the War of Independence.[14] Alexander Hamilton tried to allay their fears by writing in the Federalist Papers:

> It is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent. This is the general sense, and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every state of the Union. Unless, therefore, there is a surrender of this immunity in the plan of the convention, it will remain with the states. The contracts between a nation and individuals are only binding on the conscience of the sovereign and have no pretension to compulsive force. They confer no right of action independent of the sovereign will.[15]

Likewise, in arguing for the ratification of the United States Constitution, James Madison pointed out: "It is not in the power of individuals to call any state into court."[16]

However, in 1793, in the case of *Chisolm v. Georgia*,[17] the United States Supreme Court held that the two citizens of South Carolina could sue the State of Georgia for payment of a debt.

This decision provoked such an angry reaction in Georgia that the House of Representatives of Georgia passed a law punishing any attempt to execute the decision with death by hanging without benefit of clergy.[18]

The decision also alarmed the States. As a result, on September 5, 1794, the United States Congress proposed the following amendment to the United States Constitution: "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or

[14] Pugh, *Approach, Supra* note 2, at 481.

[15] Federalist Papers No. 81.

[16] 3 ELLIOT, DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 533 (1937).

[17] 2 Dall. 419.

[18] GUNTHER, CASES AND MATERIALS ON CONSTITUTIONAL LAW 47 (10th ed., 1980).

by citizens or subjects of any foreign State."[19]

This proposal was swiftly ratified by three-fourths of the States and became the Eleventh Amendment.[20]

Although the United States Supreme Court first formulated the doctrine of State immunity from suit in 1812 in the case of the *Schooner Exchange v. M'Fadden*,[21] that case referred to a foreign country. It was in 1821 that the United States Supreme Court first mentioned the doctrine of State immunity from suit with reference to the United States in the case of *Colins v. Virginia*.[22] In that case, Chief Justice John Marshall dogmatically stated: "The universally received opinion is that no suit can be commenced or prosecuted against the United States; and the Judiciary Act does not authorize such suits."[23]

Since then the doctrine has become deeply rooted in American jurisprudence.

III. JUSTIFICATION FOR THE DOCTRINE

Various reasons with varying degrees of persuasiveness or lack of it have been advanced as bases for the principle of State immunity from suit.

1. The immunity of a State from suit without its consent is inherent in sovereignty.[24]

2. The State can do no wrong.[25] This reason seems to be a carry-over of the principle that the king was incapable of doing wrong and was immune from suit, as he became identified with the sovereignty of the State. Since there is no king in a democracy, it is the State which has come to be identified with sovereignty.

3. The immunity of the State from suit without its consent is intended to prevent the indignity of subjecting the State to the coercive process of

[19] Cohens v. Virginia, 6 Wheat 264, 406 (1821).

[20] Larsons v. Domestic and Foreign Commerce Corporation, 337 U.S. 682, 708 (1949); Pugh, *Approach, Supra* note 2, at 485.

[21] 7 Cranch 116.

[22] 6 Wheat 264.

[23] *Id.* at 406.

[24] Love v. Filtsch, 124 P 30, 32 (Okla. Sup. Ct. 1912).

[25] Santos v. Santos, 92 Phil. 281, 283 (1952).

courts at the instance of private parties.[26] This reason is questionable. The State regularly appears as a party before its courts and submits to the jurisdiction of its courts whenever it files a case. Yet, this is not considered degrading.

4. There can be no legal right against the authority that makes the law on which the right depends.[27] Since it is the State which is the source of the right to sue, it would be absurd to subject the State to suit.

5. The State does not undertake to guarantee to any person the fidelity of the officers and agents it employs, since that would involve it in all its operations in endless embarrassments, difficulties, and losses, which would be subversive of the public interest.[28]

6. Public service will be hindered and public safety will be endangered if the State can be sued at the instance of everyone. The State will thus be controlled in the use and disposition of the means required for the proper administration of the government. Its time and the energy will be dissipated in endless suits against it. This is subversive of public interest.[29]

7. By forming a State. the people undertake to surrender some of their private rights and interests which are calculated to conflict with the higher rights and interests of the people as a whole, represented by the State. One of those higher rights based upon those larger interests is the immunity of the

[26] Fitts v. McGhee, 172 U.S. 516, 528 (1899).

[27] American Insurance Co. v. Macondray & Co., Inc., 127 Phil. 527, 533 (1967); Firemen's Fund Insurance Co. v. United States Lines Co.,31 SCRA 309, 311 (1970); Switzerland General Insurance Co., Ltd. v. Republic, 32 SCRA 227, 229 (1970), Republic v. Villasor, 54 SCRA 84, 86 (1973); Republic v. Purisima, 78 SCRA 470, 472 (1977); Santiago v. Republic, 87 SCRA 294, 298 (1978); Malayan Insurance Co. v. Smith, Bell & Co. (Phil.), Inc., 101 SCRA 61, 64 (1980); Malong v. Philippine National Railway, 138 SCRA 63, 66 (1985); Sanders v. Veridiano, 162 SCRA 88, 96 (1990); Republic v. Court of Appeals, 182 SCRA 721, 728 (1990).

[28] Merritt v. Government of the Philippine Islands, 34 Phil. 311, 317 (1916).

[29] American Insurance Co. v. Macondray & Co., Inc., 127 Phil. 527, 533 (1967); Providence Washington Insurance Co. v. Republic, 29 SCRA 598, 603 (1969); Phoenix Assurance Co. v. Republic, 30 SCRA 194, 196 (1969); Firemen's Fund Insurance Co. v. United States lines Co., 31 SCRA 309, 311-12 (1970); Switzerland General Insurance Co., Ltd. v. Republic, 32 SCRA 227, 229 (1970); Republic v. Villasor, 54 SCRA 84, 86-87 (1973); Republic v. Purisima, 78 SCRA 470, 473 (1977); Santiago v. Republic, 87 SCRA 294, 298 (1978); Malayan Insurance Co. v. Smith, Bell & Co. (Phil.), Inc., 101 SCRA 61, 64 (1980); Malong v. Philippine National Railway, 138 SCRA 63, 66 (1985).

State from suit.[30]

8. Since the State represents the people, if they were to sue the State they would in effect be suing themselves.[31] It is difficult to see the tenability of this reasoning. A principal can sue his agent, and the principal will not be deemed as suing himself.

9. Since the courts are mere agents of the State, they cannot exercise authority over the State, who is their principal.

IV. SUITS AGAINST THE STATE

A. Instances of Suits against the State

Jurisprudence has mapped out the instances when an action may be considered a suit against the State without its consent.

1. Financial Liability

If a judgment in a suit will result in a financial liability on the part of the State, the action is a suit against the State.[32] Thus, in the following cases, the action was deemed a suit against the State because of the nature of the relief sought:

[30] Metropolitan Transportation Service v. Paredes, 79 Phil. 819, 826 (1948).

[31] *Id.* at 826-827.

[32] Metropolitan Transportation Service v. Paredes, 79 Phil. 819, 823 (1948); Syquia v. Lopez, 84 Phil. 312, 319 (1949); Marvel Building Corporation v. Philippine War Damage Commission, 85 Phil. 27, 32 (1949); Lim v. Nelson, 87 Phil. 328, 331 (1950); Ruperto v. Moore, 91 Phil. 185, 188 (1952); Parreno v. McGravery, 92 Phil. 791, 793 (1953); Treasurer of the Philippines v. Encarnacion, 93 Phil. 610, 612-613 (1953); Johnson v. Turner, 94 Phil. 807, 811 (1954); Republic v. De Leon, 101 Phil. 773, 778 (1957); Roldan v. Philippine Veterans Board, 105 Phil. 1081, 1085 (1959); Lim v. Brownell, 107 Phil. 344, 350 (1960); New Manila Lumber Co., Inc. v. Republic, 107 Phil. 824, 830 (1960); Garcia v. Chief of Staff, 122 Phil. 1199, 1201 (1966); Republic v. Ramolete, 124 Phil. 348, 357 (1966); Equitable Insurance & Casualty Co., Inc. v. Smith, Bell & Co. (Phil.), Inc., 127 Phil. 547, 548 (1967); Begosa v. Chairman, Philippine Veterans Administration, 32 SCRA 466, 471 (1970); Ministerio v. Court of First Instance of Cebu, 40 SCRA 464, 468 (1971); Isberto v. Raquiza, 67 SCRA 116, 120 (1975); Sanders v. Veridiano, 162 SCRA 88, 98 (1988); Shauf v. Court of Appeals, G.R. No. 90314 (November 27, 1990).

