The Evolution of the Philippine Commercial Law System

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I. INTRODUCTION

Most lawyers and judges would consider the question "What is Commercial Law?" as well as the answer to that question, as being too technical to have any practical importance.[1] The Supreme Court itself would not adopt the term "commercial law" in the coverage of the bar examinations, and would rather retain the archaic term "mercantile law," perhaps, to emphasize the area covered as the law on merchants.

In his treatise on Philippine Commercial Laws,[2] Tolentino writes that the concept of

> [c]ommercial laws, excepting the Code of Commerce, are not designated by the legislator by any mark or sign which determines their nature and their commercial function, but they derive their mercantile character from their subject matter or their contents. In order to determine whether a particular law or provision of law is commercial, it is necessary to first

1. *Commercial Law* is that branch of private law that provides for the rules that govern the rights, obligations, and relations of persons engaged in commerce or trade, and necessarily includes the purchase, sale, exchange, traffic or distribution of goods, commodities, productions, services or property, tangible or intangible (MORENO'S LAW DICTIONARY 81 (2000 ed.); 15A AM. JUR. 2D *Commerce* §3 (1964).), including the instrumentalities and agencies by which they are promoted and the means and appliances by which they are carried on (BLACK'S LAW DICTIONARY 93 (6th ed. 1998).) Likewise, the term includes both concept of laws relating to trade, which is the business traffic within the limitations of a state, and commerce, which covers the intercourse with foreign states (PHILIPPINE LEGAL ENCYCLOPEDIA 141 (1986 ed.)).

2. ARTURO TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON COMMERCIAL LAWS OF THE PHILIPPINES, (1951 ed.).

> inquire if its purpose is to govern a relation pertaining to commercial matters... generally, all laws referring to merchants and to commercial transactions are commercial in nature.[3]

Under that definition, the field of commercial law may not represent a discipline bounded by a common set of philosophical underpinnings, but merely represents a conglomeration of laws and jurisprudence pertaining to merchants and commercial transactions.

Although there would be no argument to the proposition that the commercial law system is a very important component of our legal system, there has been very little effort to define the main ingredients and doctrines of that system. Rather, the commercial law system is known for the intricacies of its separate and often disparate components, rather than as a "system"[4] of "an ordered group of facts, principles, or beliefs."

No legal system could best serve society, unless it is encompassed within a philosophical framework, and with clear definition and delineation of the nature and essence of its components, as the bases by which such system is to be evolved and adapted. The philosophical framework of Philippine Commercial Law was analyzed on a macro-historical level in our article entitled *Revisiting the Philosophical Underpinnings of Philippine Commercial Laws*.[5] This Article proceeds from where that article left off, covering on a micro-level, the nature and essence of the components of Philippine Commercial Laws that make it an important legal discipline and an ordered operating system in the Philippine hybrid legal system.[6]

II. THE UNIFYING CHARACTERISTICS OF COMMERCIAL LAWS AS THE BASIS FOR DEVELOPMENT OF THE SYSTEM

The passage of the New Civil Code of the Philippines[7] which effectively emasculated the Code of Commerce[8] by taking away from its coverage the

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3. *Id.* at 1, 1 Vivante 71 (emphasis supplied).
4. THE WORLD BOOK DICTIONARY (1983 ed.).
5. 46 ATENEO L.J. 707 (2003).
6. *See* Cesar L. Villanueva, *Judicial Activism in Commercial Laws*, 18 THE LAWYER'S REVIEW 12 (2003) [hereinafter JUDICIAL ACTIVISM]. (The aforementioned paper provides for conclusions where the phenomenon described was drawn).
7. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE] Republic Act No. 386 (1949).
8. From the old Code of Commerce [CODE OF COMMERCE] (1906), which was adopted from the Spanish Code of Commerce of 1885, which was modified by the *Comision de Codificacio de las Provincias de Ultramar* which resulted in our

more important commercial contracts, and the enactment of special statutes governing other important commercial law areas, have practically rendered fatherless the Philippine commercial law system. The Code of Commerce has ceased to be a panoramic code providing over-arching set of principles, rules and doctrines that can govern the commercial law system. Today, the Code of Commerce, while it still contains basic commercial postulates, no longer serves as the "organizing" code for Philippine Commercial Law since many of its key components have already been covered by the Civil Code, which repealed provisions in partnership, agency, sales, loan, deposit and guaranty, and by other special laws.

