would have served no useful purpose to enact laws which would and could not be implemented effectively.

It is, therefore, hoped that the various IP laws of ASEAN countries can be harmonized and that there will be uniformity of, and consistency in, efforts for effective IP rights enforcement in the entire region. The Philippines, cognizant of its role as a member of this community and the economic benefits of such participation, has laid the groundwork to achieve this end. What therefore remains to be seen is a more concrete effort on the structural end in order to attain the goals of greater protection of intellectual property rights in the Philippines, perhaps through the creation of permanent specialized IP courts similar to those of other countries. In this manner, enforcement of such laws and the procedures relating thereto could be given greater attention and specialization in light of the increasing influx of branded goods into the country. A development of the legal measures to protect such additional investments in our country would provide an incentive to future investors and bode well for continued Philippine economic prosperity.

Writ of Possession in Extra-Judicial Foreclosure of Real Estate Mortgage: A Critical Analysis

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I. INTRODUCTION: THE MECHANISM OF EXTRA-JUDICIAL FORECLOSURE AND THE WRIT OF POSSESSION

On 6 March 1924, the Legislative department of the Philippines enacted Act No. 3135,[1] entitled "An Act to Regulate the Sale of Real Property under Special Powers Inserted in or Annexed to Real Estate Mortgages." Prior to its enactment, no law at that time permitted a mortgagee, upon the default of a debtor, to extra-judicially foreclose property used as security in a transaction based on a stipulation in the contract.[2] At best, the Supreme Court supported this notion, albeit with a minority of the Court adhering to the contrary.[3] Later, this Act was amended by Act No. 4118,[4] and the result was an affirmation of the use of stipulations of this nature and the regulation of the method by which such right of extra-judicial foreclosure may be exercised by the mortgagee.[5] To emphasize, "Act 3135, as amended, covers only real estate mortgages and is intended merely to regulate the extrajudicial sale of the property mortgaged if and when the mortgagee is given a special power or express authority to do so in the deed itself or in a document annexed thereto."[6] From this pronouncement, it is clear that the same statute is rendered inapplicable where the mortgage is a chattel mortgage.[7]

In enacting the said law, the procedure by which a mortgagee may foreclose a real estate mortgage was thus established; but it cannot be overemphasized that the law still recognizes that the debtor possessed the right to redeem the subject property in the same means as established in ordinary civil actions.[8] Likewise, the law clearly provides that a creditor-

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1. An Act to Regulate the Sale of Real Property under Special Powers Inserted in or Annexed to Real Estate Mortgages, Act No. 3135 (1924).
2. VICENTE FRANCISCO, 1 THE REVISED RULES OF COURT: SPECIAL CIVIL ACTIONS 672 (1972).
3. El Hogar Filipino v. Paredes, 45 Phil. 178 (1923).
4. An Act to Amend Act Numbered Thirty-One Hundred and Thirty-Five, Entitled "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages," Act No. 4118. (1933).
5. FRANCISCO, *supra* note 2.
6. *Id.* at 673 (citing Luna v. Encarnacion, *et al.*, 91 Phil. 531 (1952)).
7. *Id.* at 672.
8. *Id.* at 673.

mortgagee may validly foreclose on a property only if there is a stipulation in the written agreement authorizing him to do so in case the debtor defaults on his obligation. Absent such stipulation, the creditor has no other recourse than that of a judicial foreclosure.[9]

In the exercise of this right to foreclose, the law grants to the purchaser of the foreclosed property the right to resort to filing a Petition for the Writ of Possession in court.[10] By definition, a Writ of Possession is "a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment."[11] Clearly, it is granted mainly to facilitate the transfer of the property from the previous holder to one now entitled to it.

Under section 7,[12] the purchaser may avail of the Writ in two ways: *first*, within the one year redemption period, provided that a bond is filed, and *second*, after the lapse of such one year redemption period and without the necessity of a bond.[13] If the purchaser chooses to avail of the first manner by

9. *Id.*
10. Act No. 3135, § 7.
11. Philippine National Bank v. Sanao Marketing Corporation, 465 SCRA 287, 299 (2005) (citing BLACK'S LAW DICTIONARY 1611 (6d ed. 1999)).
12. Act No. 3135, § 7.

> In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Court, or of any other real property, encumbered with a mortgage duly registered in the officer of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four Hundred and ninety-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

13. *Philippine National Bank*, 465 SCRA at 300; Ong v. Court of Appeals, 333 SCRA 189, 195 (2000) (citing Navarra v. CA, 204 SCRA 850, 856 (1991);

which the Writ may be obtained, he must file an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property covered by a Torrens title. Upon the filing of such motion and the approval of the corresponding bond, the law, also in express terms, directs the court to issue the order for the issuance of a writ of possession.[14]

It is in the application of such a provision, however, that the damage is done. In desiring to facilitate the transfer of property, the law, as rendered by the Court, has been seemingly one-sided in favor of the purchaser of the property and against the debtor. True, the law must afford protection to the purchaser in good faith, but in doing so, Supreme Court decisions have resulted in denying certain rights to the debtor and have, thus, in effect, failed to afford him the protection which the law itself clearly provides under section 7, in relation to section 8.[15] Unfortunately, the remedy for the debtor, as stated in the Act itself, is rendered nearly nugatory if the application by the courts — which inevitably deny the debtor rights afforded to him by the law and the Constitution — is allowed to persist.

This article, therefore, seeks to revisit Supreme Court decisions involving pertinent provisions of Act No. 3135, as amended, and the due process clause of the Constitution,[16] and to harmonize such decisions with

UCPB v. Reyes, 193 SCRA 756, 760-61, 764 (1991); Banco Filipino Savings and Mortgage Bank v. Intermediate Appellate Court, 142 SCRA 44 (1986); Marcelo Steel Corp. v. Court of Appeals, 54 SCRA 89, 97 (1973); De Gracia v. San Jose, 94 Phil. 623 (1954)).

14. *Philippine National Bank*, 465 SCRA at 301; Chailease Finance Corporation v. Ma, 409 SCRA 250 (2003); Samson v. Rivera, 428 SCRA 759 (2004); Idolor v. Court of Appeals, 450 SCRA 396 (2005).

15. Act No. 3135, § 8.

> The debtor may, in the proceedings in which possession was requested, but not later that thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered four hundred and ninety-six, and if it finds complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the partied may appeal from the order of the judge in accordance with section fourteen of Act Numbered four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

16. PHIL. CONST. art III, § 1.

the sweeping rule that the Writ of Possession be automatically and mechanically issued, without the exercise of discretion by the courts,[17] upon a petition by the purchaser, placing him in possession of the property in question, and the rule that the mortgagor may only dispute such a Writ *after* the purchaser has been given possession.[18] In addition, this article likewise suggests for legal justifications why such a remedy may and should be automatically permitted to the debtor. It also presents suggestions that may help remove the inequities against mortgagors in the sweeping and unqualified applications by the courts that make the issuance of the writ of possession in favor of the purchaser of the mortgaged property automatic, mechanical, and mandatory, in derogation of the substantive and procedural requirements of pertinent laws and the due process clause of the Constitution.

II. *EX PARTE*: UNFAIRLY TITLED IN FAVOR OF ONE SIDE

In Latin, the term *ex parte* literally means "in part;"[19] however, some legal systems have equated the same term with "without notice" when translated into plain legal English.[20] Such a translation is clearly illustrated in the proceedings for a Writ of Possession under section 7 of Act No. 3135. The Supreme Court has itself recognized that this petition is one that is *ex parte* and is summary in nature — declaring the same to be "a judicial proceeding brought for the benefit of one party only and without need of notice to any person claiming an adverse interest. It is a proceeding wherein relief is granted even without giving the person against whom the relief is sought an opportunity to be heard."[21]

This proclamation, one of so many others of a similar tenor, demonstrates the Supreme Court's tendency to extend greater aid to a purchaser in ensuring his possession of the property subject to such foreclosure in situations where extra-judicial foreclosure is resorted to. As a result, less protection is thus afforded to the debtor, who, though given a

17. *Ong*, 333 SCRA at 197 (citing Suico v. Court of Appeals, 301 SCRA 212, 221 (1999); A.G. Development v. Court of Appeals, 281 SCRA 155, 159 (1997); Navarra v. Court of Appeals, 204 SCRA 805, 858 (1991)).

18. *Ong*, 333 SCRA at 196.

19. CASSELL'S LATIN DICTIONARY 201 (1942).

20. Renata Vystrcilova, Legal English, http://publib.upol.cz/~obd/fulltext/Anglica-2/Anglica-2_07.pdf (last accessed Feb. 23, 2008).

21. Saguan v. Philippine Bank of Communications, G.R. No. 159882, Nov. 23, 2007; Oliveros v. Presiding Judge, RTC, Br. 24, Biñan, Laguna, 532 SCRA 109 (2007); Santiago v. Merchants Rural Bank of Talavera, Inc., 453 SCRA 756 (2005).

right to redeem, is almost left unaided in protecting his rights against illegal and unjustified deprivation of possession over the mortgaged property.

An apt illustration is the case of *Philippine National Bank v. Sanao Marketing Corporation*.[22] Here, Sanao Marketing Corporation obtained a loan from the Philippine National Bank (PNB), which was secured by a real estate mortgage on several parcels of land. When it failed to pay the loan, PNB resorted to an extra-judicial foreclosure of the properties and thus applied for a Writ of Possession based on a Provisional Certificate of Sale over the said properties. Respondents questioned the issuance of the certificate and the application for the Writ of Possession, alleging certain procedural lapses in its issuance. The Regional Trial Court first granted the Writ in favor of PNB and denied the motion for reconsideration filed by Sanao. On appeal, the Court of Appeals reversed the lower court and ruled in favor of the respondent, declaring that the Provisional Receipt was null and void, and, as such, the Writ based on it must likewise be rendered invalidly issued in grave abuse of its discretion. The Supreme Court, on appeal by PNB, ruled in its favor, declaring that the Writ was in fact properly issued in this case. To justify its ruling, the Court first declared that in cases of extra-judicial foreclosure, petitioning for the Writ is proper.[23] It then went on to pronounce that a reading of section 7 of Act No. 3135 shows that:

> The purchaser in a foreclosure sale may apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case covered by a Torrens title. Upon the filing of such a motion, the law also directs the court to issue the order for a writ of possession.
>
> ...
>
> Any question regarding the regularity and the validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in section 8 of Act No. 3135, as amended by Act No. 4118. Such a question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding is *ex parte*.[24]

From this pronouncement, the Court proceeded to read section 8 of the said Act which provides for the manner by which the debtor may question the writ should it appear that there was no violation of the mortgage in the first place, or in the case where the procedural requirements for the

22. Philippine National Bank v. Sanao Marketing Corporation, 465 SCRA 287 (2005).

23. *Id.* at 299-300.

24. *Id.* at 301-02.

foreclosure were not followed. It then, however, declares that a reading of the provision indicates that:

> The law is clear that purchaser must first be placed in possession. If the trial court later finds merit in the petition to set aside the writ of possession, it shall dispose the bond furnished by the purchaser in favor of the mortgagor. Thereafter, either party may appeal from the order of the judge. The rationale for the mandate is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on his right of ownership.
>
> It has been consistently held that the duty of the trial court to grant a writ of possession is ministerial. Such writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. The court neither exercises its official discretion nor judgment.[25]

In this ruling, the Supreme Court stated that the Court of Appeals, while recognizing the existence of procedural lapses in the issuance of the Writ by the lower court, was nonetheless erroneous in ruling that the Writ of Possession was invalidly issued. It unequivocally declared that upon the filing of a petition for the issuance of a writ of possession, the court:

> need not look into the validity of the mortgage or the manner of its foreclosure. In the issuance of a writ of possession, no discretion is left to the trial court. Any question regarding the cancellation of the writ or in respect of the validity and regularity of the public sale should be determined in *a subsequent proceeding* as outlined in section 8 of Act No. 3135.[26]

From this ruling, one can see that the Supreme Court's interpretation of sections 7 and 8 is greatly advantageous to the purchaser. Despite the procedural lapses recognized by the Court itself as having occurred in the issuance of the Writ, it nonetheless declared the same to have been validly issued on the premise that its issuance is ministerial upon the court in which the same has been applied for. It in fact directs that a new case be filed should the debtor have valid cause to question the Writ: the validity of the real estate mortgage or the foreclosure proceedings, even as it recognizes the right of the debtor under section 8 of Act No. 3135 to seek cancellation of the Writ after possession, is given to the purchaser.

This ruling is just one of many declarations made by the Court towards this direction. The Supreme Court has, in more than one instance,[27]

25. *Id.* at 303.

26. *Id.* at 305 (emphasis supplied).

27. *Id.* at 303; Philippine National Bank v. Adil, 118 SCRA 116 (1982); Vda. De Zaballero v. Court of Appeals, 229 SCRA 810 (1994); Veloso v. Intermediate Appellate Court, 205 SCRA 227 (1992); David Enterprises v. Insular Bank of

continuously held that the issuance of a Writ of Possession following extra-judicial foreclosure of real estate mortgage is ministerial, mechanical, and automatic, involving absolutely no exercise of discretion on the part of the Regional Trial Court judge handling the special land registration proceeding for issuance of the Writ of Possession. Clearly, these sweeping unqualified rulings of the Supreme Court may cause irreparable damage and injury and deprivation of the property rights of the mortgagor in breach of the substantive and procedural requirements of the pertinent laws and the sacred constitutional right to due process of law.[28]

To add insult to injury, the remedy of the mortgagor — to petition in the same summary land registration proceeding for issuance of a Writ of Possession to set aside the foreclosure sale and the Writ of Possession as provided for in section 8 of Act No. 3135[29] — is emasculated as a remedy against deprivation of property rights without due process of law by the pronouncement of the Court in strictly interpreting the same provision in favor of the debtor. The Court has stated that the petition to set aside the foreclosure sale may be filed only after the possession has been delivered to the highest bidder, within 30 days from such deprivation of possession from the mortgagor. The ruling that the purchaser must first be placed in possession of the property is unjust, unfair, and oppressive in case the Writ of Possession issued is later found to be erroneous. The Court will simply enforce damages on the bond in favor of the mortgagor.[30] The aggrieved party is given the opportunity to question the decision of the judge via an appeal. The Supreme Court based such *dictum* on the purchaser's presumed right to ownership, declaring that the same must be exercised without delay.[31]

The remedy has trampled on possessory rights, consequently resulting in irreparable damage and injury to the procedural right of the mortgagor in violation of the protection of the due process of law before such remedy becomes available. It is a grossly unjust and oppressive policy of the law to allow the highest bidder to shoot first and inflict damage and injury before determining whether the issuance and implementation of the Writ of Possession is justified or not. Even if it should turn out that the Writ of

Asia and America, 191 SCRA 516 (1990); Marcelo Steel Corporation v. Court of Appeals, 54 SCRA 89 (1973).

28. PHIL. CONST. art III, § 1 ("[n]o person shall be deprived of life, liberty or property without due process of law.").

29. Act No. 3135, § 8.

30. Philippine National Bank v. Sanao Marketing Corporation, 465 SCRA 287, 303 (2005).

31. *Id.* at 303; Ong v. Court of Appeals, 333 SCRA 189, 197 (2000).

Possession is unjustified, the damage has been done and the right against deprivation of property without due process of law has been violated.

The *dictum* that the remedy to set aside the auction sale and Writ of Possession may be filed only within 30 days from the time possession is given to the purchaser, and not before,[32] is rendered illusory by the rule on appeal. The appeal must be filed within 15 days from the receipt of the decision or order denying the motion for reconsideration. The mode of appeal is by Notice of Appeal. The appeal is perfected upon filing of the Notice of Appeal and payment of the docketing fee. The special land registration court loses jurisdiction upon perfection of the appeal, making the remedy to petition for the cancellation of the auction sale and Writ of Possession after the purchaser is placed in possession illusory. Even if the period of appeal is counted from the resolution on the petition filed after the possession is given to the purchaser to set aside the auction sale and the writ of possession already issued, there is a great waste of time and resources involved, as well as unnecessary damage or injury to the mortgagor if it turns out that valid grounds exist to set aside the auction sale and the Writ of Possession.

The situation is compounded by another pronouncement of the Supreme Court that the filing and pendency of an action for annulment of the foreclosure sale[33] or an action questioning the validity of such issuance[34] cannot be invoked to suspend the proceedings for issuance of the Writ of Possession and its implementation.[35] Indeed, being a court of equal or concurrent jurisdiction, the Regional Trial Court trying the action for annulment of the foreclosure sale cannot enjoin the proceedings for issuance of the Writ of Possession and its implementation. This ruling holds true despite the fact that the grounds to set aside the foreclosure sale and the Writ of Possession in the land registration proceeding for issuance of the Writ of Possession — namely: (1) that the mortgage has not been violated; and (2) that the procedural and substantive requirements of Act No. 3135 have not been complied with — are the same grounds available to annul the foreclosure sale.[36]

32. *Philippine National Bank*, 465 SCRA at 302 (citing Act No. 3135, § 8).

33. *Ong*, 333 SCRA at 199; Kho v. Court of Appeals, 203 SCRA 160 (1991).

34. Vaca v. Court of Appeals, 234 SCRA 146 (1994); Navarra v. Court of Appeals, 204 SCRA 850 (1991); De Jacob v. Court of Appeals, 184 SCRA 294 (1990).

35. *Philippine National Bank*, 465 SCRA at 303 (citing *Chailease*, 409 SCRA at 253).