(1) Recovery of excess payment of interest;[33]
(2) Payment of reward for being an informer;[34]
(3) Payment of back rentals;[35]
(4) Payment for value of seized motor launch and its use;[36]
(5) Payment of back wages; [37]
(6) Payment from proceeds of sale of seized enemy property;[38]
(7) Redemption of bank notes;[39]
(8) Payment of money value of confiscated savings money;[40]
(9) Payment of construction materials;[41]
(10) Payment of disability benefits;[42]
(11) Payment of pension;[43]
(12) Payment of lost cargo;[44]
(13) Just compensation for expropriated property;[45]
(14) Claim for damages.[46]

[33] Salgado v. Ramos, 64 Phil. 724 (1937).

[34] Bull v. Yatco, 67 Phil. 728 (1939).

[35] Syquia v. Lopez, 84 Phil. 312 (1949); Marvel Building Corporation v. Philippine War Damage Commission, 85 Phil. 27 (1949); Lim v. Brownell, 707 Phil. 334 (1960).

[36] Lim v. Nelson, 87 Phil.328 (1950).

[37] Ruperto v. Moore, 91 Phil. 185 (1952); Roldan v. Philippine Veterans Board, 109 Phil. 1081 (1959); Isberto v. Raquiza, 67 SCRA 116 (1975).

[38] Parreno v. McGravery, 92 Phil. 491 (1953).

[39] Treasurer of the Philippines v. Encarnacion, 93 Phil. 610 (1953).

[40] Johnson v. Turner, 94 Phil. 807 (1954).

[41] New Manila Lumber Co., Inc. v. Republic, 107 Phil 824 (1960).

[42] Garcia v. Chief of Staff, 122 Phil. 1199 (1966).

[43] Republic v. Ramolete, 124 Phil. 348 (1966).

[44] Equitable Insurance & Casualty Co., Inc. v. Smith, Bell & Co. (Phils.), Inc. 127 Phil. 547 (1967).

[45] Ministerio v. Court of First Instance of Cebu, 40 SCRA 64 (1971).

[46] Sanders v. Veridiano, 162 SCRA 88 (1988); Republic v. Court of Appeals, 182 SCRA 721 (1990).

On the other hand, where funds have been appropriated for a specific purpose, such as the payment of disability pensions, and the public officer in charge of releasing the funds refuses to do so, an action to compel him to disburse the funds is not a suit against the State.[47] The State has no interest in those funds.

Likewise, where funds have been appropriated to pay for a contract and there is a dispute as to who between two contending parties is entitled to payment, an action to collect payment is not a suit against the State.[48]

Similarly, an action by a government official or employee who has been illegally removed from office for reinstatement to his position and for recovery of back wages will not be considered a suit against the State if the national budget contains an appropriation for salaries pertaining to the government office where he works. A judgment in his favor will not require the appropriation of money.[49] However, if the salaries have already been paid to the successor of the ousted public officer, he can no longer sue the State for payment of back wages. This will require an appropriation from Congress.[50]

2. Public Property

If an action will involve property in which the State claims to have an interest, such as ownership or possession, the suit is against the State.[51] Thus, a petition questioning the revocation of a timber license which was invalidly granted was considered a suit against the State.[52] Similarly, an action filed to recover ownership of a piece of land on the basis of the claim of the plaintiff that he held an *informacion posesoria* over it was considered a suit against the

[47] Begosa v. Chairman, Philippine Veterans Administration, 32 SCRA 466, 471-72 (1966); Teoxon v. Members of the Board of Administrators, 33 SCRA 585, 591 (1970); Animos v. Philippine Veterans Affairs Office, 174 SCRA 214, 222 (1989).

[48] Ruiz v. Cabahug, 102 Phil. 110, 114 (1957); Moreno v. Macadaeg, 117 Phil. 713, 718 (1963).

[49] Piñero v. Hechanova, 124 Phil. 1022, 1032 (1966).

[50] Roldan v. Philippine Veterans Board, 105 Phil. 1081, 1085 (1959).

[51] Philippine Alien Property Administration v. Castelo, 89 Phil. 568, 573 (1951); Lim v. Brownell, 107 Phil. 344, 350 (1960); Ministerio v. Court of First Instance of Cebu, 40 SCRA 464, 468 (1971); Tan v. Director of Forestry, 125 SCRA 302, 324 (1983); Republic v. Feliciano, 148 SCRA 424, 431 (1987).

[52] Tan v. Director of Forestry, 125 SCRA 302, 324 (1987).

State.[53]

3. Political Act

If the judgment in a case will interfere with the public administration, or will result in compelling the State to perform, or in prohibiting it from performing an act which belongs to it in its political capacity, the suit is one against the State.[54] For instance, an alien whose application for a visa was disapproved cannot sue to compel the State to grant his application.

Where the satisfaction of a money judgment will require Congress to appropriate funds, the suit is an action against the State. Since the appropriation of money involves the exercise of the legislative power of Congress, which is a political department of the State, it is political in nature.[55]

Since defense is a public function of the State, an action to enjoin the commander of a military base from interfering with the logging operations of the plaintiff within the military base is a suit against the State.[56]

B. Suits against Public Officers

In many cases, the plaintiff does not sue the State itself. He sues a public officer instead. Even if the defendant is not the State but a public officer, the question of application of the doctrine of State immunity from suit can arise. The State can only act through individuals. A plaintiff cannot evade the immunity of the State from suit by suing the proper public official. Hence, the designation of the party defendant is not controlling. Whether a suit against a public officer is actually a suit against the State depends on the

[53] Republic v. Feliciano, 148 SCRA 424, 431 (1987).

[54] Ruiz v. Cabahug, 102 Phil. 110, 115 (1957); Piñero v. Hechanova, 124 Phil. 1022, 1032-33 (1966); Baer v. Tizon, 57 SCRA 1, 9 (1974).

[55] Ruiz v. Cabahug, 102 Phil. 110, 115 (1957); Roldan v. Philippine Veterans Board, 105 Phil. 1081, 1085 (1959); Piñero v. Hechanova, 18 SCRA 417, 426-427; United States of America v. Guinto, 182 SCRA 644, 653 (1990).

[56] Baer v. Tizon, 57 SCRA 1, 9 (1974).

issues raised in the complaint and the effect of the judgment.[57] Thus, the test should be the result and effect of the judgment. If the case really seeks relief against the State, the designation of a public officer as the nominal defendant should be disregarded.[58]

If a public officer who is being sued acted in behalf of the government and within the scope of his authority, the suit against him is actually one against the State itself.[59]

In the following cases, it was held that the suit against a public officer should be dismissed:

(1) The seizure of rice by order of the Governor-General pursuant to a law granting the government control over the distribution of rice;[60]
(2) The seizure by the provost marshall of scrip money which the holder tried to convert into dollars in violation of military regulations;[61]
(3) The dismissal of a government employee pursuant to a law prohibiting the hiring of employees who are already fifty-seven years of age;[62]
(4) The revocation of a timber license issued under the condition that it was subject to cancellation at anytime;[63]
(5) The submission by public officers to their superior of recommendation against the reinstatement to full-time status

[57] Transwestern Pipeline Co. v. Kerr-Mcghee Corporation, 492 F. 2d 878, 884 (1974); New Mexico v. Regan, 745 F. 2d 1318, 1320 (1984); Thomas v. Pierce, 662 F. Supp. 519, 523 (1987).

[58] Ministerio v. Court of First Instance of Cebu, 40 SCRA 464, 468 (1971); Sayson v. Singson, 54 SCRA 282, 285-86 (1970); Tan v. Director of Forestry, 125 SCRA 302, 324 (1987).

[59] L. S. Moon & Co. v. Harrison, 43 Phil. 27, 39 (1922); Johnson v. Turner, 94 Phil. 807, 811 (1954); Roldan v. Philippine Veterans Board, 105 Phil. 1081, 1085 (1959); Tan v. Director of Forestry, 125 SCRA 302, 325 (1987); Sanders v. Veridiano, 162 SCRA 88, 96 (1988); United States of America v. Guinto, 182 SCRA 644, 659 (1990); Republic v. Court of Appeals, 182 SCRA 721, 728 (1990); Shauf v. Court of Appeals, G.R. No. 90314 (November 27, 1990).

[60] L.S. Moon & Co. v. Harrison, 43 Phil. 27 (1922).

[61] Johnson v. Turner, 94 Phil. 807 (1954).

[62] Roldan v. Philippine Veterans Board, 105 Phil. 1081 (1959).

[63] Tan v. Director of Forestry, 125 SCRA 302 (1987).

of a subordinate employee who was antagonizing other employees and his supervisors;[64]

(6) The dismissal of an employee after his arrest by public officers for dealing in prohibited drugs;[65]

(7) The refusal of a director to recognize the unauthorized return of the assistant director, who had been temporarily detailed to another office.[66]

A mere allegation in the complaint that a public officer is being sued in his personal capacity rather than his official capacity will not necessarily remove him from the protection of the doctrine of State immunity from suit if the application of the doctrine is appropriate.[67]

On the other hand, in several instances, it has been recognized that suit may be prosecuted against a public officer because it is not a suit against the State.