In fact, there seems to be no underlying juristic philosophy governing the piece-meal enactment of commercial statutes in Philippines legal history. Statutes are promulgated in accordance with a particular need, without regard to a general framework by which, we as a nation, seek to direct commercial law developments. There is perception in certain quarters that the field of Commercial Law has become less of a distinctive mark of a body of laws upon which commercial doctrines and impetus overwhelm, but has largely become a historical description of what have always been considered within its coverage.

We disagree with such a view. Although the Code of Commerce may no longer play a "unifying" code upon which Philippine Commercial Law can be anchored upon the effects of globalization and the need for the Philippines to become an important player in the international economic, financial and commercial arenas, have actually made Commercial Law the most dynamic area of legislative growth in the country. The development in this area often includes an importation into Philippine setting of commercial statutes from the United States,[9] and western or international jurisdictions.[10] Philippine Commercial Law system therefore follows a certain pattern of growth and development. In fact, unlike the American constitution which is neutral when it comes to economic principles, our 1987 Constitution is

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Code extended to the Philippines by royal decree (issued on Aug. 6, 1888) of Queen Cristina of Spain, and took effect in the Philippines on Dec. 1, 1888.

9. For example, the provisions of our Securities Regulation Code are based on American Federal securities provision; the Corporation Law is said to be based on the California code, while the Close Corporation title of the present Corporation Code is based on the provisions of the Delaware Corporation Code.

10. For example, our Electronic Commerce Law is based upon the UNCITRAL Model; while our Anti-Money Laundering Law is patterned after the various OECD models.

punctuated with terms and principles pertaining to the field of Commercial Law.[11]

In spite of our historical developments in the field, the Philippine Commercial Law system remains a "system" to be reckoned with. What really needs to be met is the dire need to actualize how that system actually works as a separate field of discipline in order to allow not only the various agencies involved in its enforcement and development, but also the various publics that it affects directly and indirectly, to have a common set of bases upon which to plan and operate.

The current phenomenal growth in Commercial Law, and the treatment of the Supreme Court on commercial law matters, considerably reaffirms the fact that based on international standards, the three (3) principal characteristics of commercial laws are as follows: (a) *Universal*; (b) *Progressive*; (c) *Equitable*.[12] Other authors have included two other characteristics, namely, that of being *customary* and *uniform*.[13]

The field of Commercial Law is *universal* or *international* in nature and in application, because it exists in every civilized society.[14] This means that even local courts have no choice but to accept the truism that the matters being universal in nature, the commercial law issues or concepts involved either require judges to consider similar practices in other jurisdiction, or emerging developments in other countries. Moreover, we also need to consider the treatment of local issues with the international standards upon which they have been patterned, especially when the case before the courts involve a foreign component.

Commercial laws are *progressive* in character because with the passage of time, they accumulate new ideas and keep abreast with contemporary developments.[15] Since the impetus or rationale of every commercial statute is

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11. For the constitutional treatment of commercial law principles, *see* Cesar L. Villanueva, *Revisiting the Philosophical Underpinnings of Philippine Commercial Laws*, 46 ATENEO L.J. 707 (2001).

12. MARTIN I, PHILIPPINE COMMERCIAL LAWS 1 (1988 ed.) [hereinafter MARTIN, COMMERCIAL LAWS] (citing DEL VISO, DERECHO MERCANTIL, 30; GOPENGCO, MERCANTILE LAW COMPENDIUM 509 (1983)).

13. JOSE NOLLEDO, COMMERCIAL LAW REVIEWER 2 (1991 rev. ed.) [hereinafter NOLLEDO, COMMERCIAL LAW].

14. *Id.* at 2. (Nolledo adds two more characteristics not cited by other authors: customary because commercial law rules are followed from time to time or are involved in everyday transactions; and uniform because within a country, a commercial act or contract is governed by the same rule). *Ibid.*

15. *Id.*

the set of commercial transactions that it seeks to cover, then invariably, the meaning and essence of commercial statutory provisions must dynamically move with the changes that meet the underlying commercial transactions they regulate. Judges must then need to realize that in the field of commercial laws, the doctrines and principles are never static. They may need to be adjusted with the changes that visit upon the underlying commercial transactions, brought upon by the changes in science, technology, etc.