36. Act No. 3135, § 8.

III. REASONS TO ALLOW THE QUESTIONING OF THE VALIDITY OF THE REAL ESTATE MORTGAGE AND THE EXTRA-JUDICIAL FORECLOSURE PROCEEDINGS IN THE SAME PETITION

Given these interpretations of the law, it is clear that the courts must remedy the obvious and glaring injury that results from these sweeping and unqualified rulings. The arbitrary declarations of both the lower courts and the Supreme Court that the mortgagor may not question the validity of the real estate mortgage and the extra-judicial foreclosure proceedings in the same petition for issuance of the Writ of Possession but must raise the same in a separate action to nullify and set aside the auction sale[37] must be reversed and set aside for the following compelling and indubitable considerations.

A. Act No. 3135 does not prohibit but in fact, permits it

Section 8 of Act No. 3135 governing the petition for the issuance of a Writ of Possession following the extra-judicial foreclosure of a real estate mortgage allows the filing of the petition to set aside the auction sale and the Writ of Possession in the same summary land registration proceedings. Such a petition must be based on the grounds that the mortgage has not been violated and that the requirements under the provisions of Act No. 3135 have not been complied with. In particular, the law, under section 8, provides that:

> The debtors may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof.[38]

Of importance in this provision are the words, "but not later than thirty days after the purchaser was given possession."[39] The law states, in clear and unequivocal terms, that the petition to set aside the auction sale and to cancel the Writ of Possession may be filed at any time but not later than 30 days after the property foreclosed has been delivered to the purchaser.[40] A

37. China Banking Corporation v. Ordinario, 399 SCRA 430 (2003); Banco Filipino Savings and Mortgage Bank v. Intermediate Appellate Court, 142 SCRA 44 (1986); A.G. Development Corporation v. Court of Appeals, 281 SCRA 155, (1997); Royal PB Management and Holdings Co. v. Regional Trial Court of Pasig, Civil Case No. 88961 (Court of Appeals, 7th Division, May 23, 2006) (resolution denying the Petition for Certiorari against the Court, May 23, 2006).

38. Act No. 3135, § 8.

39. *Id.*

40. *Id.*

reasonable reading of the provision clearly indicates that it does not prohibit the filing of the petition before the purchaser is given possession. In this instance, the 30 days provided in the law must be viewed as a period of limitation. The provision does not specify that the petition may be filed only within 30 days after the purchaser is given possession. Under the clear and literal context of the law, the petition may be filed anytime "but not later than 30 days after the purchaser was given possession." The mortgagee is clearly not prohibited from filing the petition before the purchaser is given possession of the property.

Furthermore, it must likewise be seen that there is nothing in Act No. 3135, as amended, that prohibits the mortgagor or any interested party from participating in the summary proceedings to oppose the issuance of the Writ of Possession. While it is true that section 7 provides that the petition is *ex-parte*[41] — since the Regional Trial Court acting as a special land registration court is a court of record — the mortgagor must nevertheless be furnished with a copy of the petition and the order setting the case for summary hearing, for purposes of establishing the jurisdictional facts showing compliance with the requirements under Act No. 3135 as the basis for the issuance of the Writ of Possession. Since the mortgagor is permitted to petition that the sale be set aside and the Writ of Possession be cancelled in the same proceedings where the possession was requested, under section 8 of Act No. 3135,[42] it follows that the mortgagor may participate in the proceedings by asking the court to set aside the auction sale, in opposition to the petition for the issuance of the Writ of Possession, or to cancel the Writ of Possession if already issued.

B. To avoid multiplicity of suits

The pronouncement that the validity of the mortgage and the foreclosure sale may be questioned only in a separate civil action encourages and promotes multiplicity of suits. Certainly, the petition for the issuance of a Writ of Possession, if consolidated with the civil action to annul the foreclosure sale, will avoid such multiplicity. Considering the fact that both proceedings involve the same parties and the same subject matter, there is no reason why the same cannot be done. In *Philippine Savings Bank v. Mañalac, Jr.*,[43] the main argument of the petitioner was that:

> [T]he Court of Appeals erred in sustaining the trial court's order consolidating Civil Case No. 53967 with LRC Case No. R-3951, arguing that consolidation is proper only when it involves actions, which means an ordinary suit in a court of justice by which one party prosecutes another

41. *Id.* § 7.

42. *Id.* § 8.

43. Philippine Savings Bank v. Mañalac, Jr., 457 SCRA 203 (2005).

> for the enforcement or protection of a right, or a prevention of a wrong. Citing *A.G. Development Corp. v. Court of Appeals*, petitioner posits that LRC Case No. R-3951, being summary in nature and not being an action within the contemplation of the Rules of Court, should not have been consolidated with Civil Case No. 53967.[44]

In ruling on the contention of the petitioners, the Court declared unequivocally that such was not correct. It stated, to wit:

> We do not agree. In *Active Wood Products Co., Inc. v. Court of Appeals*, this Court also deemed it proper to consolidate Civil Case No. 6518-M, which was an ordinary civil action, with LRC Case No. P-39-84, which was a petition for the issuance of a writ of possession. The Court held that while a petition for a writ of possession is an *ex parte* proceeding, being made on a presumed right of ownership, *when such presumed right of ownership is contested and is made the basis of another action, then the proceedings for writ of possession would also become groundless.* The entire case must be litigated and must be consolidated with a related case so as to thresh out thoroughly all related issues.
>
> In the same case, the Court likewise rejected the contention that under the Rules of Court only actions can be consolidated. The Court held that the technical difference between an action and a proceeding, which involve the same parties and subject matter, becomes insignificant and consolidation becomes a logical conclusion in order to avoid confusion and unnecessary expenses with the multiplicity of suits.
>
> In the instant case, the consolidation of Civil Case No. 53967 with LRC Case No. R-3951 is more in consonance with the rationale behind the consolidation of cases which is *to promote a more expeditious and less expensive resolution of the controversy than if they were heard independently by separate branches of the trial court.* Hence, the technical difference between Civil Case No. 53967 and LRC Case No. R-3951 must be disregarded in order to promote the ends of justice.[45]

From this ruling, it is gleaned that the notion of consolidating a Petition for the Writ of Possession with an ordinary civil action is not a novel consideration for the Court. It has itself recognized the need for ensuring the most expeditious and less expensive means of resolving controversies for the benefit of all those concerned. Such is, in fact, the better recourse, especially when the grounds for the annulment of the foreclosure sale and those for setting aside such sale are the same. It is, therefore, but proper to allow mortgagors to question the validity of a Writ of Possession, asking that the same be set aside in the same proceedings as the petition for the issuance of the Writ itself, so that the burden borne by courts in adjudicating controversies may be alleviated when possible.

44. *Id.* at 213.

45. *Id.* at 213-14 (emphasis supplied).

C. In the interest of the administration of justice and fair play

Since the separate civil action may be consolidated with the petition for issuance of a Writ of Possession, it is more in keeping with the orderly administration of justice to allow the mortgagor to participate in the proceedings for the issuance of the Writ of Possession as oppositor and to move to set aside the foreclosure sale and the Writ of Possession, if already issued, in the same proceeding. Instead of directing the mortgagor to file a separate civil action — which may be decided differently on the same issues if consolidation is not resorted to, and thus yielding results violative of the spirit and objective of the policy against multiplicity of suits — the problem is avoided by a simple consolidation of the actions in the same petition and proceeding. The courts are therefore able to administer justice on related issues with the same frame of thinking and with the same judicial imperatives, thereby ensuring fairness in adjudicating the respective rights of the parties.

In addition, the consolidation of the petitions may ensure that whatever other remedies granted to the mortgagor by law are not left empty and without meaning. As indicated in Act No. 3135, the mortgagor is permitted to appeal from the order granting the issuance of a Writ of Possession.[46] Such an appeal is rendered an empty remedy for the mortgagor if and when he is not permitted to file an opposition and a petition to set aside the auction sale and the Writ of Possession in the same summary proceeding where the Writ of Possession is requested, as is allowed under the statute. The mortgagor cannot raise new issues on appeal which were not raised and taken up during the summary hearing and, therefore, the absence of his participation in the latter proceeding deprives him of his chance to properly question the validity of the issuance of the Writ. Allowing the mortgagor, therefore, to participate in the same proceeding as for the issuance of the Writ, provides him with the opportunity to raise issues that may be taken up, should an appeal become necessary.

The consolidation of the petitions is not contrary to the Rules of Court. In fact, some provisions found therein support the motion for consolidation when read in relation to Act No. 3135. The 1997 Rules of Civil Procedure is said to be applicable in all courts[47] and in special land registration cases "in a suppletory character and whenever practicable and convenient."[48] Since

46. Act No. 3135, § 8.

47. 1997 RULES OF CIVIL PROCEDURE, rule 1, § 2 ("These Rules shall apply in all courts, except as otherwise provided by the Supreme Court.").

48. *Id.* rule 1, § 4 ("These rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient.").

there is nothing in Act No. 3135 that prohibits the service of pleadings on the mortgagor, the rule under section 4 of rule 13[49] on service of judgments, resolutions, orders, or pleadings subsequent to the complaint (petition), written motions, notices, appearances, demands, offers of judgment, or similar papers, upon the parties affected are followed by all the courts of the land in proceedings for the issuance of a Writ of Possession. All things considered, the concept of allowing an action to be consolidated with the Petition for the Writ of Possession is not one to which the Rules are adverse. In fact, this is one such situation wherein the Rules of Court must be made applicable as it is both "practicable and convenient" to do so, albeit in a suppletory character, as expressly permitted by the Rules of Court.

Accordingly, the purpose of serving notice to the affected parties is to give them an opportunity to be heard. This purpose would be thwarted if the mortgagor is not permitted to participate by opposing the issuance of the Writ of Possession in the summary land registration proceeding. Besides, Act No. 3135 itself expressly allows the mortgagor to move to set aside the auction sale in the same special land registration case where the possession is requested.[50] How can the mortgagor be barred from participating in the summary hearing after he has been served with the order and the other notices for the summary hearing as an affected party? Clearly, therefore, it is only by permitting his participation in the proceedings that all parties concerned are afforded their rights to due process.

IV. JURISDICTION OF THE SPECIAL LAND REGISTRATION COURT IN SUMMARY PROCEEDINGS FOR THE ISSUANCE OF A WRIT OF POSSESSION AND THE INDISPENSABLE REQUISITE OF ADEQUATE NOTICE UNDER THE DUE PROCESS CLAUSE OF THE CONSTITUTION

A. Jurisdiction of the special land registration court over the person of the mortgagor is acquired by service of notice

The summary proceeding for the issuance of a Writ of Possession under Act No. 3135 is a special land registration case,[51] which cannot bind the

49. *Id.* rule 13, § 4 ("Every judgment, resolution, order, pleading subsequent to the complaint, written motion, notice, appearance, demand, offer of judgment or similar papers shall be filed with court, and served upon parties affected.").

50. Act No. 3135, § 8.

51. *Id.* § 7; De los Angeles v. Court of Appeals, 60 SCRA 116 (1974); De Ramos v. Court of Appeals, 213 SCRA 207 (1992). All Petitions for Writ of Possession are docketed as land registration cases, which are the appellations for land registration proceedings. In *De los Angeles v. Court of Appeals*, the Supreme Court held that petitions mentioned in Act No. 3135 "should be disposed of in accordance with the summary procedure prescribed in section 112 of the Land Registration Act [now section 108 of the Property Registration Decree or Presidential Decree No. 1529]." *De los Angeles*, 60 SCRA at 118; *see,* Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes [PROPERTY REGISTRATION DECREE], Presidential Decree No. 1529, § 108 (1978). This was reiterated in *De Ramos. De Ramos,* 213 SCRA at 216.

Although *De los Angeles*, referred to a petition to set aside the sale and to cancel the Writ of Possession, the same applies to the issuance of the Writs of Possession, which are also "petitions" as can be seen in section 7 of Act No. 3135. *De los Angeles*, 60 SCRA at 118; Act No. 3135, § 7. Besides, section 112 of the Land Registration Act (now section 108 of the Property Registration Decree) is the only rule of summary procedure in the "registration proceedings" mentioned in section 7 of Act No. 3135, as amended. "Grant any other relief," as provided under section 108 of the Property Registration Decree, certainly refers to the issuance for a Writ of Possession.

> Sec. 108. *Amendment and Alteration of Certificates.* — No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and *the court may hear and determine the petition after notice to all parties in interest*, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or *grant any other relief* upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.
>
> ...

PROPERTY REGISTRATION DECREE, § 108 (emphasis supplied).

Thus, the law is clear that jurisdiction over the persons of the affected parties is acquired by the court in a special land registration proceeding by setting the case for initial hearing giving notice to all affected parties. Mortgagors-

mortgagor without the acquisition of jurisdiction over his person. A proceeding does not bind a person who is not brought within the jurisdiction of the court.[52]

Before the court, acting as a special land registration court, may proceed with the *ex-parte* presentation of evidence in support of the petition, the jurisdictional facts must first be established. Such facts may be established by proof consisting primarily of notice by way of service of the petition[53] on the mortgagor and notice of the initial hearing for establishing the jurisdictional facts, with proof of service of the notice[54] on the mortgagor and the *prima facie* fact of ownership by the purchaser. Said ownership must, in turn, consist of the certificate of title registered in his or her name, or the Sheriff's Certificate of Sale[55] in favor of the purchaser, where there is yet no consolidation of title in the name of the purchaser.

The *ex-parte* presentation of evidence to prove the violation of the mortgage and compliance with procedural and substantive requirements may proceed only after establishing at the initial hearing the above-mentioned jurisdictional facts of notice to the mortgagor and *prima facie* ownership of the mortgaged property of the purchaser. This is the common practice of most courts handling special land registration cases for issuance of a Writ of Possession. However, some courts acting as special land registration courts, proceed with the *ex-parte* reception of evidence without first establishing the aforementioned jurisdictional facts on the mistaken motion that the proceedings are absolutely *ex-parte* and the issuance of the Writ is mandatory, mechanical, and automatic.[56]

Without establishing said jurisdictional facts at the initial hearing, the court acquires no jurisdiction over the person of the mortgagor and the summary proceeding, including the issuance of the Writ of Possession, will not be binding on the mortgagor. It is settled that a party not brought within the jurisdiction of the court is not bound by its judgment for such would be violative of his cardinal right to procedural due process, the minimum requisite of which is notice and opportunity to be heard.

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oppositors are parties-in-interest because they would be adversely affected by the petition for issuance of the Writ of Possession as their properties would be wrested from their possession.

52. Sievert v. Court of Appeals, 168 SCRA 692 (1988).

53. 1997 RULES OF CIVIL PROCEDURE, rule 13, § 4.

54. *Id.* rule 15, §§ 5-6.

55. FRANCISCO, *supra* note 2, at 681.

56. *See generally*, An Act to Provide for the Adjudication and Registration of Titles to Lands in the Philippine Islands [LAND REGISTRATION ACT], Act No. 496 (1924); *see*, 1997 RULES OF CIVIL PROCEDURE, rule 68.

B. Jurisdictional facts that must be established to warrant the issuance of the Writ of Possession

After establishing the jurisdictional facts at the initial hearing, the special land registration court is vested with jurisdiction to proceed with the reception of evidence; the evidence adduced must establish that the mortgage was violated,[57] usually by non-payment of the loan secured by the mortgage. Compliance with the substantive and procedural requirements under Act No. 3135 is likewise required. These requirements include the presence of a power of sale to justify extra-judicial foreclosure,[58] the publication and posting of the notice of auction sale, and the conduct of the auction sale "between the hours of 9:00 o'clock in the morning and 4:00 o'clock in the afternoon,"[59] which means that the bidding must start at nine o'clock in the morning and close not earlier than four o'clock in the afternoon to accommodate as many competitive bidders as possible.

Non-compliance with any of the requirements under Act No. 3135 is a ground to deny the petition for the issuance of a Writ of Possession. For instance, where the auction sale is rescheduled to another date, the subsequent foreclosure sale is null and void if there is no re-publication of the notice because a sale without the corresponding notice is tantamount to a private sale. Similarly, an extra-judicial foreclosure of real estate mortgage without a power of sale incorporated or attached to the deed of real estate mortgage is null and void.

Other instances where the Petition for Writ of Possession has been denied are the following:

(1) In *Vaca v. Court of Appeals*,[60] the Supreme Court recognized the fact that equitable circumstances can merit the denial of the Writ of Possession.[61]

(2) In *Villarico v. Court of Appeals*,[62] the Supreme Court held that an invalid deed of mortgage cannot be a basis for the issuance of a writ of possession. In that case, the Supreme Court upheld the denial of a Writ of Possession because the deed of mortgage was null and void.[63]

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57. *See*, Act No. 3135, §§ 7-8.

58. FRANCISCO, *supra* note 2, at 673 (citing Luna v. Encarnacion, 91 Phil. 531, 534 (1952)).

59. Act No. 3135, § 4.

60. Vaca v. Court of Appeals, 243 SCRA 146 (1994).

61. *Id.* at 149.

62. Villarico v. Court of Appeals, 373 SCRA 23 (2002).

63. *Id.* at 29.