1. Illegal Acts and Acts beyond the Scope of Authority

A suit against a public officer who, while claiming to act in the name of the State, acted illegally or beyond the scope of his authority, is not a suit against the state. Since he was acting illegally or beyond the scope of his authority, it cannot be said that he was acting as an agent of the State.[68]

In the case of the *Director of the Bureau of Telecommunications v. Aligaen*,[69] the Supreme Court elaborated on this doctrine by saying:

> Inasmuch as the State authorizes only legal acts by its officers, unauthorized acts of government officials or officers are not acts of the State, and an action against the officials or officers by one whose rights have been unaided or violated by such acts, for the protection of his rights, is not a suit against the State within the

[64] Sanders v. Veridiano, 162 SCRA 88 (1988).

[65] United States of America v. Ceballos, 182 SCRA 644 (1990).

[66] Republic v. Court of Appeals, 182 SCRA 721 (1990).

[67] Sanders v. Veridiano, 162 SCRA 88, 94 (1988); Republic v. Court of Appeals, 182 SCRA 721, 728 (1990).

[68] Ministerio v. CFI of Cebu, 40 SCRA 464, 468-69 (1971); Shauf v. Court of Appeals, G.R. No. 90314 (November 27, 1990).

[69] 33 SCRA 368, 337-38 (1970).

> rule of immunity of the State from suit. In the same tenor, it has been said that an action at law or suit in equity against a State officer or director of a State department on the ground that, while claiming to act for the State, he violates or invades the personal and property rights of the plaintiff, under an unconstitutional act or under an assumption of authority he does not have, is not a suit against the State within the constitutional provision that the State may not be sued without its consent.

Thus, a public officer may be sued for illegally seizing or withholding the possession of the property of another. Otherwise, the aggrieved owner will have no redress for the violation of his rights.[70] The same holds true of a public officer who, while claiming to act in the discharge of his official duties, committed a quasi-delict.[71] The same is true of military officers who committed violations of human rights.[72] Likewise,a school principal could sue the officials of the Department of Education, Culture and Sports who improperly refused to reinstate him to his position.[73] It has also been held that public officers could be sued for damages for discriminating against an employee on account of her sex, color and origin.[74]

2. Unconstitutional Acts

A public officer may be sued to enjoin him from enforcing an unconstitutional law.[75] If the Bill of Rights cannot be enforced by filing such an action, the rights guaranteed by the Constitution will be rendered nugatory.

Likewise, a public officer may be sued if the power he is exercising,

[70] Tan Te v. Bell, 27 Phil. 357, 358 (1914); Syquia v. Lopez, 84 Phil. 312, 319 (1949); Marvel Building Corporation v. Philippine War Damage Commission, 85 Phil. 27, 34 (1949); Lim v. Nelson, 87 Phil. 328, 330 (1950).

[71] Festejo v. Fernando, 94 Phil. 504, 506 (1954); Sanders v. Veridiano, 162 SCRA 88, 93 (1988); United States of America v. Guinto, 182 SCRA 644, 658 (1990).

[72] Aberca v. Ver, 160 SCRA 590, 603 (1988).

[73] Sabello v. Department of Education, Culture and Sports, 180 SCRA 623, 626 (1989).

[74] Shauf v. Court of Appeals, G.R. No. 90314 (November 27, 1990).

[75] J. M. Tuason & Co., Inc. v. Land Tenure Administration, 31 SCRA 413, 421-22 (1970); Sanders v. Veridiano, 162 SCRA 88, 97 (1988).

or the manner he exercises such power in a particular case, is unconstitutional.[76]

3. Mandamus

If a public officer fails to comply with a ministerial obligation imposed by law, the party in whose favor the obligation was constituted may file a petition for mandamus against him.[77] Thus, a petition for mandamus may be filed against a public officer with the task of releasing public funds appropriated for the payment of benefits to claimants.[78]

V. SCOPE OF PROHIBITION AGAINST SUING THE STATE

Because of its immunity from suit,the State cannot be compelled to litigate against other parties without its consent. Thus, it cannot be compelled to interplead in an action filed by a private party.[79]

Likewise, public funds in the hands of a public officer due a defendant in a lawsuit cannot be garnished. The garnishment will amount to a suit against the State without its consent.[80] Garnishment makes the garnishee a forced intervenor in the action.

[76] Ludwig v. Western Union Telegraph Co., 216 U.S. 146, 159 (1910); Western Union Telegraph Co. v. Andrews, 216 U.S. 165, 166 (1910); Herndon v. Chicago v. Rock Island & Pacific Railway Co., 218 U.S. 135, 156 (1910); Truax v. Raich, 239 U.S. 33, 37 (1915); Louisville & Interurban-Railroad Co. v. Greene, 244 U.S. 153, 159 (1916); Public Service Company of Northern Illinois v. Corboy, 250 U.S. 153, 159 (1916); Sterling v. Constantin, 287 U.S. 378. 393 (1932); Larson v. Domestic & foreign Commerce Corporation, 337 U.S. 682, 702 (1949).

[77] Tan v. Veterans Backpay Commission, 105 Phil. 377, 383 (1959); Sanders v. Veridiano, 162 SCRA 88, 97 (1988).

[78] Moreno v. Macadaeg, 117 Phil. 713, 716 (1963); Begosa v. Chairman, Philippine Veterans Administration, 32 SCRA 466, 471-472 (1970); Sanders v. Veridiano, 162 SCRA 88, 97 (1988); Animos v. Philippine Veterans Administration, 174 SCRA 214, 222 (1989).

[79] Alvarez v. Commonwealth of the Philippines, 65 Phil. 302, 313 (1938).

[80] Director of Commerce & Industry v. Concepcion, 43 Phil. 384, 386 (1922); Director of Bureau of Printing v. Francisco, 54 SCRA 324, 331 (1973); Pacific Products, Inc. v. Ong, 181 SCRA 536, 543 (1990).

Thus, salaries due government employees cannot be garnished.[81] The same holds true of the payment due a supplier of the Bureau of Telecommunications.[82]

VI. EXPRESS WAIVER OF IMMUNITY FROM SUIT

The express consent of the State to be sued is given in the form of a statute.[83] Hence, only Congress can give such consent.[84] The law may be special or general.

Act No. 2457 authorized E. Merritt to sue the government for damages resulting from collision between his motorcycle and an ambulance owned by a government hospital. Likewise, Act No. 2630 permitted the Marine Trading Company, Inc. to sue the government for damages caused by a collision between a launch belonging to it and a scow being towed by a launch belonging to the government. Act No. 3083 contained a general waiver of immunity from suit. Under Sections 1 and 2 of Act No. 1083, the government consented to be sued on the basis of any express or implied contract, should the Insular Auditor fail to decide a claim within two months. However, these provisions were repealed by Commonwealth Act No. 327.[85]

By virtue of Presidential Decree No. 1807, the Philippines waived its immunity from suit with respect to its foreign debts. Section 1 of Presidential Decree No. 1807 reads in part:

> In instances where the law expressly authorizes the Republic of the Philippines to contract or incur a foreign obligation, it may consent to be sued in connection therewith. The President of the Philippines or his duly designated representative may, in behalf of the Republic of the Philippines, contractually agree to waive any claim to sovereign immunity from suit or legal

[81] Director of Commerce & Industry v. Concepcion, 43 Phil. 384, 386 (1922); Director of Bureau of Printing v. Francisco, 54 SCRA 324, 331 (1973).

[82] Pacific Products, Inc. v. Ong, 181 SCRA 536, 544 (1990).

[83] Lim v. Brownell, 107 Phil. 344, 350 (1959); United States of America v. Guinto, 182 SCRA 644, 654 (1990).

[84] Philippine Alien Property Administration v. Castelo, 89 Phil. 568, 577 (1951); Republic v. Purisima, 78 SCRA 470, 474 (1977); Republic v. Feliciano, 148 SCRA 424, 431 (1987); United States of America v. Guinto, 182 SCRA 644, 654 (1990).

[85] Carabao, Inc. v. Agricultural Productivity Commission, 35 SCRA 224, 228 (1970).

proceedings and from set-off, attachment or execution with respect to its property, and to be sued in any appropriate jurisdiction in regard to such foreign obligation.

The Central Bank may be sued. Under Section 4 of the Central Bank Act No. 265, as amended, the Central Bank may sue or be sued.[86]

If a government agency was vested by law with a juridical personality separate and distinct from that of the State, it may be sued. A suit against it will not amount to a suit against the State, since it has a separate juridical personality.