Commercial laws have the quality of being *equitable* since commercial transactions involve the exchange of values or consideration.[16] Embodied in this concept is the other indicated characteristic of commercial laws of being *uniform*, which means that within a country, a commercial act or contract is governed by the same set of rules.[17] These characteristics emphasize the point that commercial laws, rules and concepts, are more "business-like" in nature and often do not involve themselves with moral issues. For example, since the impetus of Commercial Law is in the pursuit of business and the generation of profits, then there are postulates that apply uniquely to commercial laws.

The first postulate is that "commercial transactions generally arise from the element of repetition" so that the Code of Commerce stresses the need for habituality.[18] It is this habituality that places the business of merchants into a grid of similar transactions upon which a common set of doctrines and practices are made to apply. To illustrate, the stipulation in the bill of lading that the owner of the vessel would not be liable for the negligent acts of the crew would be invalid if the underlying contract is a commercial transaction. It would not have been so if the contract was that of a common carrier. However, if the vessel was specially chartered for an isolated transaction, there being no element of habituality, the stipulation will be enforced since the provisions of the Code of Commerce were deemed inapplicable.[19] In another case, the sale by a person of his capital in an unregistered partnership,

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16. *Id.*

17. *Id.*

18. CODE OF COMMERCE, art. 1. (This provision provides that "[f]or purposes of this Code, the following are merchants: …[t]hose who, having legal capacity to engage in commerce, habitually devote themselves thereto.").
Id. art. 3. ("The legal presumption of habitually engaging in commerce shall exist from the moment the person who intends to engage therein announces through circulars, newspapers, handbills, posters exhibited to the public, or in any other manner whatsoever, an establishment which has for its object some commercial operation.")

19. Home Insurance Co. v. American Steamship, 23 SCRA 24 (1968).

was deemed not to make him a merchant within the meaning of the law governing "merchant," on the basis that a single commercial act does not make a person a merchant. Furthermore, in contemplation of the Code of Commerce and other laws dealing in commerce, a merchant is one who executes various acts of commerce.[20]

The other postulate is that "time is the essence of all commercial law transactions" and every debtor to a commercial contract would be in *mora* or default when he fails to meet the stipulated deadline, without need of formal demand from the other party (*mora ex re*).

Closely tied with the equitable nature of commercial laws, is the ancillary characteristic of being *customary* in nature because commercial laws embody rules that are followed from time to time or are invoked in everyday transactions.[21]

We now proceed to undertake a review of the historical developments in Philippine Commercial Law, particularly on how the primary characteristics have become pivotal in evolving the system that is in play today, and indicative of the development of that system in the future.

A. Equitable Nature of Commercial Law

1. Differences in Philosophical Approaches Between the Civil Code and the Code of Commerce

The New Civil Code cannot effectively be considered as a mother code for commercial law system of the Philippines since it contains basic doctrines and rules that actually run counter to commercial law principles. In essence, the Civil Code focuses more on "the person, his capacity, properties and relations," and concerns itself primarily on the uniqueness of each contract and transactions based on the principles of "freedom to contract,"[22] "obligatory force,"[23] and "relativity."[24]

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20. Boada v. Juan Pasada, 58 Phil. 184 (1933); Murphy v. Trinidad, 44 Phil. 649 (1923).

21. NOLLEDO, COMMERCIAL LAW, *supra* note 13, at 2.

22. CIVIL CODE, art. 1306. ("The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.").

23. *Id.* art. 1308. ("The contract must bind both contracting parties, its validity or compliance cannot be left to the will of one of them.")

Id. art. 1315. ("Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly

On the other hand, the Code of Commerce rightfully emphasizes "a system of contracts and transactions," and presents the structure by which they could be efficiently pursued. This is in keeping with one of the key characteristics of commercial laws -- that they are *equitable* in character, and that commercial transactions are an integral part of a system or set of rules by which similar transactions are to be governed. The point being made is that since the impetus of Commercial Law is in the pursuit of business and the generation of profits, then there are postulates that apply uniformly to commercial transactions.