(3) In *Sulit v. Court of Appeals,*[64] the Supreme Court refused to issue the Writ of Possession on the equitable consideration that the mortgagee did not turn over the surplus proceeds of the auction sale.[65]

(4) In *Cometa v. Intermediate Appellate Court,*[66] where the properties in question were found to have been sold at a price unusually lower than their true value — that is, properties worth at least PhP500,000.00 were sold for only PhP57,396.85 — the Supreme Court, taking into consideration the factual milieu obtaining therein as well as the peculiar circumstances attendant thereto, decided to withhold the issuance of the Writ of Possession on the ground that it could work injustice because the petitioner might not be entitled to the same.[67]

C. Lack of notice to the mortgagor, except by publication, of the extra-judicial foreclosure is a ground to deny the petition for issuance of Writ of Possession

The due process clause requires adequate notice to the defendant and an opportunity for him to be heard. Whether jurisdiction is exercised *in personam* or *in rem,* the judgment will be invalid if defendant has not been given adequate notice. The recognized methods of giving notice are personal service[68] or substituted personal service, by leaving the summons and the complaint at defendant's house with "some person of suitable age and discretion then residing therein."[69]

The extra-judicial foreclosure of real estate mortgage is null and void if the mortgagor was not given notice, except by publication of the auction sale. Notice by publication is only proper when made for justifiable causes[70] and becomes adequate compliance of the due process clause of the Constitution only with respect to the mortgagor where his address or his general whereabouts are unknown. For a mortgagor with a known address, the acceptable mode of service is personal service, which is a better way of giving notice to the mortgagor as it is "practicable."[71]

Act No. 3135 originates from the American legal system. Hence, the developments in United States (U.S.) constitutional law, from which a due process clause was transplanted to this country, has a persuasive effect on our

64. Sulit v. Court of Appeals, 268 SCRA 441 (1997).

65. *Id.* at 455-58.

66. Cometa v. Intermediate Appellate Court, 151 SCRA 563 (1987).

67. *Id.* at 568-69.

68. 1997 RULES OF CIVIL PROCEDURE, rule 14, § 6.

69. *Id.* § 7.

70. *Id.* § 14.

71. *Id.* § 6.

legal system. Proceedings under the Land Registration Act are actions *in rem,*[72] which are "against the whole world."

The previous doctrine that publication and posting of notice on the property in an action *in rem* constituted adequate notice to affected parties[73] was explicitly abandoned by the U.S. Supreme Court[74] after *Mullane v. Central Hanover Bank and Trust Co.*[75]

In the leading case of *Mullane,* the U.S. Supreme Court held that notice by publication for defendants whose names and addresses are known is not adequate notice. Notice by publication is adequate only for defendants whose names and addresses are unknown because no other mode is more

72. LAND REGISTRATION ACT, § 2.

73. Pennoyer v. Neff, 95 U.S. 714 (1878).

74. Schroeder v. City of New York, 371 U.S. 208 (1962); Walker v. City of Hutchinson, 352 U.S. 112 (1956); WILLIAM M. RICHMAN & WILLIAM L. REYNOLDS, UNDERSTANDING CONFLICTS OF LAW 22-23 (3d ed. 2002). As noted by Professors William M. Richman of the University of Toledo College of Law and William L. Reynolds of the University of Maryland:

> [d] Notice in *In Rem* actions
>
> The measure of adequate notice does not change when the court exercises power over defendant's property instead of her person. There is language in older cases that indicates that, because property is deemed to be in possession of its owner, seizing the property or posting the notice upon it (especially if accompanied by publication) constitutes adequate notice to its owner. After *Mullane,* however, the Supreme Court explicitly rejected this notion. The measure of adequate notice for in rem as well as in personam actions is the two-part *Mullane* test. Posting property and publication in local newspapers will rarely pass part 1 since they are unlikely to give actual notice to defendant. Nor will such forms of notice satisfy part 2 of the *Mullane* test because typically they are not the best means of notice available. The names and addresses of property owners are usually available from public records, and notice by mail (considerably more reliable than posting or publication) often will be possible. Based on this analysis, the Court has rejected notice by publication and posting in a wide variety of contexts. (*See,* Tulsa Professional Collection Service Inv. v. Pope, 485 U.S. 478 (1988) (published notice of probate proceeding insufficient notice to creditors of the estate); Mennonite Board of Missions v. Adams, 462 U.S. 791 (1983) (notice of tax sale by publication and posting of property inadequate as to mortgagee); Green v. Lindsey, 456 U.S. 444 (1982) (posting notice on tenant's apartment door insufficient notice in eviction action)).

75. Mullane v. Central Hanover Bank and Trust Co. 339 U.S. 306 (1950).

likely to give them actual notice. It is only in this situation that notice by publication alone is constitutionally adequate.[76]

The U.S. Supreme Court, in *Mullane*, laid down two tests for adequate notice under the due process clause of the Constitution. The first test is whether the method chosen is reasonably likely to reach those affected; and the second test is if the conditions do not permit notice reasonably likely to reach those affected, whether the method chosen is about as good as the other.[77]

Under the twin standards, notice by publication is not an adequate notice under the first test for known defendants. For known defendants, notice by mail is clearly more likely to inform them than notice by publication.[78]

The same rule must apply to notice by publication in a newspaper of general publications under the 1997 Rules of Civil Procedure. Service of summons and the complaint by publication is allowed for justifiable causes, as when the whereabouts of the defendant is unknown.[79] Personal service or substituted service is required if the address of the defendant is known.[80]

76. *Id.* at 318-19.

77. *Id.* at 314.

78. RICHMAN & REYNOLDS, *supra* note 74, at 22.

> Notice by publication is much more troublesome. It clearly fails part 1 of the *Mullane* test. In the words of the Court:
>
> > It would be idle to pretend that publication alone ... is a reliable means of acquainting interested parties of the fact that their rights are before the courts. ... Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed.
>
> If publication is ever to be considered constitutionally adequate notice, it must be because it satisfies part 2 of the *Mullane* test. When the identity, interest, or address of persons affected by legal action are unknown, notice by publication, although not likely to reach them, is no less likely to give actual notice than any other method. It is only in those situations that publication alone is constitutionally adequate.

79. 1997 RULES OF CIVIL PROCEDURE, rule 14, § 14.

80. *Id.* §§ 6-7.

V. RESPONDING TO THE INEQUITY: SUGGESTIONS FOR THE REFORMATION OF THE INEQUITABLE CASE LAW

The decisions[81] of the Supreme Court that adhere to the obsolete and outmoded doctrine that the issuance of a Writ of Possession after foreclosure is a mechanical, automatic, and ministerial duty of the court, disallowing the participation of the mortgagor as an affected party in the summary proceedings under the Land Registration Act, and to the *dictum* that the petition under section 8 to set aside the auction sale may be filed only after the purchaser was given the possession[82] must be qualified and harmonized with the requirements of due process and the paramount ends of justice.

While the investments of banks and other lenders are entitled to legal protection, the borrowers are likewise entitled to protection against groundless and illegal foreclosure. Mortgagors have the right to be heard in the summary land registration proceeding. That is the objective of serving notice to them and setting the petition for summary hearing to establish the jurisdictional facts for the issuance of a Writ of Possession. If the proceeding is really *ex parte*, ministerial, mechanical, and automatic, giving the judge no discretion, what is the use of setting the petition for summary hearing? What is the use of serving notice to the mortgagor as an affected party if he does not have the right to be heard before he is deprived of possession?

The Supreme Court, in the exercise of judicial statesmanship, may establish rules in an appropriate case allowing the mortgagor, in the same special proceeding where the possession is requested, to oppose the issuance of the Writ of Possession at any time after the filing of the petition, not later than 30 days after the purchaser was given possession. In this way, the mortgagor as an affected party is given the opportunity to be heard before possession is taken from him and the court shall make the necessary adjudication, which either party may appeal, "but the order of possession shall continue in effect during the pendency of the appeal," as provided by section 8 of Act No. 3135.

Such judicial statesmanship of the Supreme Court has in fact leaned towards this direction in the recent case of *Saguan v. Philippine Bank of*

81. Philippine National Bank v. Sanao Marketing Corporation, 465 SCRA 287 (2005); Ong v. Court of Appeals, 333 SCRA 189 (2000); Philippine National Bank v. Adil, 118 SCRA 116 (1982); Vda. De Zaballero v. Court of Appeals, 229 SCRA 810 (1994); Veloso v. Intermediate Appellate Court, 205 SCRA 227, 229 (1992); David Enterprises v. Insular Bank of Asia and America, 191 SCRA 516 (1990); Marcelo Steel Corporation v. Court of Appeals, 54 SCRA 89 (1973).

82. *Philippine National Bank*, 465 SCRA at 303; *Ong*, 333 SCRA at 197.

Communications.[83] In that case, spouses Ruben and Violeta Saguan obtained a loan from the said bank secured by a mortgage over five parcels of land in Davao City. Having failed to pay the loan on time, the bank foreclosed the properties extra-judicially. An auction sale was conducted wherein the bank was declared the highest bidder. As expected, the bank petitioned for a Writ of Possession but the same was opposed by the spouses. While the Supreme Court ultimately ruled in favor of the bank, it nonetheless recognized that Act No. 3135 recognizes the right of the mortgagor to question the propriety of the Writ, in the same proceeding where the Petition for the Writ of Possession was filed by the purchaser. To note, the Court stated that, while such a petition is in fact *ex parte* and thus non-litigious, "the debtor or mortgagor is not without recourse ... [he] may file a petition to set aside the foreclosure sale and to cancel the writ of possession in the *same proceedings* where the writ of possession was requested."[84] This ruling, hopefully the first of many, recognizes the rights to which a mortgagor, though indebted, is nonetheless entitled. Clearly, one very concrete remedy to the dilemma is the perpetuation of rulings and decisions by the Supreme Court in this direction and with this tenor, thus equally aiding the debtor and granting him protection against the illegal and unwarranted issuance of a Writ of Possession.

Furthermore, another solution is for the Supreme Court, in the exercise of its rule-making power under the Constitution,[85] to issue a memorandum circular making the above clarificatory rule. Such would be similar to the circular issued by the Supreme Court which rectified the situation involving the stray decision in *China Bank v. Court of Appeals*,[86] allowing the non-payment of the docketing fee for the petition for extra-judicial foreclosure filed with the notary public. The Court issued an amendatory circular

83. Saguan v. Philippine Bank of Communications, G.R. No. 159882, Nov. 13, 2007.

84. *Id.* (emphasis supplied).

85. PHIL. CONST. art VII, § 5 (5).

> The Supreme Court shall have the following powers:
>
> ...
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

86. China Bank v. Court of Appeals, 265 SCRA 327 (1999).

mandating that all petitions for extra-judicial foreclosure of real estate mortgage, whether to be conducted by the sheriff or before a notary public, be filed with the Office of the Clerk of Court, with payment of the filing fee, be assigned a case number, and be examined by the Clerk of Court, under the supervision of the Presiding Judge, following the suggestion in an article earlier published in the *Ateneo Law Journal*.[87] In this way, the Court will allow for the adjudication of the petition and the opposition to the same in the same summary proceeding even before the possession is given to the purchaser. This will result in a balanced administration of justice and will ultimately benefit society.

Apart from actions on the part of the Judiciary, the other solution is for the Legislature to introduce amendments to Act No. 3135: by deleting "*ex parte*" before "motion" at the *ninth* line and the last clause of section 7, and amending section 8 by inserting between "requested" and "but" the phrase "at anytime after the filing of the Petition." Should these suggestions be considered, the law shall read as follows:

> Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of a motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six.
>
> Sec. 8. The debtors may, in the proceedings in which possession was requested *at anytime after the filing of the Petition*, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in

87. *See*, Arturo M. de Castro, *Extra-Judicial Foreclosure of Real Estate Mortgage Before A Notary Public: A Case for the Re-Examination and Reversal of China Banking Corporation v. Court of Appeals*, 44 ATENEO L.J. 485 (2000).

> section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

These suggested amendments are designed to clarify the right which the mortgagor may avail of to protect himself and his interests before possession is taken from him. In addition, to remove the slight ambiguities that are currently plaguing the terms of the law will be removed and will thereby allow legal practitioners the chance of applying the same with the certainty that is assured when the law is clear upon its face.

VI. CONCLUSION

It is not denied that default on their obligations by debtors must be deemed reprehensible to the very tenets of agreements and contracts and serve only to curtail the development of relationships worthy of trust, especially when such relationships are crucial to the economic functioning of society as a whole. Obviously, the law has seen fit to protect the lenders in order to ensure the sanctity of agreements securing their loan investments against mortgagors who have availed of the same and have unfortunately reneged on their agreements; they must not, after all, be allowed to walk away from them with impunity. Nevertheless, in ensuring the protection of these transactions, the law must not lose sight of the fact that, ultimately, it is both parties to the controversy and their interests which it must protect with even hands.

Act No. 3135 has provided both parties mechanisms by which their respective rights may be exercised; however, its application has often been one-sided and detrimental to the debtor. This has been illustrated in the numerous Supreme Court decisions that declare that possession must first be given to the purchaser before the propriety of the issuance of the Writ may be questioned. The same decisions have likewise declared that although the Writ may be set aside, it must be done in an action separate from the forum in which the Writ is being petitioned. Not only does this foment the multiplicity of suits, which the Philippine legal system abhors, it does not serve the best interests of justice and fair play and even denies the mortgagor his constitutional right to be given notice and the opportunity to be heard.

The Bench and the Bar, and even the Legislature, must respond to this urgent need, which calls for the revisiting of either the case law or the statute that has long been referred to but rarely critically examined. While the Judiciary may be credited for the numerous pronouncements that have applied the provisions of Act No. 3135 greatly favoring the creditor, they are not entirely to blame for the lack of protection to the debtor. The law may be, and should have long been, challenged as unconstitutional for being violative of due process. The Legislature is thus called upon to amend the provisions that require such action. At the same time, the Judiciary must revisit case law and, from here on, apply the same in a manner that will ensure that all parties are equally protected in accordance with the cardinal requirement of notice and the opportunity to be heard before the deprivation of possession under the due process clause of the Constitution. A reasonable reading of Act No. 3135 will show that possession need not first be resorted to before the debtor be allowed to question the Writ petitioned for and that the legal entitlement to the right of possession may be made in the same proceedings where the petition for the Writ is being heard.

To ensure that all the competing interests and rights of parties to the transaction are equally respected, the changes in the law of an oft-overlooked area of day-to-day transactions must be revisited to balance the scale of justice under a legal system that is no longer deemed as favoring one side, but is in fact in equipoise between the parties — the creditor and the mortgagor, in expeditiously adjudicating their respective rights and obligations in the same summary land registration proceedings.

The Prejudice of the Prejudicial Question: Examining and Re-Examining the Doctrine of the Prejudicial Question

Vera M. de Guzman[*]

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I. INTRODUCTION

The 2000 Revised Rules of Criminal Procedure[1] defines a prejudicial question by enumerating its elements: (1) that there is an issue (in a previously instituted civil action) similar or intimately related to the issue (in a subsequent criminal action); and (2) the resolution of the issue determines whether or not the criminal action may proceed.[2] This remains faithful to the definition stated in the Civil Code of the Philippines, which was drafted approximately 50 years before the 2000 Revised Rules of Criminal Procedure. The Civil Code states that a prejudicial question *must be decided before any criminal prosecution may be instituted or may proceed* and shall be governed by the rules which the Supreme Court shall promulgate.[3]

Jurisprudence, on the other hand, has been using the doctrine as early as 26 February 1920, in the case of *Berbari v. Concepcion*,[4] and defines it as that which is "[u]nderstood in law to be that which *must precede the criminal action*, that which requires a decision before a final judgment is rendered in the principal action with which said question is closely connected."[5]

It appears from the definition provided in the 2000 Revised Rules of Criminal Procedure that there is a very technical description to the doctrine — there has to be a civil case that is filed previous to the criminal case. Nevertheless, while the Rules are defined this way, there are various instances in jurisprudence where the doctrine has been used in situations not involving civil-criminal cases. This can also be gleaned from the definition in *Berbari*, which only states that there is a *question posed before the criminal case may be decided*. It does not state that this question should only be posed in a civil case. Instead, it only requires that the question must first be answered in another case before the criminal case may be decided. The previous question does *not necessarily concern a civil case*. This implication can

1. 2000 REVISED RULES OF CRIMINAL PROCEDURE.
2. *Id.* rule 111, § 7.
3. An Act to Ordain and Institute the Civil Code of the Philippines [NEW CIVIL CODE], Republic Act No. 386 (1950). Article 36 provides:

   > Prejudicial questions, *which must be decided before any criminal prosecution may be instituted or may proceed*, shall be governed by the rules of court which the Supreme Court shall promulgate and which shall not be in conflict with the provisions of this Code (emphasis supplied).

4. Berbari v. Concepcion, 40 Phil. 837 (1920).
5. *Id.* at 839 (emphasis supplied).

also be found in the Civil Code, which states that such prejudicial question is *a question which must be decided before a criminal case may proceed.*[6]

It is thus quite obvious that the Rules have a very stringent definition, and yet, the strict wordings have only been used in one case — *Torres v. Garchitorena.*[7] On the other hand, we have jurisprudence, comprised of some 250 to 260 cases, which touch upon and use the doctrine. It is worth noting that these cases do not concern themselves with civil and criminal cases alone. They also involve other combinations of cases, such as civil-civil, criminal-criminal, civil-administrative, criminal-administrative, labor, and election cases.

The doctrine has been used in our jurisdiction since the 1920s. It was only during the 1960s, however, in the 1964 Rules of Court, when such doctrine was codified. While it has already been codified, the codified version of the doctrine of the prejudicial question fails to provide an exhaustive guideline and framework under which the same may be used. Also, as there are no clear-cut guidelines under which the Supreme Court applies the doctrine, the present status of the doctrine of the prejudicial question simply breeds and breathes in confusion. On one hand, we have the very strict guidelines in the Rules of Court and, on the other, the very flexible application of the doctrine in cases decided by the Supreme Court: how can these then be reconciled?