Thus, it has been held that the following government entities may be sued, because they have a separate juridical personality:

(1) Postal Savings Bank;[87]
(2) Metropolitan Water District;[88]
(3) Philippine Normal College;[89]
(4) Social Security System;[90]
(5) Philippine National Bank;[91]
(6) National Power Corporation;[92]
(7) National Irrigation Administration;[93]

On the other hand, if a government agency has no personality separate and distinct from that of the State, a suit against it is actually a suit against the State.

Thus, it has been held that the following government offices cannot be sued, because they have no separate juridical personality:

[86] Central Azucarera Don Pedro v. Central Bank, 104 Phil. 598, 603 (1958); Arcega v. Court of Appeals, 66 SCRA 229, 232 (1975).

[87] Stiver v. Dizon, 76 Phil. 725, 728 (1946).

[88] Metropolitan Water District v. Court of Industrial Relations, 91 Phil. 840, 843 (1952).

[89] Bermoy v. Philippine Normal College, G.R. No. L-8670 (May 18, 1956).

[90] Social Security System Employees Association v. Soriano, 117 Phil. 1038, 1043 (1963); Social Security System v. Court of Appeals, 120 SCRA 707, 717 (1983).

[91] Republic v. Philippine National Bank, 121 Phil. 26, 29 (1965).

[92] Rayo v. Court of First Instance of Bulacan, 196 Phil. 572, 576 (1981).

[93] Fontanilla v. Maliaman, G.R. No. 5563 (February 27, 1991).

(1) Metropolitan Transportation Service;[94]
(2) Philippine Veterans Board;[95]
(3) Bureau of Printing;[96]
(4) Bureau of Customs;[97]
(5) Rice and Corn Administration;[98]
(6) Board of Liquidators;[99]
(7) Bureau of Telecommunications;[100]

However, even if the government is the controlling stockholder of a corporation, the corporation may be sued. The fact that the government is the controlling stockholder of the corporation does not clothe the corporation with immunity from suit.[101]

Congress can subject the consent of the State to be sued to certain conditions. In such case, the plaintiff must show that he has complied with all the conditions for the consent to be sued.[102] The conditions must be complied with strictly.[103]

The consent to be sued, once given, can be withdrawn.[104] The

[94] Metropolitan Transportation Service v. Paredes, 79 Phil. 819, 823 (1948).

[95] Roldan v. Philippine Veterans Board, 105 Phil. 1081, 1084 (1959).

[96] Bureau of Printing v. Bureau of Printing Employees Association, 110 Phil. 952, 957 (1961).

[97] Mobil Philippines Exploration, Inc. v. Customs Arrastre Service, 125 Phil. 270, 277 (1966).

[98] Republic v. Purisima, 78 SCRA 470, 474 (1977).

[99] Philippine Rock Industries, Inc. v. Board of Liquidators, 180 SCRA 171, 174 (1989).

[100] Pacific Products, Inc. v. Ong, 181 SCRA 536, 544 (1990).

[101] Government of the Philippine Islands v. Springer, 50 Phil. 259, 288 (1927).

[102] Compañia General de Tabacos v. Government of the Philippine Islands, 45 Phil. 663, 666 (1924); Salgado v. Ramos, 64 Phil. 724, 728 (1937); Bull v. Yatco, 67 Phil. 728, 723 (1939); Philippine Alien Property Administration v. Castelo, 89 Phil. 568, 573 (1951); Harry Lyons, Inc. v. United States, 104 Phil. 593, 598 (1958); Insurance Company of North America v. Republic, 128 Phil. 488, 489 (1967).

[103] Soriano v. United States, 352 U.S. 270, 276 (1957); Lehman v. Nakshian, 453 U.S. 156, 161 (1981); Block v. North Dakota, 461 U.S. 273, 287 (1983).

[104] Pareño v. McGravery, 92 Phil. 791, 794 (1953).

withdrawal may be made at any time.[105]

Laws waiving the immunity of the State from suit must be construed strictly and should not be expanded liberally.[106] The consent of the State to be sued must be expressed unequivocally.[107] Thus, if the State consented to be sued for the recovery of property, the consent should not be interpreted as including the recovery of damages for the use of the property.[108]

However, when the consent to be sued is given without qualification, the waiver is not limited to actions for breach of contract but includes actions for the commission of quasi-delicts.[109]

VII. IMPLIED WAIVER OF IMMUNITY FROM SUIT

It is in the case of implied waiver of the State immunity from suit that numerous controversies have arisen. Decisions in this field have not been consistent. However, from the tangle of decisions, certain principles can be drawn.

A. Proprietary Functions

When the State engages in business, it divests itself of its sovereign

[105] Beers v. Arkansas, 20 How. 527, 529 (1858); Baltzer v. North Carolina, 161 U.S. 240, 243 (1896); Lynch v. United States, 292 U.S. 571, 582 (1934); Maricopa County v. Valley National Bank of Phoenix, 318 U.S. 357, 362 (1943).

[106] Compañia General de Tabacos v. Government of the Philippine Islands, 45 Phil. 663, 666 (1924); Mobil Philippines Exploration, Inc. v. Customs Arrastre Service, 125 Phil. 270, 279 (1966); Equitable Insurance & Casualty Co., Inc. v. Smith, Bell & Co. (Philippines), Inc., 127 Phil. 547, 549 (1967); Insurance Company of North America v. Warner, Barnes & Co., Ltd., 128 Phil. 807 (1967); Firemen's Fund Insurance Co. v. Maersk Line Far East Service, 137 Phil. 344, 347 (1969); Providence Washington Insurance v. Republic, 30 SCRA 536, 538 (1969).

[107] United States v. Testan, 424 U.S. 392, 399 (1976);United States v. Mitchell, 445 U.S. 535, 538 (1980); Lehman v. Nakshian, 453 U.S. 156, 160 (1981); Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 99 (1984).

[108] Philippine Alien Property Administration v. Castelo, 89 Phil. 568, 574 (1951); Lim v. Brownell, 107 Phil. 344, 351 (1960).

[109] Rayo v. Court of First Instance of Bulacan, 196 Phil. 572, 576 (1981); Social Security System v. Court of Appeals, 120 SCRA 707, 717 (1983); Civil Aeronautics Administration v. Court of Appeals, 167 SCRA 28, 35 (1988).

immunity. It puts on the garb of an ordinary individual, becomes subject to the rules binding upon private business enterprises, and becomes amenable to suit.[110]

1. Constituent and Ministrant Function

To determine whether or not a governmental agency is amenable to suit, it is important to find out if it is performing constituent or ministrant functions.

In *Bacani v. National Coconut Corporation*,[111] the Supreme Court enumerated the constituent functions as follows:

(1) The keeping of order and providing for the protection of persons and property from violence and robbery;
(2) The fixing of the legal relations between man and wife and between parents and children;
(3) The regulation of the holding, transmission, and interchange of property, and the determination of its liabilities for debt or crime;
(4) The determination of contract rights between individuals;
(5) The definition and punishment of crime;
(6) The administration of justice in civil cases;
(7) The determination of the political duties, privileges, and relations of citizens; and
(8) Dealings of the State with foreign powers; the preservation of the State from external danger or encroachment and the advancement of its international interest.

[110] Manila Hotel Employees Association v. Manila Hotel Co., 73 Phil. 374, 389 (1941); National Airports Corporation v. Teodoro, 91 Phil. 203, 206 (1952); Santos v. Santos, 92 Phil. 281, 285 (1952); Price Stabilization Corporation v. Court of Industrial Relations, 102 Phil. 515, 523 (1957); National Development Co. v. Tobias, 117 Phil. 703, 705 (1963); National Development Co. v. NDC Employees and Workers' Union, 66 SCRA 181, 184-85 (1975); Philippine National Bank v. Court of Industrial Relations, 81 SCRA 314, 319 (1978); Philippine National Bank v. Pabalan, 83 SCRA 595, 600 (1978); Philippine National Railway v. Union de Maquinistas, Fogoneros y Motormen, 84 SCRA 223, 226 (1978); Malong v. Philippine National Railway, 138 SCRA 63, 67 (1985); Civil Aeronautics Administration v. Court of Appeals, 167 SCRA 28, 37 (1988); Rizal Commercial Banking Corporation v. De Castro, 168 SCRA 49, 60 (1988); United States of America v. Rodrigo, 182 SCRA 644, 661 (1990).

[111] 100 Phil. 468, 472 (1956).