We can illustrate this difference in philosophical basis in the areas of contractual perfection, binding effect, and default. In Civil Law, unless otherwise stipulated, *time is not of the essence of a contract or transaction*, and its emphasis in on the person of the creditor or obligee. Civil Law on private contracts tends to consider the effects and consequences of contracts and transaction on a person. Commercial Law, considering the time value of money and the imperatives for the need to make efficient the velocity of commercial transactions, considers *time to be of the essence of every commercial contract or transaction*. Rather than looking only on the individual consequences of contracts and transactions, Commercial Law concentrates on the over-all effect of a series of transactions on the market and the economy, under the premise that the more similar transactions are facilitated under a common set of system, the better societal needs are served. In other words, while in civil law or private contracts, each contract (its enforcement and breach) is considered as a unique and isolated transaction, in commercial transactions, each transactions is considered not in isolation, but as an integral part of a system or series of interconnected transactions, which have to be enforced, construed and interpreted together.

In the area of contractual perfection and binding effect of contracts negotiated through correspondence, Article 1319 of the Civil Code provides that acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge and that the contract is presumed to have been entered into in the place where the offer was made. In essence, therefore, under Civil Law considerations, the perfection and binding effects of contracts must be taken from the point of view of the offerer. In contrast, Article 54 of the Code of Commerce provides that contracts entered into by correspondence shall be perfected from the moment an answer is made

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stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.").

24. *Id.* art. 1311. ("Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law…").

accepting the offer or the conditions by which the latter may be modified, which emphasizes the point that unlike in a private transaction where the offerer must be given the decision on whether to keep his offer afloat, in commercial transactions, the offerer stands out offering his products to the public ready to accept their orders or bid.

In the area of designation of period, Article 1197 of the Civil Code provides that if the obligation does not fix a period, but from its nature and the circumstances it would appear that the period was intended, an action would have to be filed with the courts for the fixing of the period. On the other hand, Article 62 of the Code of Commerce provides that obligations which do not have a period previously fixed by the parties shall be demandable ten days after having been contracted if they give rise only to an ordinary action, and on the next day if they involve immediate execution. Commercial transactions governed by the Code of Commerce therefore are *ipso jure* given a period by which they could be enforced, affirming that *time is of the essence of commercial contracts*.

Finally, the concept of default under Civil Law doctrine depends largely on the actuation of the obligee or creditor. Article 1169 of the Civil Code provides that mere non-compliance of an obligation at the designated time or period would not constitute default. Only when the obligee makes formal demand upon the obligor shall the later be considered to be in default of his obligations. This rule therefore emphasizes the "personal" nature of civil contracts, as allowing the obligee or creditor the choice of whether to move forward to have the obligor declared in default or whether to grant obligor more leeway. In contrast, Article 62 of the Code of Commerce provides that the moment the obligor fails to comply with his obligation at the period designated in the contract, he would already be in default without need of further demand from the obligee, concentrating as it does therefore on preserving the integrity of the contract and the obligations taken therein as a more rational and uniform basis upon which society can plan and act upon.

Unlike the Civil Law, particularly the New Civil Code, wherein the focus is on the "person, his property and his relations," where "freedom to contract" and the personal binding effects of his contracts are given emphasis, the approach of Commercial Law is more *institutional* in nature -- the purpose being to provide a framework or *market system*, upon which a large volume of transactions would be processed. In each special field of Commercial Law, therefore, like the Negotiable Instruments Law, the Corporation Code, the Securities Regulation Code, the General Banking Law of 2000, the Insurance Code, *etc.*, the emphasis is to provide a set of rules that govern a multitude of transactions uniformly and equitably, in order to encourage persons and institutions at both ends of the transactions, to go about their businesses relying in the efficiency of the system or network in place to achieve an almost uniform end.

2. "Public Interest" Characterization of Commercial Law Areas

Another significant difference between civil or private contracts and commercial contracts and transactions is the "public interest" characterization in the commercial law areas. For example, although controversies are resolved on individual contracts entered into and the claims and remedies interposed are individual, in public transportation, each contract of carriage is to be gauged against the entire business of the carrier as being imbued with public interests. Thus, "[t]he contract of air carriage is a peculiar one. Imbued with public interest, the law requires common carriers to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons with due regard for all the circumstances."[25] It also imposes on them very exacting standards.[26] Thus, in action for breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that is necessary to prove is the existence of the contract and the fact of its non-performance by the carrier.[27]

Consequently, the level of diligence that is often required in key commercial law areas is not the "diligence of a good father of a family" under the mainframe standard of the New Civil Code, but that of extraordinary diligence imposed on common carriers over the goods they transport, according to all the circumstances of each case. The non-performance of the terms of the contract usually gives rise to the presumption of negligence, unless they prove that they observed extraordinary diligence.[28]

Although Article 1733 of the New Civil Code provides expressly for such "extraordinary diligence standards," and thereby carries the implication that transportation business and the covering contracts of carriage, are imbued with public interests, such standards uniquely apply only when the underlying transaction that is inherently commercial in nature. Thus, in one case where the covering contract of carriage was deemed to be a private

25. Singapore Airlines Ltd. v. Fernandez, 417 SCRA 474 (2003).

26. China Airlines v. Chiok, 407 SCRA 432 (2003).

27. *Singapore Airlines*, 417 SCRA at 474.