Thus, the aim of this article is to bring together all the cases wherein the Court[8] used the doctrine or where the parties raised the doctrine as a defense, in order to deduce from them a framework or guideline, if such a framework exists, under which the doctrine of the prejudicial question operates. In addition, the title of this article refers to the *examination* and *re-examination* of the doctrine of the prejudicial question as it seeks to examine the doctrine through jurisprudence, and to re-examine the same, in order to be able to deduce a framework by which it is to be applied.

As the Rules of Court provide for very strict yet non-exhaustive guidelines in applying the doctrine and as jurisprudence provide for very flexible examples, how then do we apply the doctrine? When then, do we apply the doctrine?

6. NEW CIVIL CODE, art. 36.

7. Torres v. Garchitorena, 394 SCRA 494 (2002).

8. Note that in the succeeding discussions, "court" shall refer to lower courts while "Court" shall refer to the Supreme Court.

The questions then that seek to be answered are as follows:

1. As there are other possible combinations of cases that may use the doctrine, other than civil-criminal, such as civil-civil, criminal-criminal, civil-administrative, criminal-administrative, labor, and election cases, can the doctrine be used successfully in these instances?

2. In the civil-criminal combination, does the civil case strictly have to be filed before the criminal case to warrant the suspension of the latter? This is in consonance with the wordings of the 2000 Revised Rules of Criminal Procedure.[9] Do we follow the wording strictly or are there exceptions?

3. Ultimately, is there a framework that can be deduced from jurisprudence as to the use of the doctrine of the prejudicial question?

4. What purpose does the doctrine serve in this jurisdiction? What essential and salient features does it have that makes it indispensable? Or if it does not have any such essential and salient features, can it ultimately be dispensed with in our jurisdiction?

II. THE DOCTRINE OF THE PREJUDICIAL QUESTION: GENERAL IDEA AND HISTORY

Jurisprudence guides us as to the concept and history of the prejudicial question.

Berbari v. Concepcion was decided in 26 February 1920. This was the first decided case in our jurisdiction to have used the doctrine of the prejudicial question. This case defined a prejudicial question as a concept understood in law to be "that which *must precede the criminal action* that which requires a decision before a final judgment is rendered in the principal action with which said question is closely connected."[10] Despite this, *Berbari* provides caution that "Not *all previous questions are prejudicial, although all prejudicial questions are necessarily previous.*"[11]

It has also been defined as the question arising from a case the resolution of which is a logical antecedent to the issue involved in said case and the cognizance of which pertains to another tribunal.[12] It is also a question based

9. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 111, § 7.

10. Berbari v. Concepcion, 40 Phil. 837, 839 (1920) (emphasis supplied); *see also,* Brito-Sy v. Malate Taxicab & Garage, Inc., 102 Phil. 482 (1957).

11. *Berbari,* 40 Phil. at 839 (emphasis supplied).

12. People v. Aragon, 94 Phil. 357 (1954).

on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused.[13]

Berbari explained that the doctrine was carried over to our jurisdiction from Spain, through the Spanish Law of Procedure of 1882, when the need for the application of said doctrine arose. The Court stated that:

> The compilation of the laws of criminal procedure of Spain as amended in 1880 did not have any provision concerning questions requiring judicial decision before the institution of criminal prosecution. *Wherefore, in order to decide said questions in case they are raised before the courts of these Islands, it would be necessary to look for the Law of Criminal Procedure of 1882, which has repealed the former procedural laws and is the only law in force in Spain in 1884 when the Penal Code was made applicable to these Islands.* Said law of 1882 is clothed, therefore, of the character of supplementary law containing respectable doctrine, inasmuch as there is no law in this country on said *prejudicial* questions.[14]

The case of *Merced v. Hon. Diez, et al.*[15] further explained that the requirement of an issue *cognizable by another court* is necessary to the existence of a prejudicial question, as Spanish jurisprudence, from which the doctrine of the prejudicial question was derived, requires such. This is because Spanish courts are divided according to their jurisdictions, some being exclusively of civil jurisdiction, others of criminal jurisdiction.[16] This is not the case, however, with Philippine courts. Philippine courts have both civil and criminal jurisdiction. Thus, as applied to Philippine courts, when two cases are pending before the same court, the court may be exercising

13. Benitez v. Concepcion, 2 SCRA 178 (1961).

14. *Berbari*, 40 Phil. at 841 (emphasis supplied).

15. Merced v. Hon. Diez, *et al.*, 109 Phil. 155 (1960).

16. *Id.* at 160-61.

> Spanish jurisprudence, from which the principle of prejudicial question has been taken, requires that the essential element determinative of the criminal action must be cognizable by another court. This requirement of a different court is demanded in Spanish jurisprudence because Spanish courts are divided according to their jurisdictions, some courts being exclusively of civil jurisdiction, others of criminal jurisdiction. *In the Philippines where our courts are vested with both civil and criminal jurisdiction, the principle of prejudicial question is to be applied even if there is only one court before which the civil action and the criminal action are to be litigated. But in this case the court when exercising its jurisdiction over the civil action for the annulment of marriage is considered as a court distinct and different from itself when trying the criminal action for bigamy* (emphasis supplied).

different jurisdictions over these cases, for instance, jurisdiction over a civil case for annulment of marriage on the one hand and criminal jurisdiction over a complaint for bigamy on the other. Hence, the doctrine is applicable.[17]

This definition later on evolved to state the elements constitutive of a prejudicial question: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed. This enumeration is now *codified* and *modified* in the 2000 Revised Rules of Criminal Procedure, which provides that:

> (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.[18]

This is as much as can be found in the history of the prejudicial question. It is a Spanish doctrine brought to our territory by reason of our being a colony of Spain. It was insinuated in the Spanish Rules of Court of 1882.[19] In addition, *Berbari* was the first documented case to have used the doctrine in deciding the issues of the case.

The doctrine has been used in this jurisdiction so as to avoid conflicting court decisions, to avoid unnecessary litigation, and to address different rights that are at stake in different proceedings. For instance, in civil cases, what is involved is money or property, whereas in criminal cases, it is life, liberty, as well as money or property.[20] Hence, when a prejudicial question exists in a

17. *See, Merced,* 109 Phil. at 160-61. The distinction between prejudicial question in Spanish jurisprudence and Philippine jurisprudence is that:

> Spanish jurisprudence, from which the principle of prejudicial question has been taken, requires that the essential element determinative of the criminal action must be cognizable by another court. This requirement of a different court is demanded in Spanish jurisprudence because Spanish courts are divided according to their jurisdiction, some courts being exclusively of civil jurisdiction, other of criminal jurisdiction. In the Philippines, where courts are in both civil and criminal jurisdiction, the principle of prejudicial question is to be applied even if there is only one court before which the civil action and the criminal action are to be litigated.

18. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 111, § 7.

19. *See,* Antonio Bautista, *Procedure and Pre-emption in Adjudication: The Doctrine of Prejudicial Questions,* 78 PHIL. L.J. 1 (2003) [hereinafter Bautista].

20. *See generally, id.*

civil case, it is important to resolve such issue, as it may be determinative of the guilt of the accused in the criminal case and may result in avoiding the subjection of the accused to a restraint on his life and liberty, a punishment more difficult and graver.

III. THROUGH THE YEARS — THE RULES OF COURT AND THE PREJUDICIAL QUESTION

The rules on criminal procedure were originally governed by:

1. The Spanish Law of Criminal Procedure (*Ley de Enjuiciamento Criminal).*
2. General Orders No. 58, dated 23 April 1900.
3. Amendatory Acts passed by the Philippine Commission (Act No. 194).
4. Philippine Bill of 1902, Jones Law of 1916, Tydings-McDuffie Law and the Constitution of the Philippines.[21]

These were all incorporated in the 1940 Rules of Court. Thereafter, the Rules were amended in 1964, 1985, 1988, and 2000.

Relative to the doctrine of the prejudicial question, the Rules of Court have been amended in 1964, 1988, and 2000:

The 1964 Rules provide:

> A petition for the suspension of the criminal action based upon the pendency of a prejudicial question in a civil case may only be presented by any party during the trial of the criminal action.[22]

The 1985 and 1988 Rules state, respectively:

> A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the fiscal or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.[23]

21. OSCAR M. HERRERA, TREATISE ON HISTORICAL DEVELOPMENTS AND HIGHLIGHTS OF AMENDMENTS OF RULES ON CRIMINAL PROCEDURE 1-2 (2001) [hereinafter HERRERA].
22. 1964 RULES OF CRIMINAL PROCEDURE, rule 111, § 5 (superseded 1985).
23. 1985 RULES OF CRIMINAL PROCEDURE, rule 111, § 6 (superseded 1988).

> The two (2) essential elements of a prejudicial question are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.[24]

The 2000 Rules now provide:

> A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.[25]
>
> The elements of a prejudicial question are (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.[26]

A significant revision in the 1964 Rules by the 1988 and 2000 Rules is that the petition for suspension may be filed with the fiscal, even when the case is still in the preliminary investigation stage or in court, before the prosecution rests its case. In the 1964 Rules, the petition for suspension may only be filed in court during the trial of the criminal case.

Section 7 of the 2000 Revised Rules of Criminal Procedure is Amendment 8 in the revision of the Rules in 2000. There was a clamor to delineate the use of the doctrine and the doctrine itself as it was much prone to abuse.

Solicitor General Galvez sought a clearer definition of a prejudicial question. He said that the determination of its existence should be based on whether the issue on the civil case can be decided by the criminal court.[27]

Justice Tuquero suggested the removal of the power of the fiscals to determine the existence of the prejudicial question that would suspend the criminal proceedings. He noted that this has been abused in the past by the prosecutors. The courts should only be the one to determine the existence of a prejudicial question. Justice Feria said that this proposal will not only

24. 1988 RULES OF CRIMINAL PROCEDURE, rule 111, § 5 (superseded 2000).
25. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 111, § 6.
26. *Id.* § 7.
27. Revised Rules of Court of the Philippines, Minutes of the Meeting of the Committee on the Revision of the Rules of Court (May 17, 1999) [hereinafter Minutes of the Meeting].

reverse Francisco but would also affect the institution of a criminal case with the Fiscal provided in rule 110.[28]

Hence, the present changes. These changes now limited a prejudicial question to a "*previously* instituted civil action."[29] This means that before the provision on the prejudicial question comes into play, the civil action must have already been previously instituted or filed prior to the filing of the criminal case.[30]

It was opined that the strict wording has been suggested and incorporated into the Rules to avoid perceived abuse by litigants who may file a case only to prevent the criminal case from proceeding.[31] This is supported by the statement made by Solicitor General Galvez during the meeting of the Committee on the Revision of the Rules of Court, in which case Justice Feria made the suggestion of adding the words "previously instituted" before "civil action" and "subsequent" before "criminal action."

Solicitor General Galvez explicated that his proposal of delineating the nature of a prejudicial question will discourage the willful filing by the accused of a civil case in order to delay or suspend the criminal case. Justice Feria noted that the criterion of the Solicitor General is too restrictive. He opined that the prior filing of the civil case should be taken as good faith on the part of the accused. As a safeguard against abuses, he then suggested to amend section 5 by adding "PREVIOUSLY INSTITUTED" before "civil action" and "SUBSEQUENT" before "criminal action." This modification, Justice Feria declared, would also achieve the purpose of the Solicitor General. The Committee approved Justice Feria's suggestion. The amendments were ordered inserted into the Approved Draft.[32]

IV. CASE SURVEY (1920-2006)

This part will concern itself with cases from 1920-2006, from 26 February 1920 up to 17 March 2006 to be exact, which made use of and discussed the doctrine of the prejudicial question,.

The cases shall be grouped into smaller subdivisions depending on the combinations of the types of cases that are involved. These subdivisions or

28. *Id.*

29. *See*, HERRERA, *supra* note 21, at 50 (emphasis supplied).

30. *See*, FORTUNATO GUPIT, SIGNIFICANT REVISIONS IN CRIMINAL PROCEDURE 27 (2003).

31. *Id.* at 27-28.

32. Minutes of the Meeting, *supra* note 26 (Oct. 25, 1999).

combinations are: (a) civil-criminal, which shall be subdivided further as to which case precedes the other, hence (1) civil-criminal and (2) criminal-civil, and a special subdivision dealing with bigamy cases is provided under (3); (b) civil-civil; (c) criminal-criminal; (d) civil-administrative; (e) criminal-administrative; (f) labor cases; and (g) election cases.

A. Civil-Criminal Cases Combination

This subdivision is further subdivided into civil-criminal and criminal-civil combination, if only to test the strict wordings of the 2000 Revised Rules of Criminal Procedure.[33] The latter states that the civil case must precede the criminal case before the latter may be suspended. Where the civil case is filed belatedly, however, are there instances that warrant the suspension of the criminal case, serving as an exception to the strict wordings of the Rules?

1. Civil-Criminal Cases Combination

Under this subsection, the civil case is filed previous to the criminal case. The earliest case under this category is the earliest case that delved into the doctrine of the prejudicial question — *Berbari v. Concepcion.*[34]

This involved a civil and criminal case. Berbari entered into an agreement with Chicote to establish a corporation. Chicote should have, soon after, given the former half of the capital.

Berbari thereafter, instituted a civil case against Chicote for recovery of a certain sum of money that the latter owes to him personally. Chicote refused to comply with this. Instead, he filed a case of *estafa* against Berbari for allegedly embezzling money that, pursuant to their agreement, should have been used as part of the capital of the business. Berbari defended himself in the *estafa* case alleging that he used said money in compensation for the amount Chicote owed him.

Berbari then requested the Court hearing the criminal case to suspend the criminal proceedings as the issue in the civil case constituted a prejudicial question necessary for the determination of guilt in the criminal case.

The Supreme Court believed otherwise saying that the issue and decision in the civil case was not prejudicial to the decision in the criminal case, if at all, it was "the criminal case which [wa]s prejudicial to the civil case."[35] The Court stated, in addition, that it was not even a question which

33. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 111, § 7.

34. Berbari v. Concepcion, 40 Phil. 837 (1920).

35. *Id.* at 840.

2. Criminal-Civil Cases Combination

Under this subsection, the criminal case is filed previous to the civil case. The first case to deal with this combination is the case of *Ocampo and dela Cruz v. Cochingyan,*[41] which made an interesting pronouncement. This case concerned a criminal case for violations of the Copyright Law. Thereafter, a civil case was filed for the annulment of the copyright, which was allegedly copied, on the grounds of fraud. Petitioners prayed for the suspension of the criminal action on the grounds of the existence of a prejudicial question in the civil case. The Court denied their petition and stated that, if at all, it is the civil case that should be suspended and not the criminal case, as until the copyrights are cancelled, they presumed to have been duly granted and issued. This is quite different from the general pronouncement that the criminal case should be suspended due to the existence of the civil case; and what is more intriguing is that the Court says that this is the general rule — the suspension of the civil case.[42]

Torres v. Garchitorena[43] is an important case as it is the first and only one to have incorporated and used in its decision the 2000 amendment to the Rules of Criminal Procedure.

petitioner's innocence in the criminal case. That second marriage was contracted in good faith is immaterial in the civil action. It is material only in the criminal case to show lack of criminal intent.

41. Ocampo and dela Cruz v. Cochingyan, 96 Phil. 459 (1955).

42. *Id.* at 460-61.

> The action for cancellation of copyrights brought by the petitioners on the ground of fraud, deceit and misrepresentation allegedly resorted to by, or imputed to, the respondent Jose Cochingyan to secure the issuance of the copyrights is independent from the criminal prosecution for infringement of copyrights charged against the petitioner and does not constitute and is not a prejudicial action which must be decided first before the trial of the defendants in the criminal cases may be held, as the determination of the question raised in the civil action is not necessarily prejudicial. Until cancelled the copyrights are presumed to have been duly granted and issued. *As a general rule, a criminal case should first be decided; and if the trial or hearing of any case is to be suspended on the ground that there is a prejudicial question which must first be decided, it is the hearing of the civil and not, the criminal which should be suspended — the latter must take precedence over the former* (emphasis supplied).

43. Torres v. Garchitorena, 394 SCRA 494 (2002).

This case concerned a criminal case for violation of Republic Act No. 3019[44] against Mayor Dionisio Torres of Noveleta, Cavite for taking advantage of his official function and, through evident bad faith, causing the relocation of squatters in an area allegedly owned by Susana Realty, Inc. (SRI).[45] Thereafter, the Republic, through the Solicitor General, filed a civil case against SRI for reversion of property.[46]

Through this, petitioners moved for a suspension of the criminal case as the civil case was constitutive of a prejudicial question in the criminal case filed against them. The Court believed otherwise as, in the 2000 amendment, the civil case must have been filed ahead of the criminal case. This is not applicable in this case as the criminal case was filed before the civil case.

44. Anti-Graft and Corrupt Practices Act, Republic Act No, 3019 (1960).

45. *Torres*, 394 SCRA at 498. The allegation in the complaint stated:

> [T]aking advantage of their official functions and through evident bad faith and gross inexcusable negligence, did then and there wilfully, unlawfully and feloniously cause the filling up of a submerged portion of a lot owned by and registered in the name of Susana Realty Corp. without first verifying the existence of its owner and despite showing proof of its ownership, with the intention to reclaim it for the municipality's housing program to the damage and prejudice of the registered owner as squatters now occupy the area.

The antecedent facts of said complaint were as follows:

> On October 10, 1997, Mayor Dionisio Torres of Noveleta, Cavite caused the leveling and reclamation of the submerged portion of SRI's property for the relocation of displaced squatters from Tirona, Cavite who were living along river banks and esteros. Domingo Fernandez protested to the Mayor informing him that his employer [Susana Realty, Inc. or SRI] owned the property being levelled and reclaimed at the instance of the Mayor.