However, in the case of the *Agricultural Credit and Cooperative Financing Administration v. Confederation of Unions in Government Corporations and Offices*,[112] the Supreme Court held that this enumeration is obsolete. The Supreme Court reasoned out:

> The growing complexities of modern society, however, have rendered this traditional classification of the functions of government quite unrealistic, not to say obsolete. The areas which used to be left to private enterprise and initiative and which the government was called upon to enter optionally, and only because it was better equipped to administer for the public welfare than is any private individual or group of individuals, continue to lose their well-defined boundaries and to be absorbed within activities that the government must undertake in its sovereign capacity if it is to meet the increasing social challenges of the times. Here as almost everywhere else the tendency is undoubtedly towards a greater socialization of economic forces.

Today the State is not limiting its role to maintaining peace and order. It also undertakes social and economic activities.

Thus, it has been held that the following functions are governmental:

(1) Stabilization of the price of palay, rice and corn[113]
(2) Education[114]
(3) Construction and maintenance of roads[115]
(4) Collection and disposal of garbage[116]
(5) Printing for the government[117]

[112] 30 SCRA 649, 662 (1969).

[113] Tabora v. Montelibano, 98 Phil. 800, 806 (1956); Ramos v. Court of Industrial Relations, 129 Phil. 542, 547 (1967); Republic v. CFI of Rizal, 99 SCRA 660, 665 (1980).

[114] Bermoy v. Philippine Normal College, G.R. L-8670 (May 18, 1956); University of the Philippines v. Court of Industrial Relations, 107 Phil. 848, 850 (1960); University of the Philippines v. Gabriel, 154 SCRA 684, 693 (1987).

[115] Palafox v. Ilocos Norte, G.R. No. L-10659 (January 31, 1958).

[116] Department of Public Services Labor Union v. Court of Industrial Relations, 110 Phil. 927, 929 (1961).

[117] Bureau of Printing v. Bureau of Printing Employees Association, 110 Phil. 952, 957 (1961).

(6) Defense[118]
(7) Administration of pensions for war veterans[119]
(8) Collection of taxes[120]
(9) Implementation of land reform[121]
(10) Improvement of the economic conditions of tobacco farmers[122]
(11) Implementation of low-cost housing program[123]
(12) Liquidation of the Reparations Commission[124]
(13) Promotion of tourism[125]

On the other hand, it has been held that the following functions are proprietary:

(1) Operation of a hotel[126]
(2) Banking[127]

[118] Republic v. Philippine National Bank, 121 Phil. 26, 29 (1965).

[119] Republic v. Remolete, 124 Phil. 348, 356-57 (1966).

[120] Mobil Philippines Exploration, Inc. v. Customs Arrastre Service, 125 Phil. 270, 277 (1966).

[121] Agricultural Credit & Cooperative Financing Administration v. Confederation of Unions in Government Corporations and Offices, 30 SCRA 649, 662 (1969).

[122] Philippine Virginia Tobacco Administration v. Court of Industrial Relations, 65 SCRA 416, 423 (1975).

[123] National Housing Corporation v. Juco, 134 SCRA 172, 180 (1985); People's Homesite & Housing Corporation v. Court of Industrial Relations, 150 SCRA 171, 175 (1987).

[124] Philippine Rock Industries, Inc. v. Board of Liquidators, 180 SCRA 171, 175 (1989).

[125] Yu v. Province of Pangasinan, CA-G.R. No. SP-04967-R (July 1, 1976).

[126] Manila Hotel Employees Association v. Manila Hotel Co., 73 Phil. 374, 388-89 (1941).

[127] Asociacion Cooperativa de Credito Agricola de Miagao v. Monteclaro, 74 Phil. 281, 282 (1943); Republic v. Philippine National Bank, 121 Phil. 26, 29 (1965).

(3) Insurance[128]
(4) Engaging in commercial and industrial enterprises[129]
(5) Operation of common carrier[130]
(6) Operation of a restaurant[131]
(7) Irrigation[132]

The Supreme Court has repeatedly ruled that the Civil Aeronautics Administration may be sued, even if it has no separate juridical personality, because it is engaged in the management of the airports, which is a proprietary function.[133] In the earlier case of the *National Airports Corporation v. Yanson*,[134] the Supreme Court held that the Civil Aeronautics Administration is an agency of the government. Since the Civil Aeronautics Administration is engaged in the promotion of the safety of the travelling public, it should be considered engaged in the performance of a governmental function. In *National Airports Corporation v. Teodoro*,[135] the Supreme Court tried to explain the different conclusion it reached in *Yanson* by stating that the latter case involved a labor dispute. Is this a valid basis for making a distinction? Can a function be governmental for one purpose and proprietary for another purpose?

[128] Abad Santos v. Auditor General, 79 Phil. 176, 190 (1947); Government Service Insurance System v. Castillo, 98 Phil. 876, 879 (1956); Government Service Insurance System Employees Association v. Alvendia, 108 Phil. 505, 508 (1975); Social Security System Employees Association v. Soriano, 118 Phil. 1354, 1361 (1983).

[129] National Development Co. v. Tobias, 117 Phil. 703, 705 (1963); National Development Co. v. NDC Employees and Workers' Union, 66 SCRA 181, 184-85 (1975); National Development Co. v. Nueva Ecija, 125 SCRA 572, 757 (1983).

[130] Philippine National Railway v. Union de Maquinistas, Fogoneros y Motormen, 84 SCRA 223, 226 (1978); Malong v. Philippine National Railway, 138 SCRA 63, 67 (1985).

[131] U.S. v. Rodrigo, 182 SCRA 644, 661 (1990).

[132] Fontanilla v. Maliaman, 179 SCRA 685 (1989).

[133] National Airports Corporation v. Teodoro, 91 Phil. 203, 206 (1952); Santos v. Santos, 92 Phil. 281, 285 (1952); Civil Aeronautics Administration v. Court of Appeals, 167 SCRA 28, 37 (1988).

[134] 89 Phil. 745, 747 (1951).

[135] 91 Phil. 203, 207.

2. Profit Motive

If a government agency is being operated for the purpose of profit, it is performing a proprietary function.[136] On the other hand, if a government agency was not organized for profit but as a public service, it is performing a governmental function.[137] In such a case, it makes no difference that it earns profits from its operation. Its primary purpose is not to earn profits but to promote the general welfare. For instance, the postal service rendered by the Bureau of Posts is not operated for profit but as a public service.[138]

The Supreme Court repeatedly held that whenever the government engages in buying and selling rice and corn, it is doing so for the purpose of stabilizing the price of such prime commodities and keeping the price within the reach of the common masses. The purpose is not to earn profits.[139] However, in the case of the *Naric Workers Union v. Alvendia*,[140] the Supreme Court ruled that such activity is proprietary, because profits can be derived or losses incurred from such activity. This isolated ruling is erroneous.

Likewise, the Supreme Court previously held that the administration of the national irrigation system is a governmental function, because it is being undertaken primarily for the promotion of the general welfare.[141] However, in the recent case of *Fontanilla v. Maliaman*,[142] the Supreme Court held that this is a proprietary function, especially since the National Irrigation Administration charges a fee for its services. The Supreme Court overlooked the fact that the National Irrigation Administration was not organized for the primary purpose of earning profits.

[136] Price Stabilization Corporation v. Court of Industrial Relations, 102 Phil. 515, 523 (1957); U.S. v. Rodrigo, 182 SCRA 644, 661 (1990).

[137] Agricultural Credit & Cooperative Financing Administration v. Confederation of Union in Government Corporations and Offices, 30 SCRA 649, 660 (1969); Philippine Rock Industries, Inc. v. Board of Liquidators, 180 SCRA 171, 174 (1989).

[138] Philippine Education Co. v. Soriano, 39 SCRA 587, 590 (1971).

[139] Tabora v. Montelibano, 98 Phil. 800, 806 (1956); Ramos v. Court of Industrial Relations, 129 Phil. 542, 547 (1967); Republic v. CFI of Rizal, 99 SCRA 660, 665 (1980).

[140] 107 Phil. 404 (1960).

[141] Angat River Irrigation Systems v. Angat River Workers' Union, 102 Phil. 790, 796 (1957).

[142] 179 SCRA 685, 692 (1989).

3. Performance of Functions Imposed by the Constitution

If the performance of a function is imposed by the Constitution upon the state, it is governmental. Thus, in ruling that the Angat River Irrigation System was performing a governmental function, the Supreme Court reasoned out:

> "This undertaking of regulating the use and appropriation of our public waters by the Government, in turn, arose out of the duty of the State to supervise the disposition and use of our natural resources and the correlated exhortation by the Constitution as regards its conservation and utilization."[143]

In the subsequent case of *Fontanilla v. Maliaman*,[144] the Supreme Court held that the administration of irrigation systems is a proprietary function. However, it kept silent over the fact that the disposition and use of natural resources is a function imposed by the Constitution upon the government.