28. Sulpicio Lines, Inc. v. First Lepanto-Taisho Insurance Corp., 462 SCRA 125 (2005); Republic v. Lorenzo Shipping Corp., 450 SCRA 550 (2005); Central Shipping Co., Inc. v. Insurance Co. of North America, 437 SCRA 511 (2004); Light Rail Transit Authority v. Navidad, 397 SCRA 75 (2003); Calvo v. UCPB General Insurance Co., 379 SCRA 510 (2002); Baritua v. Mercader, 350 SCRA 86 (2001).

contract, the requirements of extraordinary diligence mandated under Article 1733 were not imposed.[29]

This standard of extraordinary diligence in commercial transactions has begun to creep into other areas where the statutory laws do not expressly require such high standard of care and diligence in the performance of a commercial contract. To illustrate, even before the reforms undertaken under the General Banking Law of 2000, the Supreme Court had characterized the banking business as one affected with public interest.[30] In *Bank of the Philippine Islands v. Casa Montessori Internationale*,[31] the Court held that:

> [W]e have repeatedly emphasized that, since the banking business is impressed with public interest, of paramount importance thereto is the trust and confidence of the public in general. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required, of it. By the nature of its functions a bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.[32]

In the case of banking industry, jurisprudence developed outside of statutory declaration provides that the diligence is more that that of a *pater familias* or good father of the family.[33] As a matter of fact, since the business of bankers is impressed with public interest, they are expected to exercise more care and prudence than private individuals in their dealings. The highest degree of diligence is expected and high standards of integrity and performance are also required in cases involving registered lands.[34]

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29. National Steel Corp. v. Court of Appeals, 283 SCRA 45 (1997); Home Insurance Co. v. American Steamship, 23 SCRA 24 (1968); *Boada*, 58 Phil. at 184.

30. United Coconut Planters Bank v. Ramos, 415 SCRA 596 (2003); PCIBank v. Court of Appeals, 350 SCRA 446 (2001); BPI v. Court of Appeals, 326 SCRA 641 (2000); Canlas v. Court of Appeals, 326 SCRA 415 (2000); Ibaan Rural Bank v. Court of Appeals, 321 SCRA 88 (2000); Philippine Bank of Commerce v. Court of Appeals, 269 SCRA 695 (1997).

31. Bank of the Philippine Islands v. Casa Montessori Internationale, 430 SCRA 261 (2004).

32. *Id.*

33. Bank of Philippine Islands v. Court of Appeals, 383 Phil. 538; 326 SCRA 641 (2000). *See also* Philippine Bank of Commerce v. Court of Appeals, 336 Phil. 667, 269 SCRA 695 (1997).

34. Heirs of Eduardo Manlapat v. Court of Appeals, 459 SCRA 412 (2005).

The commercial standard of extraordinary diligence was eventually adopted in Section 2 of General Banking Law of 2000,[35] which now expressly imposes a fiduciary duty on banks when it declared that the State recognizes the "fiduciary nature of banking that requires high standards of integrity and performance," and that the fiduciary nature of banking requires a bank to assume a degree of diligence higher than that of a good father of a family.[36]

It is the *customary* and *progressive* nature of commercial laws that drives the standards that are being applied in the field of commercial law and which eventually dictates the nature of future legislation. In other words, the impetus of the growth of statutory commercial law is, and has always been, the actual customs and usages that prevail in the market system. Therefore, commercial laws find their rationale not necessarily from the genius of Legislature, but from the customs and usages that have developed in the market that it intends to regulate.

3. The Judicial Role

What is of more profound distinction between civil or private contract in a civil law system and the commercial contract or transaction under a common law system is the role of the judge and primacy of jurisprudence to develop and evolve the governing system.