Id. at 496.

46. *Id.* at 498.

> [T]he Republic filed a complaint against SRI and the Register of Deeds of Cavite for the reversion of the property covered by Transfer Certificate of Title Nos. 5344 and 5345 issued in favor of SRI. The case was docketed as Civil Case No. 7160. The Republic alleged *inter alia* that said property had been ascertained by the Department of Environment and Natural Resources (DENR) as part of the Manila Bay per Classification Map 2736 dated February 21, 1972. Hence, it formed part of the inalienable mass of the public domain owned by the State.

> Under the amendment, a prejudicial question is understood in law as that which must precede the criminal action and which requires a decision before a final judgment can be rendered in the criminal action with which said question is closely connected. *The civil action must be instituted prior to the institution of the criminal action.* In this case, the Information was filed with the *Sandiganbayan* ahead of the complaint in Civil Case No. 7160 filed by the State with the RTC in Civil Case No. 7160. Thus, no prejudicial question exists.[47]

The Court held that, notwithstanding this point, the issue in the civil case was not determinative of the guilt of the accused in the civil case:

> *Besides,* a final judgment of the RTC in Civil Case No. 7160 declaring the property as foreshore land and hence, inalienable, is *not determinative of the guilt or innocence of the petitioners* in the criminal case. *It bears stressing that unless and until declared null and void by a court of competent jurisdiction in an appropriate action therefor, the titles of SRI over the subject property are valid.* SRI is entitled to the possession of the properties covered by said titles. It cannot be illegally deprived of its possession of the property by petitioners in the guise of a reclamation until final judgment is rendered declaring the property covered by said titles as foreshore land.[48]

3. Bigamy/Concubinage Cases

This section will concern itself with bigamy cases where the doctrine of a prejudicial question is raised as a defense.

The first case involving such a situation is *People v. Aragon.*[49] A criminal case was filed against Abelo Aragon for having contracted a second marriage with Efigenia C. Palomer in 1947, while his previous valid marriage with Martina Godinez was still subsisting and had not been dissolved. Thereafter, Efigenia C. Palomer filed a civil case for annulment of marriage in the same court against Aragon, alleging that the latter, by means of force, threats, and intimidation, forced her to marry him. Aragon prayed that the criminal case against him be provisionally dismissed on the ground that the civil action poses a prejudicial question to the criminal case.

The Court, however, denied his petition, stating that a decision on the annulment of the marriage will not determine his guilt in the criminal case, as the civil case *did not allege nor state that he was the victim of the force, threat or intimidation.* The Court explained, "*This civil action does not decide that*

47. *Id.* at 509 (emphasis supplied).

48. *Id.* (emphasis supplied).

49. People v. Aragon, 94 Phil. 357 (1954).

defendant-appellant did not enter the marriage against his will and consent[;] ... the complaint does not allege that he was the victim of force and intimidation in the second marriage; it does not determine the existence of any of the elements of ... bigamy."[50] Hence, it was not his consent which was vitiated. Aragon cannot use his own malfeasance to defend himself in a criminal action against him.[51]

50. *Id.* at 360 (emphasis supplied). The Court further explains:

> There is no question that if the allegations of the complaint on time the marriage contracted by defendant-appellant with Efigenia C. Palomer is illegal and void (Section 29, Act 3613 otherwise known as The Marriage Law). Its nullity, however, is no defense to the criminal action for bigamy filed against him. The supposed use of force and intimidation against the woman, Palomer, even if it were true, is not a bar or defense to said action. Palomer, were she the one charged with bigamy, could perhaps raise said force or intimidation as a defense, because she may not be considered as having freely and voluntarily committed the act if she was forced to the marriage by intimidation. But not the other party, who used the force or intimidation. The latter may not use his own malfeasance to defeat the action based on his criminal act.
>
> It follows that the pendency of the civil action for the annulment of the marriage filed by Efigenia C. Palomer, is absolutely immaterial to the criminal action filed against defendant-appellant. This civil action does not decide that defendant-appellant did not enter the marriage against his will and consent, because the complaint does not allege that he was the victim of force and intimidation in the second marriage; it does not determine the existence of any of the elements of the charge of bigamy. A decision thereon is not essential to the determination of the criminal charge. It is, therefore, not a prejudicial question.

Id.

51. *Id.* at 359 (citing *Encyclopedia Juridica Española* 228) ("*[c]uestion prejudicial, es la que surge en un pleito o causa, cuya resolucion sea antecedente logico de la cuestión objeto del pleito o causa y cuyo conocimiento corresponda a los Tribunales de otro orden o jurisdicción*, which means that a [p]rejudicial question has been defined to be that which arises in a case, the resolution of which (question) is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal."). The Court, thus, held:

> The prejudicial question must be determinative of the case before the court; this is its first element. Jurisdiction to try said question must be lodged in another tribunal; this is the second element. In an action for bigamy, for example, if the accused claims that the first marriage is null and void and the right to decide such validity is vested in another tribunal, the civil action for nullity must first be decided before the

The case of *Merced v. Diez*,[52] while similar to the case of *Aragon*, differed in one point. In this case, the Court allowed the suspension of the criminal case of bigamy, due to the existence of a previously instituted civil case. It must be recalled that in *Aragon*, it was Aragon's second wife who alleged vitiation of consent. In *Merced*, it was Merced himself, the one against whom the bigamy case was filed, who alleged vitiation of consent.

The defendant in the bigamy case, Merced, alleging that force, threat, and intimidation were employed against him to obtain his consent to his second marriage with Elizabeth Ceasar, filed this civil case for annulment of the marriage.[53] The issue in this case is precisely whether an action to annul the second marriage is a prejudicial question in a prosecution for bigamy. The Court held in the affirmative. "In order that a person may be held guilty of the crime of bigamy, the second and subsequent marriage must have all the essential elements of a valid marriage, were it not for the subsistence of the first marriage."[54] And as one of the elements of a valid marriage is consent, which is freely and voluntary given, the absence of such warrants an illegal or void marriage. Hence, if the first marriage is void due to vitiated consent, then the case for bigamy will not and cannot prosper.[55]

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action for bigamy can proceed; hence, the validity of the first marriage is a prejudicial question.

Id. at 359-60.

52. Merced v. Diez, 109 Phil. 155 (1960).

53. This is different from *Aragon*, as it was the second wife of Aragon who alleged that force, intimidation, and threat was employed against her to be able to secure her consent. This instance in *Merced* is the very instance which the Court speaks of in *Aragon* that it has to be the victim of the threat that should seek and succeed in the request for the suspension of the criminal case of bigamy, not the malefactor who seeks refuge under his malfeasance.

54. *Merced*, 109 Phil. at 159 (1960).

55. *Id.* at 160.

> One of the essential elements of a valid marriage is that the consent thereto of the contracting parties must be freely and voluntarily given. Without the element of consent a marriage would be illegal and void (Section 29, Act 3613 otherwise known as The Marriage Law). But the question of invalidity can not ordinarily be decided in the criminal action for bigamy but in a civil action for annulment. Since the validity of the second marriage, subject of the action for bigamy, cannot be determined in the criminal case and since prosecution for bigamy does not lie unless the elements of the second marriage appear to exist, it is necessary that a decision in a civil action to the effect that the second marriage contains all the essentials of a marriage must first be secured.

B. Civil-Civil Cases Combination

Mabale v. Apalisok[56] concerned a civil case in relation to an amicable settlement as to the ownership of a parcel of land. Mabale, however, was held in contempt in the civil case as he refused to vacate the parcel of land after signing the amicable settlement in favor of the respondents. Mabale alleged that said allegation of contempt was a prejudicial question in the civil case. The Court however, stated in clear terms that petitioners' contention that the "contempt proceeding in the Civil Case No. 2711 should be suspended, [wa]s not correct"[57] as "the supposed contempt [wa]s not criminal in nature. It [wa]s *civil in nature* because it consist[ed] in the failure to do so something for the benefit of a party."[58]

In *Tamin v. Court of Appeals*,[59] the Court stated that, technically speaking, a prejudicial question shall not arise in actions which are both civil in nature, such as in the case at bar; however, substantively speaking, the cadastral case was *prejudicial* to the ejectment case. As peculiar circumstances obtained in the case at bar, as the cadastral proceeding (civil) would ultimately determine the rightful owners of the land and whether or not the case for ejectment (other civil case) should prosper, certain measures had to be taken.[60]

> We have, therefore, in the case at bar, the issue of the validity of the second marriage, which must be determined before hand in the civil action, before the criminal action can proceed. We have a situation where the issue of the validity of the second marriage can be determined or must be determined in the civil action before the criminal action for bigamy can be prosecuted. The question of the validity of the second marriage is, therefore, a prejudicial question, because determination of the validity of the second marriage is determinable in the civil action and must precede the criminal action for bigamy.

56. Mabale v. Apalisok, 88 SCRA 234 (1979).

57. *Id.* at 249.

58. *Id.* (citing III MANUEL V. MORAN, COMMENTS ON THE RULES OF COURT 343 (1970 ed.)) (emphasis supplied).

59. Tamin v. Court of Appeals, 208 SCRA 863 (1992).

60. *Id.* at 874.

> Technically, a prejudicial question shall not rise in the instant case since the two actions involved are both civil in nature. However, we have to consider the fact that the cadastral proceedings will ultimately settle the real owner/s of the disputed parcel of land. In case respondent Vicente Medina is adjudged the real owner of the parcel of

Thus, in this case, where a cadastral case was pending and a civil case for ejectment was pending against the petitioners in the cadastral case, the Court deemed it necessary for the petitioners in the ejectment case to post a bond in case the demolition of their properties be declared illegal by the Court, pending determination of the ownership in the cadastral case.

C. Criminal-Criminal Cases Combination

The case of *Hipolito v. Court of Appeals*[61] did not concern two or more cases of a different nature nor of the same nature; however, the Court, ruling in the criminal case, made interesting pronouncements regarding the motions submitted in said criminal case.

The lower court held in abeyance the criminal case by virtue of several motions filed by the accused in the criminal case of murder and said that these motions constitute "prejudicial questions"[62] to the prosecution of the case. The Court said that this was correct — that the issues stated in the motions were indeed prejudicial to the continuation or abeyance of the prosecution of the case. Nevertheless, the Court, as a *caveat,* stated that the use of the term "prejudicial question" in the instant case was not used according to the definition provided for in the 1985 Rules of Criminal Procedure, "but in the sense that the resolution of the motions [wa]s a *logical antecedent* of the trial on the merits of the cases."[63]

D. Civil-Administrative Cases Combination

Ocampo v. Buenaventura[64] involved an administrative case and a civil case, where Ocampo filed for the suspension of the civil case because of the existence of the administrative case. The administrative case was the offshoot of an incident where the son and nephews of Ocampo, all minors, were arrested because they were wandering the streets past curfew, an act punishable under an ordinance. Later on, the minors were acquitted as they fell under the exceptions in the ordinance.

> land, then the writ of possession and writ of demolition would necessarily be null and void. Not only that. The demolition of the constructions in the parcel of land would prove truly unjust to the private respondents.
>
> *Id.*

61. Hipolito v. Court of Appeals, 230 SCRA 191 (1994).
62. *Id.* at 200.
63. *Id.* at 202 (emphasis supplied).
64. Ocampo v. Buenaventura, 55 SCRA 267 (1974).

Ocampo then filed with the Office of the Mayor and with the Police Commission (POLCOM) an administrative case against the arresting officers for serious misconduct, grave abuse of authority, and commission of a felony. The respondents in these administrative cases then filed a civil case for damages against Ocampo for the alleged harassment the latter committed in charging the former with administrative cases.

The Court concluded that the administrative case[65] did not constitute a prejudicial question to the civil case, using as rationale the nature of a prejudicial question as stated in the Civil Code. Simply, the Civil Code states that a prejudicial question must be decided before any criminal prosecution based on the same facts may proceed. In this case, since there was no criminal prosecution, then, there can be no prejudicial question.[66]

E. Criminal-Administrative Cases Combination

The case of *Calo v. Degamo*[67] concerned a disbarment case with three criminal cases against Degamo.

65. Only the POLCOM case was pending because the Mayor exonerated by the respondents.
66. *Ocampo,* 55 SCRA at 271.

> A careful consideration of the record discloses that the principal issue in the complaint for damages is the alleged malicious filing of the administrative cases by the petitioner against the policemen respondents. The determination of this question is primarily dependent on the outcome of the administrative case before the POLCOM. The respondents' complaint for damages is based on their claim that the administrative case filed against them before the POLCOM is malicious, unfounded and aimed to harass them. The veracity of this allegation is not for us to determine, for if We rule and allow the civil case for damages to proceed on that ground, there is the possibility that the court *a quo* in deciding said case might declare the respondents victims of harassment and thereby indirectly interfere with the proceedings before the POLCOM. The respondents' case for damages before the lower court is, therefore, premature as it was filed during the pendency of the administrative case against the respondents before the POLCOM. The possibility cannot be overlooked that the POLCOM may hand down a decision adverse to the respondents, in which case the damage suit will become unfounded and baseless for wanting in cause of action.
>
> *Id.*

67. Calo v. Degamo, 20 SCRA 447 (1967).

The disbarment proceeding was instituted against Degamo for "having committed false statement under oath or perjury" in connection with his appointment as Chief of Police of Carmen, Agusan. The facts were unrebutted:

> On 17 January 1959, respondent Esteban Degamo, as applicant to the position of Chief of Police of Carmen, Agusan, subscribed and swore to be filled-out "Information Sheet" before Mayor Jose Malimit of the same municipality. The sheet called for answers about name, personal circumstances, educational attainment, civil service eligibility and so forth. One item required to be filled out reads:
>
> > "*Criminal or police record, if any, including those which did not reach the Court* (State the details of case and the final outcome.)"
> >
> > To which respondent answered, "*None.*"
>
> Having accomplished the form, the respondent was appointed mayor to the position applied for. However, on the day the respondent swore to the information sheet, there was pending against him ... in the Court of First Instance of Bohol ... for illegal possession of explosive powder.
>
> Prior to the commencement of this administrative case, respondent was also charged ... for perjury ... on the same facts upon which he is now preceeded against as member of the Philippine bar.[68]

The respondent raised the defense that he made those representations in good faith believing that the question referred to a judgment or conviction in criminal cases. The Court, however, stated that it was plainly and clearly written in the questionnaire that it only called for an information and not necessarily a judgment in a criminal case, as proved by the phrase "which did not reach the Court." In addition, while Degamo never raised the defense of the existence of a prejudicial question, the Court nevertheless said that the criminal cases filed against him do not constitute prejudicial questions to the disbarment case.

Nor was the pendency of the Criminal Case No. 2194 (for perjury) a prejudicial question, since the ground for disbarment in the proceeding was not for conviction of a crime involving moral turpitude but for gross

68. *Id.* at 449 (emphasis supplied).

misconduct.[69] A violation of criminal law is not a bar to disbarment[70] and an acquittal is no obstacle to cancellation of the lawyer's license.[71]

In *Re: Agripino A. Brillantes*[72] concerned an administrative complaint against Atty. Brillantes and a criminal case for notarizing a deed of sale of real property without being commissioned as a notary public, in violation of article 171 of the Revised Penal Code,[73] and knowingly introducing the deed as evidence in a civil case, in violation of article 172 of the Revised Penal Code.[74]

Atty. Brillantes contended that the criminal case pending posed a prejudicial question to the resolution of the primordial issue in the administrative case. The Court, however, stated that this contention was unmeritorious. It stated in part that, "it *is not sound judicial policy* to await the final resolution of a criminal case before we ... act on a complaint ... against a lawyer and impose the judgment appropriate[;] ... [o]therwise, this Court ... will be effectively rendered helpless from vigorously applying the rules on admission to and continuing membership in the legal profession ... ."[75] Also, a disbarment case is different from a criminal case in terms of the evidence required through and the factors under which an accused may acquitted. In a criminal case, proof beyond reasonable doubt is required. On the other hand, in a disbarment proceeding, only a preponderance of evidence is necessary. In a criminal case, an accused may be acquitted by the mere fact that the prosecution failed to prove his guilt but not necessarily because the accused did not commit the crime. This is not the same with disbarment cases.[76]

69. *Id.* at 450.

70. *Id.* (citing VI MANUEL V. MORAN, COMMENTS ON THE RULES OF COURT 242 (1963 ed.)).

71. *Id.* at 450 (citing *In re:* Del Rosario, 52 Phil. 399 (1928)).

72. *Re:* Agripino A. Brillantes, 76 SCRA 1 (1977).