Likewise, State colleges and universities are performing a governmental function.[145] Section 2, Article XIV of the 1987 Constitution provides:

> "The State shall:
>
> . . . .
>
> (c) Establish, maintain, and support a complete, adequate,and integrated system of education relevant to the needs of the people and society."

4. Performance of Proprietary Functions Incidental to Governmental Functions

If the performance of a proprietary function is merely incidental to a

[143] Angat River Irrigation Systems v. Angat River Workers' Union, 102 Phil. 790, 796 (1957).

[144] 179 SCRA 685.

[145] Bermoy v. Philippine Normal College, G.R. L-8670 (May 18, 1956); University of the Philippines v. Court of Industrial Relations, 107 Phil. 848, 850 (1960); University of the Philippines v. Gabriel, 154 SCRA 684, 693 (1987).

governmental function, the government agency cannot be sued.[146] The proprietary functions do not detract from the governmental nature of the function of the government agency. Thus, it was held that the Board of Liquidators could not be sued for selling a rock pulverizing plant, as the sale was merely incidental to the governmental function of liquidating the Reparations Commission.[147]

In *Mobil Philippines Exploration, Inc. v. Customs Arrastre Service*,[148] the Supreme Court ruled that the Bureau of Customs could not be held liable for the loss of goods in its custody while it was operating the arrastre service. The Supreme Court reasoned out:

> Its primary function is governmental, that of assessing and collecting lawful revenues from imported articles and all other tariff and customs duties, fees, charges, fines and penalties. (Sec. 602, R.A. 1937) To this function, arrastre service is a necessary incident. For practical reasons said revenues and customs duties cannot be assessed and collected by simply receiving the importer's or ship agent's or consignee's declaration of merchandise being imported and imposing the duty provided in the Tariff law. Customs authorities and officers must see to it that the declaration tallies with the merchandise actually landed. And this checking up requires that the landed merchandise be hauled from the ship's side to a suitable place to enable said customs officers to make it, that is, it requires arrastre operation.

In the earlier case of *Arrastre Workers Union v. Bureau of Customs*,[149] however, the Supreme Court held that the arrastre workers hired by the Bureau of Customs could go on a strike, because the arrastre service did not involve a governmental function. This case was distinguished by the Supreme Court from *Mobil* by claiming that the amenability of the Bureau of Customs to suit was not an issue in that case. If the arrastre operation is a proprietary function, should it not follow that the Bureau of Customs should be amenable to suit? Can a function be proprietary for one purpose, i.e., labor relations, and governmental for another purpose, i.e., liability for loss of imported

[146] Bureau of Printing v. Bureau of Printing Employees Association, 110 Phil. 952, 956 (1961).

[147] Philippine Rock Industries, Inc. v. Board of Liquidators, 180 SCRA 171. 175 (1989).

[148] 125 Phil. 270, 277 (1966).

[149] G.R. No. L-21307 (August 6, 1963).

goods?

In all the cases decided by the Supreme Court, the proprietary function could also be performed by private entities. Yet, they were considered governmental, because they were performed by a government agency. Thus, the test the Supreme Court used for classifying the nature of the activity was not the inherent nature of the activity but the identity of the performer of the activity. The proprietary function was considered as subsumed into a government function, because the governmental agency performing it was also engaged in a governmental function.

When a government agency performs a proprietary function, it becomes amenable to lawsuit, even if it does not have a juridical personality separate and distinct from that of the state.[150] By engaging in a proprietary function, the State descends to the level of a private individual. Thus, the ruling in *Metropolitan Transportation Service v. Paredes,*[151] that the Metropolitan Transportation Service was immune from suit because it had no juridical personality, is erroneous. The Metropolitan Transportation Service was engaged in the transportation service. The operation of a common carrier is a proprietary function.[152]

B. Contracts

Originally, the Supreme Court held that when the State enters into a contract, it opens itself to lawsuit. By entering into the contract, it descended to the level of a private individual. Its consent to be sued is implied from the very act of entering into the contract.[153] Later on, the Supreme Court ruled that the State may not be sued for breach of contract, because consent to be sued can only be given through a duly enacted statute.[154]

[150] National Airport Corporation v. Teodoro, 91 Phil. 203, 206 (1925); Santos v. Santos, 92 Phil. 281, 285 (1952); Civil Aeronautics Administration v. Court of Appeals, 167 SCRA 28, 37 (1988); Philippine Rock Industries, Inc. v. Board of Liquidators, 180 SCRA 171, 174 (1989); United States of America v. Rodrigo, 182 SCRA 644, 661 (1990).

[151] 79 Phil. 819, 823 (1948).

[152] Philippine National Railway v. Union de Maquinistas, Fogoneros y Motormen, 84 SCRA 223, 226 (1978); Malong v. Philippine National Railway, 138 SCRA 63, 67 (1985).

[153] Santos v. Santos, 92 Phil. 281, 284 (1952); Harry Lyons, Inc. v. U.S., 104 Phil. 593, 595-96 (1958).

[154] Republic v. Purisima, 78 SCRA 470, 474 (1977).

In its latest stance, the Supreme Court drew a distinction between contracts connected with commercial activities and contracts related to sovereign functions. In the case of the *U.S. v. Ruiz,*[155] the Supreme Court elaborated on this distinction:

> The restrictive application of State immunity is proper only when the proceedings arise out of commercial transaction of the foreign sovereign, its commercial activities or economic affairs. Stated differently, a State may be said to have descended to the level of an individual and can thus be deemed to have tacitly given its consent to be sued only when it enters into business contracts. It does not apply where the contract relates to the exercise of its sovereign function.

Thus, in the same case, it was held that the United States of America could not be deemed to have given its consent to be sued, since the contract involved the repair of wharves within a naval base and defense is a governmental function.[156] Likewise, the purchase of copper sulphate by the Bureau of Telecommunications was considered as having been made in the exercise of a governmental function.[157] On the other hand, a contract for the operation of barber shops within an air base was considered as commercial.[158] Likewise, an office organized to disseminate government information could be sued for failure to pay a loan it contracted to pay for the rights to cover basketball games, since the undertaking was not connected with its governmental function.[159]

C. Institution of Lawsuits

When the State takes the initiative in filing a case, it descends to the level of a private individual and throws itself open to a counterclaim. Section 5 of Act No. 3083 provides: "When the Government of the Philippine Islands is plaintiff in an action instituted in any court of original jurisdiction, the

[155] 136 SCRA 487, 492 (1985).

[156] *Id.*

[157] Pacific Products, Inc. v. Ong, 181 SCRA 536, 544 (1990).

[158] U.S. v. Guinto, 182 SCRA 644, 662 (1990).

[159] Traders Royal Bank v. Intermediate Appellate Court, G.R. No. 68514 (December 17, 1990).

defendant shall have the right to assert therein, by way of set-off or counterclaim in a similar action between private parties."

In *Froilan v. Pan Oriental Shipping Co.,*[160] the Supreme Court explained this rule as follows:

> In short, by taking the initiative in an action against a private party, the State surrenders its privileged position and comes down to the level of the defendant. The latter automatically acquires, within certain limits, the right to set up whatever claims and other defenses he might have against the State.

Thus, if the State files an expropriation case, it may be ordered to pay just compensation to the defendant.[161]

The counterclaims that can be interposed against the State must be limited to compulsory counterclaims and cannot extend to permissive counterclaims.[162] The consent of the State to litigate must be limited to the subject of its complaint, for it should be deemed to have waived its immunity from suit only with respect to that subject.

Since by filing a case the State waives its immunity from suit, private

[160] 95 Phil. 905, 912 (1945).

[161] Visayan Refining Co. v. Camus, 40 Phil. 550, 562 (1919); Commissioner of Public Highways v. San Diego, 31 SCRA 616, 623-24 (1970).