Under a civil law system, the role of the judge is not to "make the law" but to enforce the law as a rule of conduct imposed by Legislature.[37] In addition, court decisions are rendered in such a manner that they do not create precedence and the source of the law will always have to be statutory. Although the principles of "freedom to contract" and "obligatory force of stipulations" are primary principles in the civil law system, each contract in controversy involves basically the judge determining the agreement of the parties and measuring them against the statutory provisions applicable.

In a common law system, the main source of the law is jurisprudence.[38] Although Legislature is vested with the primary power to enact statutory law, it is still the judges, in deciding actual controversies of the community, who are to find the true meaning of the law and to move its development as

35. An Act Providing for the Regulation of the Organization and Operations of Banks, Quasi-banks, Trust Entities and for Other Purposes, Republic Act No. 8791 (2000).

36. Philippine Banking Corp. v. Court of Appeals, 419 SCRA 487 (2004).

37. RENE DAVID, MAJOR LEGAL SYSTEMS IN THE WORLD TODAY 17 (John Brierly trans., 1985) [hereinafter DAVID, MAJOR LEGAL SYSTEMS].

38. VON MEHREN, LAW IN THE UNITED STATES 15 (1988).

effective tools of rendering justice. Although the statutory language is important in deciding issues between parties in commercial transactions, the dynamism in the field must inevitably require that developments in commerce under which many contemporary commercial contracts and transactions is entered into, must be considered in deciding what is equitable between the parties, taking into consideration the commercial customs and usages in place at the time of their transaction. The prevailing customs and usages in commercial law therefore are important part of judicial role under a common law system. Even the rather archaic provisions of the Code of Commerce, particularly Article 2 thereof, recognizes this principle as it provides that:

> Acts of commerce, whether those who execute them be merchants or not, and whether specified in this Code or not, should be governed by the provisions contained in it, in their absence, by the usages of commerce generally observed in each place; and in the absence of both rules, by those of civil law[39].

In other words, the prevailing usages of commerce have more weight in governing commercial transactions, rather than the civil law considerations.

One of the main characteristic of commercial laws is that it is *customary* in nature. The term "customs" has been defined as

> [o]ne that is followed in all cases by all persons in the same business in the same territory, and which has been so long established that persons sought to be charged thereby, and all others living in the vicinity, may be presumed to have known of it and to have acted upon it as they had occasion. It becomes a rule of law through its uniform and constant observance by merchants.[40]

The primacy of customs and usages over civil law provisions have been overturned by Article 18 of the New Civil Code which provides that "[i]n matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied by the provisions of this Code."[41]

In the field of Commercial Law, it becomes imperative that judges apply, construe and interpret commercial laws not only from the language of the

39. CODE OF COMMERCE, § 2.

40. AGUEDO AGBAYANI, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES 11-12 (1978 ed.) [hereinafter, AGBAYANI, COMMENTARIES] (citing BLACK'S LAW DICTIONARY and 1 VIVANTE 75).

41. Nevertheless, the New Civil Code provides that in the following cases, the Code of Commerce is only suppletory in application: (a) Article 1766 in transportation contracts; (b) Article 1961 in loans and usurious contracts; and (c) Article 2237 on preference of credits in case of insolvency.

covering statutory provision, but more importantly from the system or commercial area upon which the law must operate, taking into consideration the customs and usages that have been developed within that system.

Although our staple commercial law contracts, namely sales, bailment and credit transactions, have tended to be governed by civil law consideration, it must still be remembered that the bulk of our commercial laws came and continue to be imported into the Philippine legal system mainly from the commercial law legal system of the United States. Therefore, statutes like the Corporation Code, the Securities Regulation Code, Negotiable Instruments Law, Warehouse Receipts Law, *etc.*, should not be treated with the same effect as the New Civil Code. Such commercial laws are primarily intended to cover at the time of their enactment the prevailing customs and usages of the particular area of commercial law that they cover, with each anticipation that the underlying commercial transactions and the media upon which they are undertaken would change and develop with changing economic, social and technological advances. It is the main presumption under such "common law" commercial statutes that the courts, in deciding actual controversies where the changes and advance is brought forth for consideration in the resolution of controversies, would then be able to "develop" the state of the law and to lead it further into a better system.