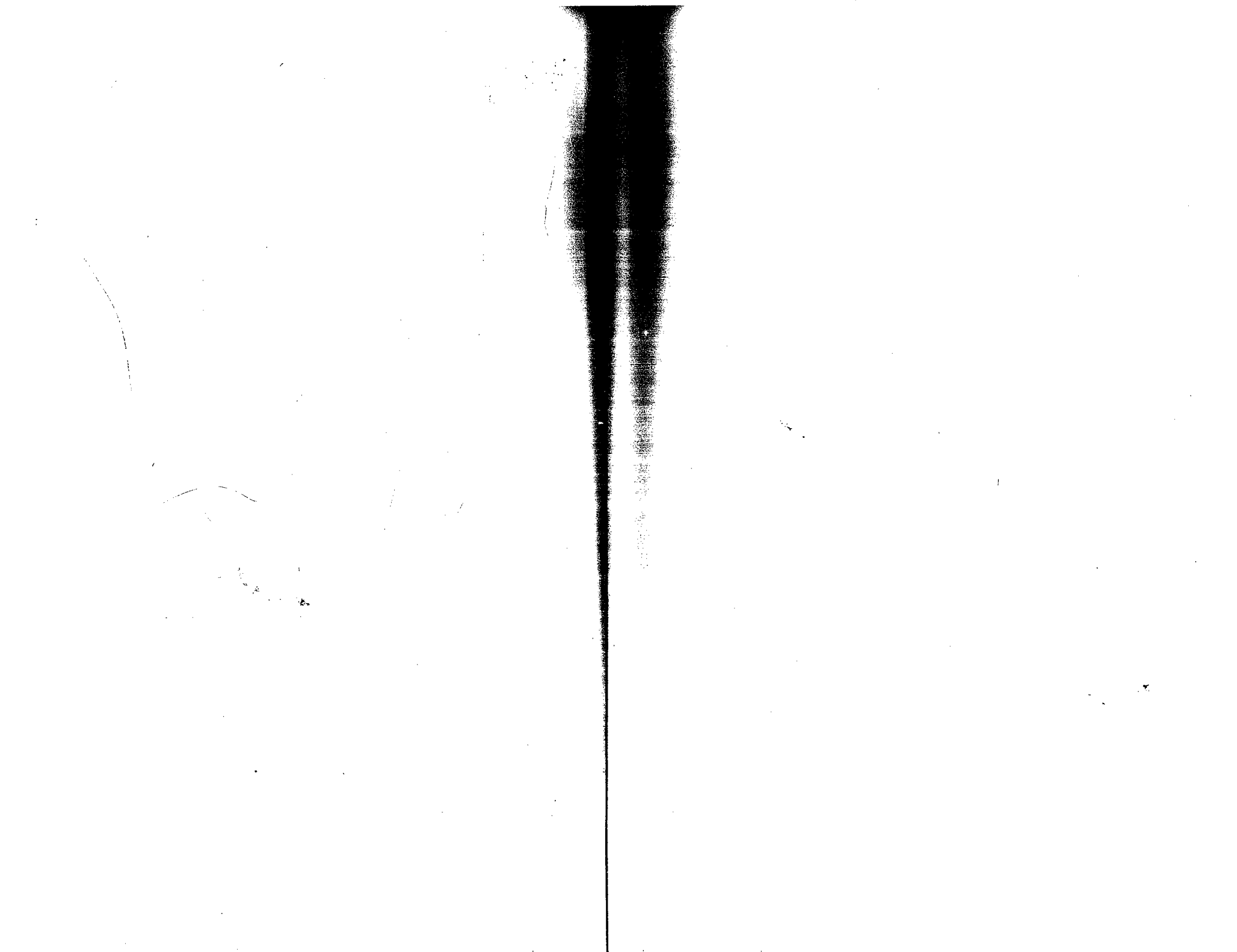
73. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 171 (1930) (falsification by public officer, employee or notary or ecclesiastic minister).

74. *Id.* art. 172 (falsification by private individual and use of falsified documents).

75. *Brillantes*, 76 SCRA at 15 (emphasis supplied).

76. *Id.*

> First, the respondent has not cited, and this Court does not find, any provision of the Constitution, the statutes, or the Rules of Court which can justify the theory. Second, in a criminal case it is the duty of the prosecution to prove that the accused is guilty beyond reasonable



to the fore in the case of *United CMC Textile Workers Union v. Bureau of Labor Relations*.[83] United CMC Textile Workers Union was a legitimate labor organization and the incumbent collective bargaining representative of all rank-and-file workers of Central Textile Mills, Inc. (CENTEX). Philippine Association of Free Labor Unions (PAFLU) was also a legitimate labor organization seeking representation as the bargaining agent of the rank-and-file workers of CENTEX. Petitioners filed an unfair labor practice case against CENTEX and PAFLU alleging that CENTEX had helped and cooperated in the organization of the Central Textile Mills, Inc. Local PAFLU. The latter were allegedly able to solicit signatures of employees of the company who were members of the complainant union to disaffiliate from complainant union and join the respondent PAFLU during company time and inside the company premises. While the ULP case was pending, a petition for certification election was filed.

The Court held that the pendency of the ULP case posed a prejudicial question to the certification election. Otherwise, the certification election may lead to the selection of an employer-dominated or company union and, when the court finds in the unfair labor practice case that this is the situation, the union will be decertified and the whole proceedings will be nullified.[84] "Under settled jurisprudence, the pendency of a formal charge of company domination is a prejudicial question that, until decided bars proceedings for a certification election, the reason being that the votes of the members of the dominated union could not be free."[85]

G. Election Cases

In the case of *Isip v. Gonzales*,[86] a criminal complaint was filed with the Court of First Instance of Catanduanes by respondent Francisco A. Perfecto, one of the candidates for the lone congressional seat of that province in the national elections, charging all the petitioners with having allegedly conspired to have petitioner Estela Isip vote in that elections in November of 1965 with the aid and use of white carbon paper for the purpose of

83. United CMC Textile Workers Union v. Bureau of Labor Relations, 128 SCRA 316 (1984).

84. *Id.* at 322 (citing The Standard Cigarette Workers Union v. C.I.R., *et al.*, 101 Phil. 126 (1957)).

85. *Id.* at 320 (citing The Standard Cigarette Workers Union v. C.I.R., *et al.*, 101 Phil. 126 (1957); Manila Paper Mills Employees v. Court of Industrial Relations, 104 Phil. 10 (1958)).

86. Isip v. Gonzales, 39 SCRA 255 (1971).

identifying her vote, a practice claimed to be violative of section 135,[87] in relation to sections 183[88] and 185,[89] of the Revised Election Code. Then again, petitioners filed, through counsel, a motion to suspend the preliminary investigation on the ground of the existence of a prejudicial question raised in Election Protest No. 168 before the House Electoral Tribunal, which private respondent had also filed against the proclaimed winner, Jose M. Alberto.

The Court, in deciding that the election protest filed did not constitute a prejudicial question to the criminal case, reasoned that the former did not concern the incidents pertinent to the latter. "To begin with, there [wa]s here no showing that the specific incident involving petitioner Estela Isip [wa]s involved in the protest before the Electoral Tribunal of the House of Representatives referred to by petitioners."[90] Moreover, the election protest was not determinative of the innocence or guilt of the accused in the criminal case.[91]

87. The Revised Election Code, Republic Act No. 180, § 135 (1947) (superseded by Omnibus Election Code of the Philippines, Batas Pambansa Blg. 881 (1985)).

88. *Id.* § 183.

89. *Id.* § 185.

90. *Isip*, 39 SCRA at 265 (citing Jimenez v. Averia, 22 SCRA 1380 (1968)).

> It is true that in said electoral protest, the Electoral Tribunal must necessarily resolve the question of whether or not protestee therein and his leaders or followers used carbon paper for the purpose of identifying certain votes cast in the elections concerned, but as pointed out by private respondent — and this is not denied by petitioners — the carbon paper allegedly used by petitioner Estela Isip, which is the basis of the criminal complaint against petitioners, is not among the hundreds of such white carbon paper devices already marked as exhibits in said electoral protest and, according to private respondent, the carbon paper allegedly used by petitioner Estela Isip is still in his possession; it follows then, that even if the Electoral Tribunal should find that there really had been extensive use of such carbon paper device by other voters, *such finding would not necessarily be determinative of the guilt or innocence of petitioners under the criminal complaint filed against them in this case* (emphasis supplied).

91. *Id.* at 265-66.

> We see no reason for holding that the exclusive jurisdiction conferred upon the House Electoral Tribunal to be "the sole judge of all contests relating to the election, returns and qualifications" of the members of the House of Representatives should deprive the courts of their jurisdiction to try and decide criminal charges related to contests filed

Astorga v. Puno[92] reiterates the doctrine enunciated in the case of *Isip*, a doctrine also espoused by earlier cases like *Dasalla v. City Attorney*,[93] and *Falgui, Jr. v. Provincial Fiscal of Batangas*,[94] that as it is only after a preliminary investigation that the Court can determine the existence of probable cause which would warrant the holding of the accused for trial — as absent a finding of probable cause, the complaint would be automatically dismissed — the motion for suspension on the ground of the existence of a prejudicial question may only be filed after a criminal case is already filed in court.

V. ANALYSIS

This section concerns itself in answering the legal issues put to the fore at the beginning of the article.

A. Applicability to Other Types of Cases

The doctrine of the prejudicial question was adopted by the Philippines from Spain as the need for the doctrine arose. In Spain, the application of the doctrine requires that there are at least two issues in two different cases, where one issue is cognizable by another tribunal, and the resolution of such issue is prejudicial to the principal action. This was the requirement in Spain as their courts are divided according to different jurisdictions, that is, there are courts of exclusive civil jurisdiction while there are those of exclusive criminal jurisdiction. Spanish courts enforced this policy as they wanted to avoid conflicting decisions of different tribunals.

In the Philippines, on the other hand, our courts exercise jurisdiction over cases of different natures. For instance, the same court handles both civil and criminal cases, but the court hearing the civil case is considered different and distinct from itself when it hears the criminal case.

The fact that the Spanish courts are organized according to the types of cases they hear may have strengthened the application of the prejudicial

with said tribunal, except perhaps in extreme instances where the question of who may be declared legally elected. It would depend exclusively on whether or not the criminal act imputed to the accused has been feloniously committed by the said accused since then it might be absurd for the tribunal and the court to make separate contradictory or inconsistent findings.

Id. at 266.

92. Astorga v. Puno, 67 SCRA 182 (1975).

93. Dasalla v. City Attorney, 5 SCRA 193 (1962).

94. Falgui, Jr. v. Provincial Fiscal of Batangas, 62 SCRA 462 (1962).

question to civil and criminal cases exclusively. This may have been the reason why the application of the doctrine of the prejudicial question in the Philippines has been limited to such types of cases. As Philippine courts are, however, organized differently from Spanish courts, and as Philippine courts exercise their jurisdictions differently from Spanish courts, the application of the doctrine of the prejudicial question has evolved and adopted itself to the Philippine judicial setting. The doctrine may have had its roots from the Spanish jurisdiction but it grew branches and bore fruits in the Philippine jurisdiction.

The Rules of Court[95] have long defined a prejudicial question to exist when a civil case and a criminal case are pending, implying that the doctrine is applicable only when these types of cases are present. Despite this, the Supreme Court cited and discussed the doctrine in a varying manner, even when the requisite civil and criminal cases are absent. For instance, the cases of *Mabale v. Apalisok*,[96] *Tamin v. Court of Appeals*,[97] *Carlos v. Sandoval*,[98] *Manalo v. Court of Appeals*,[99] *Yulienco v. Court of Appeals*,[100] *Yu v. Philippine Commercial International Bank*,[101] *Security Bank v. Victorio*,[102] *Wong Jan Realty v. Español*,[103] *Hipolito v. Court of Appeals*,[104] *Ocampo v. Buenaventura*, [105] *Quiambao v. Osorio*,[106] *Vidad v. RTC of Negros Oriental, Br. 42*,[107] *Joson III v.*

95. The Rules of Court since the 1964 Rules of Court has provided that, "A petition for the suspension of the criminal action based upon the pendency of a prejudicial question in a civil case may only be presented by any party during the trial of the criminal action." The wording may have changed but the terms "civil" and "criminal" have always been present.

96. Mabale v. Apalisok, 88 SCRA 234 (1979) (civil-civil).

97. Tamin v. Court of Appeals, 208 SCRA 863 (1992) (civil-civil).

98. Carlos v. Sandoval, 471 SCRA 266 (2005).

99. Manalo v. Court of Appeals, 366 SCRA 752 (2001) (civil-civil).

100. Yulienco v. Court of Appeals, 393 SCRA 143 (2002) (civil-civil).

101. Yu v. Philippine Commercial International Bank, 485 SCRA 56 (2006) (civil-civil).

102. Security Bank v. Victorio, 468 SCRA 609 (2005) (civil-civil).

103. Wong Jan Realty v. Español, 472 SCRA 496 (2005) (civil-civil).

104. Hipolito v. Court of Appeals, 230 SCRA 191 (1994) (criminal-criminal).

105. Ocampo v. Buenaventura, 55 SCRA 267 (1974) (civil-administrative).

106. Quiambao v. Osorio, 158 SCRA 674 (1988) (civil-administrative).

107. Vidad v. RTC of Negros Oriental, Br. 42, 227 SCRA 271 (1993) (civil-administrative).

Court of Appeals,[108] *Calo v. Degamo,*[109] *Re: Agripino A. Brillantes,*[110] *Dinsay v. Cioco,*[111] *Tomlin v. Moya,*[112] *The Standard Cigarette Workers' Union (PLUM) v. C.I.R., et al.,*[113] *Acoje Mines Employees and Acoje United Workers Union v. Acoje Labor Union and Acoje Mining Co.,*[114] *B.F. Goodrich Philippines, Inc. v. B.F. Goodrich (Marikina Factory) Confidential and Salaried Employees Union-NATU,*[115] *United CMC Textile Workers Union v. Bureau of Labor Relations,*[116] *Isip v. Gonzales,*[117] *Astorga v. Puno,*[118] and *City of Pasig v. Commission on Elections,*[119] did not concern themselves strictly with civil and criminal cases alone. These cases involved both civil cases, both criminal cases, civil and administrative cases, criminal and administrative cases, labor and election issues. While this is the situation, the Court never said that no prejudicial question existed because the requisite civil and criminal cases provided for by the Rules do not obtain; instead, the Court ruled that there was or there was no prejudicial question depending on the merits of the case. It must be noted that during the time when these cases were decided, the Rules have already been codified and, yet, the application was never strictly according to the letter of the Rules.

Indeed, the Supreme Court may have been relaxed in the application of the doctrine in relation to the elements provided by the Rules but they also have been strict in the sense that out of the 63 cases the author examined, it was only in eight instances when the Court applied the doctrine of the prejudicial question. And out of 24 cases which were not of the typical civil

108. Joson III v. Court of Appeals, 482 SCRA 360 (2006) (civil-administrative).

109. Calo v. Degamo, 20 SCRA 447 (1967) (criminal-administrative).

110. *Re:* Agripino A. Brillantes, 76 SCRA 1 (1977) (criminal-administrative).

111. Dinsay v. Cioco, 146 SCRA 146 (1986) (criminal-administrative).

112. Tomlin v. Moya, 483 SCRA 154 (2006) (criminal-administrative).

113. The Standard Cigarette Workers' Union (PLUM) v. C.I.R., *et al.*, 101 Phil.126 (1957) (labor).

114. Acoje Mines Employees and Acoje United Workers Union v. Acoje Labor Union and Acoje Mining Co., 104 Phil. 814 (1958) (labor).

115. B.F. Goodrich Philippines, Inc. v. B.F. Goodrich (Marikina Factory) Confidential and Salaried Employees Union-NATU, 49 SCRA 532 (1973) (labor).

116. United CMC Textile Workers Union v. Bureau of Labor Relations, *et al.*, 128 SCRA 316 (1984) (labor).

117. Isip v. Gonzales, 39 SCRA 255 (1971) (election).

118. Astorga v. Puno, 67 SCRA 182 (1975) (election).

119. City of Pasig v. Commission on Elections, 314 SCRA 179 (1999) (election).

and criminal case combination, it was only in one case where the Court applied the doctrine.

From a reading of the cases, it can be observed that the leniency of the Court in applying the Rules to its letter is equalized by the fact that the Court exercises prudence and reasonableness in ascertaining whether or not a prejudicial question exists in a particular case.

Also, it becomes more apparent that the doctrine adopted a more pragmatic sense in the Philippine jurisdiction. It became less technical and it became more responsive to the purpose it serves. It adopted a more pragmatic approach such that its application was not limited to civil and criminal cases alone, it also found application in other types of cases.

The following discussions will restate what the Court declared as to the doctrine of the prejudicial question in relation to the different case combinations, under the different subdivisions. These declarations are restated in response to the first legal issue posed at the beginning of the article: *as there are other possible combinations of cases — other than civil-criminal, such as civil-civil, criminal-criminal, civil-administrative, criminal administrative, labor, and election cases — that may use the doctrine, can the doctrine be used successfully in these instances?*

1. Civil-Civil Cases

Can the doctrine of the prejudicial question be used when the cases that are pending are both civil cases? Not one case has yet been decided where the Court categorically stated that the doctrine may find application in such an instance. What the Court has categorically stated is that as the cases are both civil in nature or as the cases are of the same nature, no prejudicial question can exist.[120]

Nevertheless, there were various instances when the parties raised the existence of a prejudicial question, to which the Court, as an *obiter dictum* declared that, technically speaking, no prejudicial question may exist between two civil cases, *but,* substantively speaking, a prejudicial question may exist in that the resolution of the issue in one civil case is a *logical antecedent* to the resolution of the other civil case.

120. *See,* Mabale v. Apalisok, 88 SCRA 234 (1979); Carlos v. Court of Appeals, 268 SCRA 25 (1997); Manalo v. Court of Appeals, 366 SCRA 752 (2001); Yulienco v. Court of Appeals, 393 SCRA 143 (2002), Yu v. Philippine Commercial International Bank, 485 SCRA 56 (2006).

For instance, in the cases of *Tamin* and *Security Bank*, while the Court did not declare that a prejudicial question existed, it stated that, technically speaking, none can exist in these cases but, substantively speaking, a prejudicial question as a logical antecedent can exist. In *Tamin*, the cases involved were a cadastral case and an ejectment case. Logically, the determination of the rightful owner of the land is necessary in order to make a prudent decision in the ejectment case. If a court decides in favor of petitioners in an ejectment case, and a cadastral court later on decides in favor of the respondents in the same ejectment case, the effects may be irreparable.