[162] Hawthorne v. United States, 115 F2d 805, 805 (1940); *In re* Monongahela Rye Liquors, Inc.,141 F2d 864, 869 (1944); United States v. Sliverton, 200 F2d 824, 826 (1952); United States v. Martin, 267 F2d 764, 769 (1959); Thompson v. United States, 291 F2d 67, 68 (1961); Frederick v. Unites States, 386 F2d 481, 488 (1967); Federal Savings & Loan Insurance Corporation v. Quinn, 419 F2d 1014, 1017 (1969); Equal Employment Opportunity Commission v. First National Bank of Jackson, 614 F2d 1004, 1008 (1980); ; United States v. Irby, 618 F2d 352, 357 (1980); United States v. Timmons, 672 F2d 1373, 1380 (1982); United States v. 2,116 Boxes of Boxed Beef, 729 F2d 1483, 1490 (1954); Spawr v. United States, 796 F2d 279, 280 (1986); United States v. Isenberg, 110 FRD 387, 394 (1986); United States v. New York Trust Co., 75 F Supp 583, 587 (1946); United States v. Wissahicken Tool Works, Inc.,84 F Supp 896, 900 (1949); Republic of China v. Pang-Tsu Mow, 105 F Supp 411, 412 (1952); United States v. Finn, 127 F Supp 158, 166 (1954); United States v. Southern California Edison Co., 229 F Supp 268, 270 (1964); United States v.Yonkers Branch-National Association for the Advancement of Colored People, 594 F Supp 466, 469 (1984); Federal Savings & Loan Insurance Corporation v. Williams, 599 F Supp 1184, 1211 (1984); Federal Deposit Insurance Corporation v. Renda, 692 F Supp 128, 135 (1988).

parties may intervene in the suit.[163]

A petition for certiorari may be filed against the State if it initiated a case, as the filing of the petition is merely an incident of the case with respect to which it submitted to the jurisdiction of the courts.[164]

If the State intervened in a case merely to join the defendant in resisting the claim of the plaintiff and did not ask for affirmative relief against any party, no counterclaim can be raised against it. Since the State did not take the initiative in filing the case and did not ask for any affirmative relief, it cannot be deemed to have waived its immunity from suit.[165] However, if it asked for affirmative relief, a compulsory counterclaim can be raised against it.[166] Thus, where the State intervened in an action involving a land dispute and asked that it be declared the owner of the disputed lots, it could be ordered to reimburse for necessary expenses one of the parties who was a possessor in good faith.[167]

D. Expropriation

If the government expropriates private property without paying just compensation, the owner may sue for payment of the compensation.[168] Otherwise, the constitutional guarantee against the taking of property for public use without the payment of just compensation will be rendered nugatory.

Section 9, Article III of the 1987 Constitution provides: "Private property shall not be taken for public use without just compensation."

In the case of *Ministerio v. CFI,*[169] the Supreme Court explained why the State should be deemed to have waived its immunity from suit if it expropriates property without paying just compensation:

[163] Republic v. Sandiganbayan, 182 SCRA 911, 924 (1990); Republic v. Sandiganbayan, 184 SCRA 383, 388 (1990).

[164] Carandang v. Republic, 95 SCRA 668, 670 (1980).

[165] Lim v. Brownell, 107 Phil. 344, 351-52 (1960).

[166] Froilan v, Pan Oriental Shipping Co., 95 Phil. 909, 912 (1954).

[167] Dizon v. Rodriguez, 121 Phil. 681, 687 (1965).

[168] Ministerio v. CFI of Cebu, 40 SCRA 464, 470 (1971); Amigable v. Cuenca, 43 SCRA 360, 364 (1972); Gascon v. Arroyo, 178 SCRA 582, 587 (1989).

[169] 40 SCRA 464, 470-71 (1971).

> It is unthinkable then that precisely because there was a failure to abide by what the law requires, the government would stand to benefit. It is just as important, if not more so, that there be fidelity to legal norms on the part of officialdom, if the rule of law were to be maintained. It is not too much to say that when the government takes any property for public use which is conditioned upon the payment of just compensation, to be judicially ascertained, it makes manifest that it submits to the jurisdiction of a court. There is no thought then that the doctrine of immunity from suit could still be appropriately invoked.

E. Justice and Equity

In the case of *Santiago v. Republic,*[170] the Supreme Court allowed the action filed against the government on the basis of equity and justice.

The plaintiff in that case donated a parcel of land to the Bureau of Plant Industry. The deed of donation contained the condition that the Bureau of Plant Industry should install lighting of facilities and a water system in the property donated and construct an office building and parking lot not later than December 7, 1974. Because of the alleged failure of the Bureau of Plant Industry to comply with these conditions, the plaintiff sued to have the donation revoked. The government invoked its immunity from suit.

The Supreme Court rejected the contention of the government by holding: "It is the considered opinion of this Court then that to conform to the high dictates of equity and justice, the presumption of consent could be indulged in safely."[171]

To base the waiver of immunity from suit on consideration of justice and equity is shaky. Considerations of reasonableness and justice cannot serve as basis for the right to sue the State.[172] Otherwise, in every case in which a private individual is aggrieved, the immunity of the State should be deemed to have been waived. At the risk of allowing certain grievances to remain unredressed, the State is clothed with immunity from suit because of higher considerations.

Thus, the United States Court of Appeals held: "The immunity of the

[170] 87 SCRA 294 (1976).

[171] Santiago v. Republic, 87 SCRA 294, 296-97 (1978).

[172] Wells v. United States, 214 F2d 380, 382 (1954).

government applies whether the government is right or wrong. The very purpose of the doctrine is to prevent a judicial examination of the merits of the government's position."[173]

A donation is a contract.[174] The Supreme Court recognized this in *Santiago v. Republic.*[175] The decision would have stood on firmer grounds had it been based on this premise. By entering into such a contract, the government should be deemed to have descended to the level of a private individual and to have waived its immunity from suit.

VIII. FACTORS THAT DO NOT CONSTITUTE WAIVER OF IMMUNITY FROM SUIT

A. Failure to Invoke Immunity from Suit

Since only Congress can expressly waive the immunity of the State from suit, such immunity cannot be deemed to have been waived because of the failure of the lawyer of the government to move to dismiss on the ground of lack of jurisdiction or to raise the immunity of the State from suit as a defense in the answer.[176] Otherwise, the immunity of the State from suit would depend upon the discretion of the lawyer of the government.[177] In fact, this is a defense which the courts may take up upon their own initiative at any stage of the proceedings.[178]

Thus, in the case of the *Insurance Company of North America v. Osaka, Shosen Kaisha,*[179] the Supreme Court held:

[173] Weldman v. United States, 827 F2d 1306, 1309 (1987).

[174] 4 CASTAN, DERECHO CIVIL ESPAÑOL, COMUN Y FORAL 219 (13d); 4 SANCHEZ ROMAN, ESTUDIOS DE DERECHO CIVIL 702-703 (2d 1899); 11 SCAEVOLA, CODIGO CIVIL, Vol. 2, at 525 (5d 1943).

[175] 87 SCRA 294, 301 (1978).

[176] Philippine Alien Property Administration v. Castelo, 89 Phil. 568, 577 (1950); Republic v. Feliciano, 148 SCRA 424, 431 (1987); United States of America v. Ceballos, 182 SCRA 644, 660 (1990).

[177] Minnesota v. United States, 305 U.S. 382, 389 (1939); United States v. United States Fidelity & Guaranty Co., 309 U.S. 506, 513 (1940).

[178] Republic v. Feliciano, 148 SCRA 424, 431 (1987).

[179] 137 Phil. 194, 200-01 (1969).

> The fact that defendants-appellees have not raised such defense at any stage of this case is of no moment. Indeed, whether We hold that the matter on non-suability is jurisdictional, either over the subject matter or of the person of the defendants, or We consider it a failure to state a cause of action, when the consent of the State is not alleged in the complaint, as in this case, in line with the decision of the Court in *American Insurance Co. v. Macondray & Co.*, We are all agreed that whichever of these three means may be the most accurate one, said defense may be invoked by the courts *sua sponte* at any stage of the proceedings.

B. Designation of Special Agent

Whenever the State acts through a special agent, it is liable for damages caused by the special agent because of his negligence in the performance of his duties.

Article 2180 of the Civil Code states in part: "The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task properly pertains, in which case what is provided in Article 2176 shall be applicable."

A special agent is one who received a definite and fixed order of commission foreign to the exercise of the duties of his office.[180]

Although Article 2180 of the Civil Code makes the State liable for damages if it acted through a special agent, it does not follow that it can be sued. The provision lays down a rule of liability but not of suitability.[181] Article 2180 of the Civil Code simply creates an exception to the general rule that the State is not liable for the negligence of its employees.[182]

Even if the law creates a right in the individual against the State, it does not follow that he may sue the State. Only Congress can provide for a judicial remedy for the enforcement of such right. It is up to Congress to define how such right can be enforced.[183] The State is under no obligation

[180] Merritt v. Government of the Philippine Islands, 34 Phil. 311, 322 (1916); Rosete v. Auditor General, 81 Phil. 453, 456 (1948); Fontanilla v. Maliaman, 179 SCRA 685, 692 (1989); Apla-on v. Municipality of Silay, 2 CAR 330, 334 (1962).

[181] United States of America v. Ceballos, 182 SCRA 644, 659 (1990).

[182] 1 TAÑADA AND CARREON, POLITICAL LAW OF THE PHILIPPINES, 51 (1961).