The commercial covenant under common law that judges would primarily move to develop in commercial laws with the contemporary developments in the market and society emphasizes the primary characteristic of *progressiveness* of commercial laws. This is in compliance with the common law system that they tend to conform with developments in the market as they are adopted into the system by court decisions that apply contemporary developments when deciding issues confronting parties in commercial transactions.

To illustrate this point, one would easily note that there are many common law principles and rules in Corporate Law that do not find statutory recognition nor expression in the language of the old Corporation Law or even in the present Corporation Code. An example would be principles like "piercing the veil of corporate fiction," the "trust fund doctrine", the "business judgment rule," the remedy of "derivative suit," *etc.* In fact, the primary rules on "*ultra vires*" doctrine[42] and the three-fold fiduciary duties of directors and officers (*i.e.*, duties of obedience, diligence, and loyalty)[43] where all judge-made doctrines under the old Corporation Law, which later found statutory expression later in the Corporation Code.

42. *See* The Corporation Code of the Philippines [CORPORATION CODE] Batas Pambansa Blg. 68 (1980) § 45.

43. *Id.* §§ 31-34.

In other words, the *progressive* nature of commercial law spouts forth the truism that statutory developments in a given field of commercial law tend to follow actual customs and usage, or actual developments in the commercial world. The gap between the statutory commercial law and the actual state of practice, customs and usage in the market, can only be bridged through developments in jurisprudence. Consequently, the progressive nature of commercial laws demands that judges play a leading role in the development of the law.

Finally, the *equitable* nature of commercial transactions demands that controversy must be decided from a commercial value system that may not be spelled out in the covering statutory law. It becomes imperative therefore that in deciding actual controversies in the field of commercial law, judges must take into consideration the market system that is sought to be protected or enhanced by societies' need. Judges must consider not only the peculiar circumstances pertaining to the feuding parties *vis-à-vis* the commercial contract or transaction, but more importantly, apply the overarching rationale and policy of the commercial system in place. Moreover, since their decisions create precedence, judges must also need to consider the effects of the decision on the commercial system involved.

4. Likely Effects of the "Civil-Coding" of Important Aspects of Commercial Law

With the promulgation of the New Civil Code, particularly under Article 2270 thereof, the following key areas of commercial transactions under the Code of Commerce were expressly repealed: Partnership, Agency, Guaranty, Loan, Sales, and Deposit. In addition, since the New Civil Code has new provisions relating to Transportation, the Code of Commerce has merely assumed a suppletory role on the following commercial activities or transactions: transportation,[44] charter party, bill of lading, maritime commerce,[45] averages, arrival under stress, collision,[46] bottomry, *respondentia*, aval, letters of credit,[47] joint accounts,[48] and crossed checks.[49] Since 1950, these important areas in the commercial field have been governed primarily by the provisions of the New Civil Code, using principles that are primarily civil or private law in character.

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44. CODE OF COMMERCE, arts. 349-379.

45. *Id.* arts. 573-869.

46. *Id.* arts. 826-839.

47. *Id.* arts. 567-572.

48. *Id.* arts. 239-243.

49. *Id.* arts. 443-556.

Although there are many important areas in Commercial Law not governed by the New Civil Code, to the author, the fact that the staple areas of sales, partnerships, loans and other credit transactions have been governed primarily under civil law considerations, has had profound influence on the commercial law system of our country. Admittedly, there are authors who do not agree with this position. Take for example the position taken by Rene David, a renowned comparatist, on what he terms as the "little effect" on the "fusion of civil and commercial laws," thus:

> The second development appears to be little more than a mere change in form and therefore of minor importance. The Civil law has been commercialized to such a degree in all economically developed nations that there are hardly any rules left in which commercial obligations are treated differently from civil obligations. Moreover, as a result of the national codification, the international character of commercial law which formerly distinguished it from the Civil law has now been lost. Whether it is expedient to regulate certain matters in a special code -- negotiable instruments, partnership, industrial property, bankruptcy -- of particular interest to commerce or business, no longer seems to be a major problem… does this mean that the traditional distinction should be condemned? In Quebec, Switzerland, Italy and the Netherlands Civil law and commercial law remain distinct subjects in university curricula and are taught by specialists in each area. The legislative unification of Civil and commercial law has in these circumstances no more than a purely formal significance. More important today, no doubt, is the transformation of traditional commercial law into 'law and economics' and the need to give fresh consideration to political and social factors involved and the inter-penetration of public law and private law. Works on commercial law today give a one-sided view of the law of importance to commercial dealings when they are restricted to the traditional framework of commercial law and neglect a whole series of measures (taxation, regulation of exports, credit control, wage policies, etc.) which are of primary importance to trade and commerce.[50]