It is worth noting that the rule on forcible entry and unlawful detainer[121] provides that when the issue of ownership is raised as a matter of defense, such issue shall be disposed of only insofar as the rightful possessor is determined.[122] This is already a step in preventing the irreparable consequences when an ejectment controversy is decided. Such safeguard, however, relates only insofar as possession is concerned and when the issue relating to the question of ownership is raised in the same proceeding. It does not apply in instances where such determination lies with another court, as in the case of *Tamin*. What the Court did was to require a bond from the petitioners in the ejectment case so as to safeguard the rights of the respondents in case they are declared the rightful owners in the cadastral case. In this case, the Court buffered the possible injurious effect of the prejudicial issue not by ordering the suspension of the ejectment case but by requiring that a bond be posted.

The Court stated in *Security Bank* that while technically no prejudicial question can exist between two civil cases, the court nevertheless has the power to stay the proceedings especially when the rights of the parties to the second action cannot be determined until the questions raised in the first action is settled.[123] The abeyance is done "in order to avoid multiplicity of suits and prevent vexatious litigations, conflicting judgments, confusion between litigants and courts."[124]

121. 1997 RULES OF CIVIL PROCEDURE, rule 70.

122. *Id.* § 16 ("When the defendant raises the defense of ownership in his pleadings and question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.").

123. Security Bank Corporation v. Victorio, 468 SCRA 609, 627 (2005) (citing Quiambao v. Osorio, 158 SCRA 674 (1988)).

124. *Id.* at 628.

Technically, no prejudicial question can exist but if the parties can prove that the civil case is a *logical antecedent* to the other civil case, then the Court can order that the latter proceeding be held in abeyance until the former is resolved. In the end, while no prejudicial question can exist in a technical sense, the same effect is obtained. The proceeding may be suspended or be held in abeyance.

The non-application of the prejudicial question in its technical sense, in cases of the same nature as civil-civil cases can be said to spring from the Spanish influence on the application of the prejudicial question. As have been indicated earlier, the application of the doctrine in Spain requires that the issues concerned be cognizable by different tribunals, necessitating that the issues be of dissimilar nature.

2. Criminal-Criminal Cases

Proceeding from the premise that the doctrine cannot be applied to cases of the same nature, the doctrine does not find application with criminal-criminal cases.

There is no case at all relating to the matter. The criminal case of *Hipolito* cited in the case survey under this subdivision concerned pending incidents in the criminal case and the criminal case itself. The case is significant because the Court ruled that the pending incidents are prejudicial to the criminal case, but the sense by which "prejudicial" is used is not in its technical sense, but in the sense that the pending incidents are logical antecedents to the prosecution of the case. The term "prejudicial" is not used in its technical sense because the requisite civil and criminal cases are not present and because there is just one case involved in *Hipolito*. The importance of the case rests on the fact that the Court in this instance, recognized that a different treatment of the prejudicial question exists, apart from its technical definition in the Rules.

3. Civil-Administrative Cases

A civil action is one where "a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong."[125] Certain administrative proceedings have been considered to be of the same nature and to possess the same characteristics as a civil case.[126] As such, proceeding from the earlier observation that the doctrine does not find application

125. 1997 RULES OF CIVIL PROCEDURE, rule 1, § 3 (a).

126. HECTOR S. DE LEON & HECTOR M. DE LEON, JR., ADMINISTRATIVE LAW: TEXT AND CASES 228 (5d 2005 ed.).

where cases of the same nature are involved, the prejudicial question does not find application in instances when a civil and administrative action is involved.

This is also why the observation under the subsection on civil-civil cases may also be said of this subsection. In fact, the case of *Quiambao* cited under this subsection is cited as an authority by the Court in the case of *Security Bank* mentioned under the civil-civil cases subdivision. *Quiambao* was the first case to state that even when a prejudicial question cannot technically exist, the Court may stay the principal case if it is the more prudent thing to do, especially when in the instant case there exists "the same consideration of identity of parties and issues, economy of time and effort of the court, the counsels and the parties as well as the need to resolve the parties' right to possession before the ejectment case may be properly determined."[127] The prudence, exercised by the Court was not put to waste, as it was finally

127. Quiambao v. Osorio, 158 SCRA 674, 679 (1988). The Court explains further:

> The essential elements of a prejudicial question as provided under section 5, rule 111 of the Revised Rules of Court are: [a] the civil action involves an issue similar or intimately related to the issue in the criminal action; and [b] the resolution of such issue determines whether or not the criminal action may proceed.
>
> The actions involved in the case at bar being respectively civil and administrative in character, it is obvious that technically, there is no prejudicial question to speak of. Equally apparent, however, is the intimate correlation between said two [2] proceedings, stemming from the fact that the right of private respondents to eject petitioner from the disputed portion depends primarily on the resolution of the pending administrative case. For while it may be true that private respondents had prior possession of the lot in question, at the time of the institution of the ejectment case, such right of possession had been terminated, or at the very least, suspended by the cancellation by the Land Authority of the Agreement to Sell executed in their favor. Whether or not private respondents can continue to exercise their right of possession is but a necessary, logical consequence of the issue involved in the pending administrative case assailing the validity of the cancellation of the Agreement to Sell and the subsequent award of the disputed portion to petitioner. If the cancellation of the Agreement to Sell and the subsequent award to petitioner are voided, then private respondents would have every right to eject petitioner from the disputed area. Otherwise, private respondent's right of possession is lost and so would their right to eject petitioner from said portion.

Id. at 678.

decided in the LRA case that the respondents in the ejectment case are the rightful possessors of the land in dispute.

Thus, in this subdivision, it was again put forth that while technically no prejudicial question exists, but as the resolution of the issue in one case is a logical antecedent of the resolution of the other, an order of abeyance is the most prudent thing to do. The same effect as in a suspension by reason of a prejudicial question is obtained.

4. Criminal-Administrative Cases

If the previous premises are to be used under this subdivision, that (1) in cases of the same nature, no prejudicial question, technically speaking, can exist, and (2) most administrative cases are civil in nature, then this subdivision in effect concerns itself with a case *civil in nature* (administrative case) and a criminal case. Hence, a prejudicial question may exist in this case.

This conclusion, however, is contradicted by the categorical statement made in *Flordelis v. Castillo*[128] that since the Rules require that a criminal and civil case should be pending, and since what is at hand is the pendency of a criminal and an administrative case, no prejudicial question can exist.

The Court used certain *nuances* in the prejudicial question — "determinative" and "independent." The Court stated that if the issue in the administrative case is determinative of the guilt of the accused in the criminal case or the criminal case is dependent on the outcome of the administrative case, a prejudicial question exists. If, however, the criminal case is independent or cannot be determined by the other case, no prejudicial question exists. Thus, the criminal proceeding cannot be suspended.

Most of the cases, in fact four out of the six cases surveyed by the author under this subdivision, concerned themselves with the combination of a criminal case and a disbarment/disciplinary case. In those instances, the party alleged that it is the criminal case which poses a prejudicial question to the disbarment/disciplinary case. Simply stated, the party alleged that the resolution of the disbarment/disciplinary case was dependent on the outcome of the criminal case. The Court denied this argument and stated that it was not sound judicial policy to await the resolution of the criminal case, and the Court would ultimately be rendered helpless from vigorously applying the rules on admission to and continuing membership in the legal profession. Moreover, the argument was not tenable as the two cases differed in terms of the evidence required and with the factors under which an

128. Flordelis v. Castillo, 58 SCRA 301 (1974).

accused may be acquitted. In a criminal case, proof beyond reasonable doubt is required. On the other hand, in a disbarment proceeding, only preponderance of evidence is necessary. In a criminal case, an accused may be acquitted by the mere fact that the prosecution failed to prove his guilt but not necessarily because the accused did not commit the crime. This is not the same with disbarment cases. There are likewise instances when the violation of criminal law is not a bar to disbarment and an acquittal is no obstacle to the cancellation of the lawyer's license, especially when the ground for the disciplinary case is gross misconduct.[129]

In more concrete terms, the Court stated that:

> administrative cases against lawyers belong to a class of their own. They are distinct from and they may proceed independently of criminal cases. The burden of proof in a criminal case is guilt beyond reasonable doubt while in an administrative case, only preponderance of evidence is required. *Thus, a criminal prosecution will not constitute a prejudicial question even if the same facts and circumstances are attendant in the administrative proceedings.*[130]

Thus, no prejudicial question can exist in criminal and administrative cases against lawyers. As to other types of administrative cases, the Court held that, for as long as the resolution of the criminal case is not dependent and shall not be determined by the issues in the administrative case, then no prejudicial question can exist.

5. Labor Cases

In labor cases, the Court held that a charge of an ULP relating to the existence of a company union is a prejudicial question to the petition for certification election. Otherwise, the certification election may lead to the selection of an employer-dominated or company union and when the court finds in the unfair labor practice case that this is the situation, the union will be decertified and the whole proceedings will be nullified.[131] "Under settled jurisprudence, the pendency of a formal charge of company domination is a prejudicial question that, until decided bars proceedings for a certification

129. *See*, Calo v. Degamo, 20 SCRA 447 (1967).

130. Tomlin v. Moya, 483 SCRA 154 (2006) (emphasis supplied).

131. United CMC Textile Workers Union v. Bureau of Labor Relations, 128 SCRA 316, 322 (1984) (citing The Standard Cigarette Workers Union (PLUM) v. C.I.R., *et al.*, 101 Phil. 126 (1957)).

election, the reason being that the votes of the members of the dominated union could not be free."[132]

The aim of a certification election is the determination of the union which shall represent the employees for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment. If a company-dominated union sits as the bargaining representative of the employees, there is a danger that such union will not further the needs of the employees and that the situation will, instead, work to the advantage of the employer. This is violative of the constitutional guarantee that the "State shall afford full protection to labor. ..."[133] More so, if the company-dominated union is allowed to participate in the certification elections and eventually wins, there is no guarantee that the votes obtained by said union were freely given, thus, once again, resulting in a violation of the constitutional guarantee of the "rights of all workers to self-organization, collective bargaining and negotiations ... ."[134]

Thus, in affording full protection to labor, the Court used the doctrine of the prejudicial question even if the present cases were both labor cases.

In its application, the Court attached to the doctrine of the prejudicial question another *nuance* in the sense that an issue in one case may be considered prejudicial to another case if the non-suspension of the latter case pending the determination of the issue in the former case is *harmful* or *detrimental* to guaranteed and protected rights and when the non-suspension would warrant that defeat of the purpose for which the laws are established.

In this particular subdivision, determination of the existence of the ULP prior to the certification election is important so as not to cause *harm* to the right to self-organization and so as not to defeat the purpose for which the Labor Code was enacted.

6. Election Cases

The election cases cited in the subdivision used the doctrine in relation to whether the election protest posed a prejudicial question to the criminal case and to illustrate when the petition for suspension should be filed.

132. *Id.* at 320 (citing The Standard Cigarette Workers Union (PLUM) v. C.I.R., *et al.*, 101 Phil. 126 (1957); Manila Paper Mills Employees v. Court of Industrial Relations, 104 Phil. 10 (1958)).

133. PHIL. CONST. art XIII, § 3.

134. PHIL. CONST. art XIII, § 3.

As to whether or not the election protest constituted a prejudicial question to the criminal case, the Court held that as the protest is not *determinative* of the guilt of the accused, then no prejudice exists.

As to when the petition for suspension should be filed, the case of *Astorga* tells us that it can only be filed when both the criminal and the civil case are pending. Hence, when the case is still in its preliminary investigation, the petition for suspension cannot be filed. However, this ruling is no longer applicable as the Rules have been amended in 1988 to include the preliminary investigation stage in one of the instances when the petition for suspension may be filed.

B. Strict Sequence in the Rules

This part seeks to answer the second issue posed at the beginning of the article: in the civil-criminal combination, does the civil case strictly have to be filed before the criminal case to warrant the suspension of the latter? This is in consonance with the wordings of the 2000 Revised Rules of Criminal Procedure.[135] Do we follow the wording strictly or are there exceptions?

It has been stated in the Minutes of the Meeting of the Committee on the Revision of the Rules of Court that the present rule is worded in this manner so as to avoid the willful filing by the accused of a civil case in order to delay or suspend the criminal case and that a prior filing of the accused of a civil case shall be taken in good faith.

The problem, however, is when the situation arises where the civil case is filed after the criminal case and yet such filing is not meant to delay the criminal proceedings, and more importantly, the issue concerned in the civil case is indeed a prejudicial question to the criminal case, will the strict wording of the law be followed?

1. Civil and Criminal Cases

The 2000 amendment took effect only on December 2000. As such, the requirement that the civil case be filed previous to the criminal case was not yet present in the cases decided by the Court prior to such year, such as in the cases of *Berbari v. Concepcion*,[136] *Aleria v. Mendoza*,[137] *Pisalbon v. Tesoro*,[138]

135. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 111, § 7.

136. Berbari v. Concepcion, 40 Phil. 837 (1920).

137. Aleria v. Mendoza, 83 Phil. 427 (1949).

138. Pisalbon v. Tesoro, 92 Phil. 931 (1953).

Ocampo and dela Cruz v. Cochingyan,[139] *Dela Cruz, et al. v. City Fiscal, et al.*,[140] *Benitez v. Concepcion*,[141] *Mendiola v. Macadaeg*,[142] *People v. Villamor*, [143] *Gorospe v. Nolasco*,[144] *Fortich-Celdran, et al. v. Celdran, et al.*,[145] *Jimenez v. Averia*,[146] *Rojas v. People*,[147] *Falgui, Jr. v. Provincial Fiscal of Batangas*,[148] *Andaya v. Provincial Fiscal of Surigao del Norte*,[149] *Ras v. Rasul*,[150] *Librodo v. Coscolluela, Jr.*,[151] *Lu Hayco v. Court of Appeals*,[152] *People v. Ofiana*,[153] *Balgos, Jr. v. Sandiganbayan*,[154] *Umali v. Intermediate Appellate Court*,[155] *Yap v. Paras*[156] *Apa v. Fernandez*, [157] *Tuanda v. Sandiganbayan (Third Division)*,[158] *Alano v. Court of Appeals*,[159] *Ching v. Court of Appeals*,[160] *Dichaves v. Apalit*,[161] and *First Producers Holdings Corporation v. Co.*[162] Thus, these cases decided whether the issue in the civil case is separate and distinct yet intimately related to the criminal case, such that the resolution of the former issue be determinative of the guilt or innocence of the accused in the criminal case.

139. Ocampo and dela Cruz v. Cochingyan, 96 Phil. 459 (1955).

140. Dela Cruz, *et al.* v. City Fiscal, *et al.*, 106 Phil. 851 (1959).

141. Benitez v. Concepcion, 2 SCRA 178 (1961).

142. Mendiola v. Macadaeg, 1 SCRA 593 (1961).

143. People v. Villamor, 4 SCRA 482 (1962).

144. Gorospe v. Nolasco, 4 SCRA 684 (1962).

145. Fortich-Celdran, *et al.* v. Celdran, *et al.*, 19 SCRA 502 (1967).

146. Jimenez v. Averia, 22 SCRA 1380 (1968).

147. Rojas v. People, 57 SCRA 243 (1974).

148. Falgui, Jr. v. Provincial Fiscal of Batangas, 62 SCRA 462 (1975).

149. Andaya v. Provincial Fiscal of Surigao del Norte, 73 SCRA 131 (1976).

150. Ras v. Rasul, 100 SCRA 125 (1980).

151. Librodo v. Coscolluela, Jr., 116 SCRA 303 (1982).

152. Lu Hayco v. Court of Appeals, 138 SCRA 227 (1985).

153. People v. Ofiana, 135 SCRA 372 (1985).

154. Balgos, Jr. v. Sandiganbayan, 176 SCRA 287 (1989).

155. Umali v. Intermediate Appellate Court, 186 SCRA 680 (1990).

156. Yap v. Paras, 205 SCRA 625 (1992).

157. Apa v. Fernandez, 242 SCRA 509 (1995).

158. Tuanda v. Sandiganbayan (Third Division), 249 SCRA 342 (1995).

159. Alano v. Court of Appeals, 283 SCRA 269 (1997).

160. Ching v. Court of Appeals, 331 SCRA 16 (2000).

161. Dichaves v. Apalit, 333 SCRA 54 (2000).

162. First Producers Holdings Corporation v. Co, 336 SCRA 551 (2000).

On the other hand, the cases decided after the amendment was introduced were the following: *Sabandal v. Tongco*,[163] *Torres v. Garchitorena*,[164] *People v. Consing, Jr.*,[165] and *Ark Travel Express, Inc. v. Abrogar*,[166] Surprisingly, out of these four cases only the case of *Torres* applied the doctrine in the disposition of the case.

As mentioned earlier, this case concerned a criminal case for violation of Republic Act No. 3019 against Mayor Dionisio Torres of Noveleta, Cavite for taking advantage of his official function and, through evident bad faith, causing the relocation of squatters in an area allegedly owned by Susana Realty Corp. In addition to such criminal case, a civil case was filed for reversion of property. Torres sought a suspension but the Court stated that as the amendment stated that the civil case must be filed previous to the criminal case, and as, in this case, the civil case was filed after the criminal case, no suspension on the basis of a prejudicial question could be obtained. The Court also stated that *in any case* the final judgment in the civil case is not determinative of the guilt of the accused. And until and unless the title of SRI over the property is rendered void, SRI shall remain in possession of said foreshore land.