[183] Hobby v. Hodges, 215 F2d 754, 758 (1954).

to provide a remedy through the courts for violation of a right it has created.[184]

IX. CONSEQUENCES OF WAIVER OF IMMUNITY FROM SUIT

A. Right to Defend

By consenting to be sued, the State simply waives its immunity from suit. It does not concede its liability to the plaintiff. The State retains the right to raise any lawful defense. When the State waives its immunity from suit, it is merely giving the plaintiff a chance to prove that the State is liable.[185]

B. Execution

Even if the State consented to be sued, it does not follow that a judgment against it can be enforced by execution. The waiver of its immunity from suit does not include a waiver of its immunity from execution.[186] Disbursement of public funds must be covered by a corresponding appropriation by Congress.[187]

The remedy of the plaintiff is to file a claim with the Commission on Audit. Section 7 of Act No. 3083 provides:

[184] United States v. Babcock, 250 U.S. 328, 331 (1919).

[185] Merritt v. Government of the Philippine Islands, 34 Phil. 311, 318 (1910); Philippine Rock Industries, Inc. v. Board of Liquidators, 180 SCRA 171, 175 (1989); United States of America v. Ceballos, 182 SCRA 644, 661 (1990).

[186] Republic v. Belleng, 118 Phil. 854, 857 (1963); Republic v. Palacio, 132 Phil. 370, 375 (1968); Commissioner of Public Highways v. San Diego, 31 SCRA 616, 625 (1970); Republic v. Villasor, 54 SCRA 83, 87 (1973); Director of the Bureau of Printing v. Francisco, 54 SCRA 324, 331 (1973); Philippine Rock Industries, Inc. v. Board of Liquidators, 180 SCRA 171, 175 (1989); Traders Royal Bank v. Intermediate Appellate Court, G.R. No. 68514 (December 17, 1990).

[187] Commissioner of Public Highways v. San Diego, 31 SCRA 616, 625 (1970); Republic v. Villasor, 54 SCRA 84, 87 (1973); Philippine Rock Industries, Inc. v. Board of Liquidators, 180 SCRA 171, 175 (1989).

> No execution shall issue upon any judgment rendered by any court against the Government of the Philippine Islands under the provisions of this act; but a copy hereof duly certified by the Clerk of the Court in which judgment is rendered shall be transmitted by such clerk to the Governor-General, within five days after the same becomes final.

If Congress did not appropriate money to satisfy the judgment, it cannot be paid. No money can be paid out of public funds without an appropriation.[188] This is provided in Subsection 1, Section 29, Article VI of the 1987 Constitution.

C. Liability for Interest and Costs

Even if the State waived its immunity from suit, it cannot be held liable for interest and costs of suit unless a statute expressly makes it liable.[189]

As a rule, no costs can be taxed against the Republic of the Philippines.[190] However, costs should be assessed against the Republic of the Philippines in expropriation cases.[191] This is pursuant to Section 12, Rule 67 of the Rules of Court, which reads:

> The fees of the commissioners shall be part of the costs of the proceedings. All costs, except those of rival claimants litigating their claims, shall be paid by the plaintiff, unless an appeal is taken by the owner and the judgment is affirmed, in which event the costs of the appeal shall be paid by the owner.

Thus, if it is the owner of the property sought to be expropriated who appealed and the judgment is affirmed, the costs of the appeal should be assessed against him. However, if it is the government who appealed and the

[188] Lung Chea Kung Kee & Co. v. Wright, 46 Phil. 44, 47 (1924).

[189] Marine Trading Co., Inc. v. Government of the Philippine Islands, 39 Phil. 29, 33 (1918).

[190] *Id.* Hongkong & Shanghai Banking Corporation v. Gafferty, 39 Phil. 145, 154 (1918); Sarasola v. Trinidad, 40 Phil. 252, 261 (1919); Urtula v. Republic, 130 Phil. 449, 455 (1968).

[191] Republic v. Gonzales, 94 Phil. 956, 963 (1954); Urtula v. Republic, 130 Phil. 449, 455 (1968).

judgment is affirmed, it will be liable for the costs on appeal.[192]

Costs are taxed against the Republic of the Philippines in expropriation cases because the just compensation which Section 9, Article III of the 1987 Constitution requires to be paid to the owner must include the expenses he incurred to recover the just compensation. Otherwise, the compensation he will receive will be diminished by the costs incurred in enforcing his rights.[193]

The pronouncement of the Supreme Court in the case of *Republic v. Garcia*,[194] that the Republic of the Philippines is not liable for costs in expropriation cases is erroneous.

X. EXECUTION

A. Separate Juridical Personality

The Supreme Court has repeatedly held that if a government agency has a separate juridical personality, its funds may be garnished.[195] Should not a further inquiry be made as to what is the source of such funds and for what purpose such funds were appropriated? If the funds sought to be garnished came from a legislative appropriation and they were appropriated for a certain special purpose, they should be exempt from garnishment. Otherwise, the funds will be diverted from the purpose for which they were appropriated.

[192] Republic v. Gonzales, 94 Phil. 956, 963 (1954).

[193] Dickson v. Epling, 48 NE 1001, 1003 (Ill. Sup. Ct., 1897); Stolze v. Milwaukee & Lake Winnebago Railroad Co., 88 NW 919, 924 (Wis. Sup. Ct., 1902); Dolores No. 2 Land & Canal Co. v. Hartman, 29 P 378, 378 (Col. Sup. Ct., 1894); City & County of San Francisco v. Collins, 33 P 56, 57 (Cal. Sup. Ct., 1893).

[194] 76 SCRA 47, 49 (1977).

[195] National Shipyards & Steel Corporation v. Court of Industrial Relations, 118 Phil. 782, 788 (1963); Philippine National Bank v. Court of Industrial Relations, 81 SCRA 314, 318 (1978); Philippine National Bank v. Pabalan, 83 SCRA 595, 599 (1978); Philippine National Railway v. Union de Maquinistas, Fogoneros y Motormen, 84 SCRA 223, 227 (1978); Rizal Commercial Banking Corporation v. De Castro, 168 SCRA 49, 59 (1988); Philippine Rock Industries, Inc. v. Board of Liquidators, 180 SCRA 171, 174-75 (1989).

B. Waiver of Exemption from Execution

Under Section 1 of Presidential Decree No. 1807, the Republic of the Philippines waived its immunity from execution. However, this waiver should be limited to the patrimonial properties of the Republic of the Philippines and should not be expanded to cover properties for public use and for public service.[196]

XI. CONCLUSION

The application of the principle of State immunity from suit will keep involving a delicate balancing act between the claim of private individuals for redress for violation of their rights and the need to protect the State from suability because of the demands of public interest. Doubtless, special factors will crop up in future cases that will test the applicability of the principle of State immunity from suit. In a given case, can an exemption from the principle of State immunity from suit be fashioned out and still leave this principle intact? The quest for justice is unceasing. The interplay between individual demand for justice and the principle of State immunity from suit will pose a continuing challenge to the creativity of lawyers and judges alike.

[196] Tan Toco v. Municipal Council of Iloilo, 49 Phil. 52, 59 (1926); Municipality of Paoay v. Manaois, 86 Phil. 629, 632 (1950); Municipality of San Miguel v. Fernandez, 130 SCRA 56, 60 (1984); Municipality of Makati v. Court of Appeals, G.R. No. 89898 (October 1, 1990).

JURISDICTION OF PHILIPPINE COURTS OVER NON-RESIDENT DEFENDANTS

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The world seems to be shrinking as a result of technological advancement in high-speed communication and air travel. Oral and written communications are now received almost instantly in most parts of the world; while travel from one continent to another now takes only several hours. These developments have facilitated greater interaction among people in different countries and accelerated the increase in the number of transnational transactions.

In the Philippines, transactions containing foreign elements are becoming very common as shown by the volume of imports and exports, inflow of foreign investments, international subcontracting, overseas employment, and tourist trade. Disputes are likely to occur in a number of these transactions and the party residing in the Philippines would most likely ask the question: Can it be resolved by a Philippine Court?

Even in everyday living a dispute may arise as a result of a simple purchase made by a Filipino consumer of a defective foreign-manufactured product or a Philippine-manufactured product containing defective parts produced in a foreign country. In this case, the Filipino plaintiff's interest is to satisfy his claim against the defendant. He has a strong interest in being heard in the forum which he finds most convenient. More often, this will mean that the plaintiff will sue in his home forum.[1] In the ordinary habits of life, anyone would be disinclined to litigate before a foreign tribunal.[2] This paper will try to establish the reasonable limits of a Philippine Court's jurisdiction over non-resident defendants. The focus will be on *quasi in rem* jurisdiction and *in personam* jurisdiction over foreign corporations.

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[1] Smit, *The Enduring Utility of In Rem Rules: A Lasting Legacy of Pennoyer v. Neff*, 43 BROOKLYN L. REV. 600, 607 (1977).

[2] Hongkong & Shanghai Banking Corp. v. Sherman, 176 SCRA 331 (1989).