It is curious to note that, aside from the fact that there was just one case, which applied the doctrine, the Court in *Torres* also stated as *obiter* that even if the wordings of the Rules were not considered, still, as the resolution of the civil case is not determinative of the guilt of the accused, no prejudicial question can exist.

In the case of *Sabandal*, a criminal case for Batas Pambansa Blg. 22[167] and, subsequently, a case for collection of a sum of money and damages were instituted. The Court, without ruling on the non-applicability of the amended rule, stated that no prejudicial question existed by the very nature of the claims in the criminal and civil case. The claim in the civil case is independent of the issues in the criminal case. Hence, the resolution of the civil case is not determinative of the guilt or innocence of the accused.

163. Sabandal v. Tongco, 366 SCRA 567 (2001).

164. Torres v. Garchitorena, 394 SCRA 494 (2002).

165. People v. Consing, Jr., 395 SCRA 366 (2003).

166. Ark Travel Express, Inc. v. Abrogar, 410 SCRA 148 (2003).

167. An Act Penalizing the Making or Drawing and Issuance of a Check without Sufficient Funds or Credit and for Other Purposes, Batas Pambansa Blg. 22 (1979).

Consing and *Ark Travel* were filed according to the order provided for in the amended Rules but the existence of the prejudicial question was determined on the basis of whether or not the resolution of the civil case is determinative of the guilt or innocence of the accused in the criminal case.

The very fact that the Court each and every time considers whether or not the criminal case is dependent on the civil case, or whether or not the civil case is determinative of the guilt of the accused, before declaring whether or not a prejudicial question exists, indicates that while the Rules may have been phrased in such strict manner, the substance of the issues involved are more important than the mere sequence provided for in the Rules.

According to the Rules, the elements of a prejudicial question are that (a) the *previously instituted civil action* involves an issue similar or intimately related to the issue raised in the *subsequent criminal action* and (b) the resolution of such issue determines whether or not the criminal action may proceed.[168] It must be noted that the words "previous" and subsequent" may be more apparent than the other words, such as "issues" "similarly" "resolution" and "determines," provided for in the rule. A reading of the decisions, however, militate against the conclusion that the Court gives less importance to the *determinative* factor of the issue in the civil case, than on whether or not the strict sequence is followed.

Hence, the rule is *directory* insofar as the *strict sequence* of the cases is involved, but it is *mandatory* as to the requirement that the issue in the civil case must be so *similar or intimately related to the issue in the criminal case, so as to determine whether or not the criminal action may proceed.* Consequently, there are instances when the strict sequence may be dispensed with for as long as the mandatory requirement as to the determinative, similar, or intimately related issue is present.

In sum, the following are the reasons that support the conclusion that the sequence is merely directory and a prejudicial question may exist for as long as the determinative, similar, or intimately related issues are present.

a. The Rules, first and foremost, provide that "[t]hese Rules shall be *liberally construed* in order to promote their objective of securing a *just*, speedy, and inexpensive disposition of every action and proceeding."[169]

b. An accused is presumed innocent until the contrary is proved beyond reasonable doubt.[170] As such, our penal laws are construed in favor of the

168. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 111, § 7.

169. 1997 RULES OF CIVIL PROCEDURE, rule 1, § 6 (emphasis supplied).

accused. This is afforded the accused because, in criminal cases, there is restraint on a person's life and liberty. While there is also restraint of one's property in some cases, such as in civil cases, the restraint on life and liberty is graver. The rights at stake in criminal cases are more valuable than those at stake in civil cases.

c. Substantive rights obtain primacy over procedural rules.

Taking all these together, to give the rule such a strict application as to the sequence of the filing of the case would unduly hamper, if not, undermine the right of an accused.

An accused has the right to present evidence on his behalf. For instance, in the case of *Apa,* the defendant was sought to be prosecuted under the Anti-Squatting Law.[171] The parties then filed a civil case for annulment of the title held by the complainants. The validity of the title is obviously an issue prejudicial to the prosecution of the criminal case. Without such valid title, the complainant in the criminal case had no real right by which she can prosecute the defendants for occupying the land allegedly belonging to her. If such civil case was filed after the criminal case, will the Court deny the existence of the prejudicial question and subject the defendants to criminal prosecution knowing that the controversy may be dispensed with through the resolution of the civil case? If such civil case was filed after the criminal case, will the Court deny the existence of the prejudicial question knowing that more valuable rights are at stake in criminal cases rather than in civil cases?

Of course, the Court will grant the suspension because of the obvious existence of the prejudicial question despite non-compliance with the strict sequence provided for in the Rules. This resolve is in consonance with the policy of affording protection to the accused and is also in accord with the liberal construction of the Rules in order to secure a just and speedy disposition of cases. In this instance, there is a just disposition as the substantive rights of the accused are upheld over and above the technical requirements of the Rules. There is likewise a speedy disposition because the Court is already able to dispense with the criminal proceeding — in effect, saving the Court time to hear other cases and unclogging the court dockets.

170. *See,* PHIL. CONST. art III, § 14 (2); 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 115, § 1 (a).

171. Penalizing Squatting and Other Similar Acts, Presidential Decree No. 772 (1975) (repealed by The Anti-Squatting Law Repeal Act of 1997, Republic Act No. 8368 (1997)).

2. Bigamy/Concubinage Cases

The defense that a prejudicial question exists in a civil case for annulment of marriage does not hold water in the prosecution of cases for bigamy or for concubinage. With the cases[172] decided before the effectivity of the Family Code,[173] such defense was upheld. With the enactment of the Family Code, however, said defense no longer holds water.

The Family Code requires that "[t]he absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void."[174] This is a new provision that prevents the parties from judging for themselves the nullity or validity of their marriage such that, prior to such declaration of nullity, the validity of the first marriage is beyond question. A party who contracts a second marriage then assumes the risk of being prosecuted for bigamy.

The elements for the crime of bigamy are as follows: (1) the offender has been legally married; (2) the marriage has not been legally dissolved; (3) he contracts a second or subsequent marriage; and (4) the subsequent marriage has all the essential requisites of validity.[175]

The same is also true for a party who keeps a mistress in the conjugal dwelling, has sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or cohabits with another in any other place.[176]

Hence, no prejudicial question can exist between bigamy or concubinage cases and civil cases for nullity or annulment.

C. Framework

This part seeks to answer the third legal issue posed at the beginning of the article: ultimately, is there a framework that can be deduced from jurisprudence as to the use of the doctrine of the prejudicial question?

It can then be said that there is a rough framework established by jurisprudence under which the doctrine of the prejudicial question can be

172. *See,* People v. Aragon, 94 Phil. 357 (1954); Merced v. Hon. Diez, *et al.*, 109 Phil. 155 (1960); Zapanta v. Montesa, 4 SCRA 510 (1962); Landicho v. Relova, 22 SCRA 731 (1968).

173. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209 (1988).

174. FAMILY CODE, art. 40.

175. REVISED PENAL CODE, art. 349.

176. *Id.* art. 334.

used. The discussion on how this framework or guide has been reached, was conducted under subsections A and B of this section. Hence, provided hereunder is the framework to be used to determine the applicability of the doctrine.

1. Civil-Civil Cases: A prejudicial question may exist in this case in the sense that the issue is a logical antecedent to the resolution of the other issue. Technically speaking, no prejudicial question can exist between two civil cases. The court, nevertheless, has the power to stay the proceedings especially when the rights of the parties to the second action cannot be determined until the questions raised in the first action are settled.

2. Criminal-Criminal Cases: A prejudicial question cannot exist in this case as both cases are of the same nature and one cannot be deemed to be a logical antecedent of the other.

3. Civil-Administrative Cases: As some administrative cases are construed to be of a civil nature, the rule in relation to civil-civil cases can apply in this instance. A prejudicial question may exist in the sense that the issue is a logical antecedent to the resolution of another issue. While, technically, no prejudicial question exists, as the resolution of the issue in one case is a logical antecedent of the resolution of the other, an order of abeyance is the most prudent thing to do. Thus, the same effect of suspension, as with a prejudicial question, may be obtained.

4. Criminal-Administrative Cases: No prejudicial question can exist with a criminal and administrative case, most especially if the administrative case does not concern an issue which is determinative of the guilt or innocence of the accused in the criminal case. Also, a criminal case cannot be considered a prejudicial question in an administrative case for the discipline or disbarment of lawyers.

5. Labor Cases: In its application, the Court attached to the doctrine of the prejudicial question another *nuance* in the sense that an issue in one case may be considered prejudicial to another case if the non-suspension of the latter case, pending the determination of the issue in the former case, is ***harmful*** or ***detrimental*** to guaranteed and protected rights, and when the non-suspension would warrant the defeat of the purpose for which the laws are established.

6. Election Cases: No prejudicial question can exist when the issue in the election protest is not determinative of the guilt or innocence of the accused in the criminal case.

It appears that the rule is where a case is combined with a criminal case, such other case must be determinative of the guilt or innocence of the accused, otherwise, no prejudicial question exists. To be determinative of the guilt or innocence of the accused, the civil case must provide one or all of the elements of the crime imputed to the accused. Simply put, the criminal case must be dependent on the resolution of the civil case.

One the other hand, the ultimate guide relating to other instances that do not involve a criminal case is whether or not the issue in one case is a logical antecedent to the issue in the other case, or that the determination of the issue in one case seeks to safeguard and avoid harm over the protected rights in another case (as in labor cases).

7. Civil-Criminal Cases: The rule is *directory* insofar as the *strict sequence* of the cases is involved, but it is *mandatory* as to the requirement that the issue in the civil case must be *similar or intimately related to the issue in the criminal case, so as to determine whether or not the criminal action may proceed.* Consequently, there are instances when the strict sequence may be dispensed with for as long as the mandatory requirement of the determinative, similar, or intimately related issue is present.

8. Bigamy/Concubinage Cases: Through the new provisions implemented in the Family Code, no prejudicial question can exist between the prosecution for bigamy or concubinage and a civil case for annulment or nullity of marriage, except when the marriage sought to be annulled or nullified was celebrated before the effectivity of the Family Code.

D. Purpose

This section seeks to answer the fourth legal issue posed at the beginning of this article — what purpose does the doctrine serve in this jurisdiction? What essential and salient features does it have that makes it indispensable? Or, if it does not have any such essential and salient features, can it ultimately be dispensed with in our jurisdiction?

The doctrine serves various purposes in our jurisdiction. Among these are the following: (1) to avoid multiplicity of suits; (2) to avoid unnecessary litigation; (3) to avoid conflicting decisions; (4) to safeguard the rights of the accused; and (5) to help unclog the dockets.

All these purposes are fulfilled when, through the suspension of a criminal case to give way to the resolution of the determinative issue, the court may ultimately dispense with the criminal case. Along the process, through the use of the doctrine, the Courts are also able to evade the instance when an accused is subjected to prolonged and unnecessary prosecution.

As it serves such purposes, then the doctrine should not be dispensed with in our jurisdiction.

V. CONCLUSION

At the beginning of this article, the *prejudice of the prejudicial question* existed in the confused state of the doctrine — the Rules say one thing, however, jurisprudence declare otherwise. The *prejudice* is significant as the doctrine remained unclear and ambiguous in the presence of strictly amended Rules and a flexible framework in jurisprudence.

The doctrine of the prejudicial question was adopted by the Philippines from Spain as the need for the doctrine arose. In Spain, the application of the doctrine requires that there are at least two issues in two different cases. It required that one issue be cognizable by another tribunal and the resolution of such issue be prejudicial to the principal action. These were the requirements in Spain as their courts are divided according to different jurisdictions. Spanish courts enforced this policy as they wanted to avoid conflicting decisions of different tribunals.

In the Philippines on the other hand, our courts exercise jurisdiction over different cases. For instance, one and the same court may handle both civil and criminal cases, but the court hearing the civil case is considered different and distinct from itself when it hears the criminal case.

The fact that the Spanish courts are organized according to the types of cases they hear may have strengthened the application of the prejudicial question in civil and criminal cases exclusively. This may have been the reason why the application of the doctrine of the prejudicial question in the Philippines has been apparently limited to such types of cases. As Philippine courts are, however, organized differently from Spanish courts, and as Philippine courts exercise their jurisdictions differently from Spanish courts, the application of the doctrine of the prejudicial question has evolved and adapted to the Philippine judicial setting. The doctrine may have had its roots in the Spanish jurisdiction but it grew branches and bore fruits in the Philippine jurisdiction.

It bore fruits in the sense that it shaped its own application of the doctrine while the doctrine interacted with our own laws. As it took shape, however, it resulted in various ambiguities — hence, the propriety of the framework deduced in this article.

The evolution of the doctrine is also proven by the fact that Court attached various *nuances* to the use of the doctrine (for example, *determinative of the guilt, dependent on the resolution of the issue, harmful, detrimental, injurious,*

logical antecedent). The Court used the doctrine in a more pragmatic rather than a technical approach, in order to utilize the same in serving the purposes for which the doctrine was enacted.

VI. RECOMMENDATION

In light of the doctrines enunciated in jurisprudence and in the present Rules, the author suggests that the following circular be issued to serve as a guidepost in the application of the prejudicial question as the use of the doctrine has evolved beyond the contemplation of the Rules.

SC CIRCULAR NO. ___

SUBJECT: GUIDELINES TO BE OBSERVED IN THE USE OF THE PREJUDICIAL QUESTION

TO: COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A DISTRICT COURTS AND SHARI'A CIRCUIT COURTS, QUASI-JUDICIAL AGENCIES, THE OMBUDSMAN, THE SOLICITOR GENERAL, THE GOVERNMENT CORPORATE COUNSEL, ALL MEMBERS OF THE GOVERNMENT PROSECUTION SERVICE, AND ALL MEMBERS OF THE INTEGRATED BAR OF THE PHILIPPINES

It has come to the attention of this Court that there has been a great deal of confusion as to the application of the doctrine of the prejudicial question. The 2000 amendment of the Rules of Court inserted the terms "previously instituted" before "civil action" and the term "subsequent" before "criminal action." Now, various questions arise as to whether such wording shall be applied strictly, such that the filing of the civil action should strictly precede the filing of the criminal case. Questions also arise as to whether the doctrine can only be used in relation to civil and criminal cases exclusively. The evolution of the doctrine and different nuances necessitate the issuance of these guidelines.

(1) *Purpose*: The purpose for which the doctrine has been adopted in the Philippines is to avoid multiplicity of suits, unnecessary litigations and conflicting decisions, and to safeguard the rights of the accused in criminal cases. The present amendment has been adopted in order to avoid dilatory

tactics employed by the accused in criminal cases, where they institute civil cases belatedly in order to merit the suspension of the criminal proceedings.

(2) *Construction of the Rules of Court*: The rule on the prejudicial question must be construed in the light of the policy enunciated in rule 1, section 6 of the Rules of Court that "[t]hese Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding."

(3) *Definition of Terms*:

(3.1) *Main Case* – dependent or determined by the resolution of the other case.

(3.2) *Other Cases* – upon which the main case depends or is determined so as to either proceed or not with the main case.

(4) *Application of the Doctrine*: The doctrine shall be applied in the following manner:

(4.1) *Civil and Criminal Cases*:

i. *Elements*: To apply the doctrine, the following elements must concur: (a) the civil case is previously instituted to the criminal case; (b) the civil case involves an issue that is similar or intimately related to the issue raised in the criminal case; and (c) the resolution of the issue in the civil case determines whether or not the criminal action may proceed.

ii. *Absence of One Element*: Should element (a) be absent, such that the civil case is filed after the criminal case is instituted, a prejudicial question may still be considered to exist to warrant the suspension of the criminal proceeding, PROVIDED, elements (b) and (c) are present and the party alleging the existence of a prejudicial question prove that the civil case is not filed to delay the criminal proceeding.

Absence of either element (b) or (c) is conclusive as to the fact that no prejudicial question exists in the case.

(4.2) *Cases of the Same Nature*: In instances that involve cases of the same nature, such as civil and civil cases, or civil and administrative cases, the following shall be observed.

i. *Elements*: To apply the doctrine, the following elements must concur: (a) the issue raised in the other case is similar or is intimately related to the issue raised in the main case; and (b) the resolution of the issue in the other case is a logical antecedent to the resolution of the main case.

ii. *Absence of One Element*: Absence of one element is conclusive as to the fact that no prejudicial question exists in the case.

(4.3) *Disbarment/Disciplinary Cases*: An administrative case for discipline or disbarment of a lawyer cannot be considered to constitute a prejudicial question to a criminal case, even if both concern the same parties, facts, and issues.

(4.4) *Other Cases*: In instances when the doctrine is invoked in other types of cases, the courts, at its discretion and upon determination of the following elements, may order that the main case to be held in abeyance, provided that subdivision i concur with either subdivision ii or iii.

i. It is necessary that there are at least two cases involved.

ii. *Elements*: To apply the doctrine, the following elements must concur: (a) the issue raised in the other case is similar or is intimately related to the issue raised in the main case; and (b) the resolution of the issue in the main case is dependent or determined by the resolution of the issue in the other case.

iii. *Elements*: To apply of the doctrine, the following elements must concur: (a) the issue raised in the other case is similar or is intimately related to the issue raised in the main case; and (b) the resolution of the issue in the other case is important so as to guarantee that protected rights are not harmed in the resolution of main case.

iv. *Absence of One Element*: Absence of one element is conclusive as to the fact that no prejudicial question exists in the case.

Please be guided accordingly.

July 28, 2006.