Prior to the passage on the New Civil Code, court decisions had to determine whether a disputed contract or transaction fell within the definition of civil or commercial contract because the applicable set of laws, and the philosophical basis upon which to determine the rights and obligations of parties depended on whether they were entering into a private contract or one which was termed as a "commercial transaction."[51] Since habituality was the essence of a merchant in his transactional dealings, then such was the hallmark sign often looked for by the courts. If found to exist,

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50. DAVID, MAJOR LEGAL SYSTEMS, *supra* note 36, at 90-91.

51. *Boada*, 58 Phil. at 184; Banco Espano-Filipino v. Tan-Tongko, 13 Phil. 628 (1909); Compañia Agricola de Ultramar v. Reyes, 4 Phil. 1 (1904).

such habituality would then invite resolution of the issues through the various principles in commercial laws which exudes the anchor principle that "time is of the essence of commercial transactions." In other words, prior to the passage of the New Civil Code, Philippine courts took serious consideration of whether the resolution of the issues involved civil or private contracts, or commercial contracts.

What has been the effect of governing all types of contracts and transactions, both private and commercial in nature, by a single set of rules which are essentially civil or private law, rather than commercial law in nature on the Philippine market system? We have often used a more simplistic manner to strike home the point: *What are the adverse effects, if any, of the "civil-coding" of key areas in our commercial system?*

There are those, who having pondered upon such point, have come to the conclusion that there has been no adverse consequences. For example, since the passage of the New Civil Code in 1950, commercial sales, loans and other credit transactions have continued to operate smoothly under the "private law" terms of the New Civil Code. It may even be added that having a single set of rules and regulations governing, say deposits, both private and commercial, would make the legal system simpler and less complicated for parties to follow. The problem with this position is that simplification is not always a good thing. Just as the old saying goes, you cannot treat "apples and oranges" as simply the same kind of fruit. The essence of a private transaction is essentially the result of contract -- that is the agreement of parties on peculiar or personal circumstances; and generally society as a whole. In other words, the market is not affected adversely or systematically by such private arrangement. On the other hand, the dealings of merchants are understood to be and accepted to operate as an integral part of a much larger scale, with full expectations that they would be pursued similarly for almost an indefinite period of time. Therefore to base the underlying rules of the game on "civil or private" doctrines tend to make those transactions a little cumbersome or less efficient. The consequence is that when the underlying rules of the game do not reflect the market sentiments, the market tends to compensate in other areas -- that is, merchants then tend to pass-on the bigger costs to the market as a whole. For example, the imposition under the New Civil Code that failure to pay on due date would only cause default with the added procedure of having to make a formal demand, the market then would make credit extensions more costly.

In addition, the "private law" principles pertaining to private contracts have tended to empower the courts to weigh carefully the circumstances pertaining to the parties and employ judicial discretion in rendering both justice and equity based on every individual or peculiar situations. This is alien to commercial considerations, where the courts do not look at the

individual difficulties or equity considerations pertaining to the parties, but consider that parties do enter into commercial transactions based on a system upon which both side of the contract are presumed to agree to, unless otherwise varied by contractual stipulations that do not undermine the rationale and philosophical underpinning of that system. Take for example, the area of rescission (resolution) of contracts, which is one of the key remedies afforded to parties in case of breach, and expressly acknowledged in Article 1191 of the New Civil Code. Philippine courts have used the sentence "[t]he court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period" in Article 1191 as the statutory basis upon which they affirm their judicial discretion to grant the obligor a new opportunity ("the fixing of a period"), even when the obligee has properly claimed rescission of the contract.[52] In the world of commerce, where time is of the essence of every contract, the application of the civil law principle in cases where a party fails to pay or comply on time does not produce default unless a demand, judicial or extrajudicial is given. This makes the whole market system inefficient, and thereby tends to make the whole process more costly, when even having made such a demand, the businessman is not even assured of obtaining the remedy because the courts have the power to be merciful and grant the obligor, after trial on merits, an additional period within which to comply. In a country like the Philippines, where litigation is by itself very slow, it is very well possible that the whole remedy scheme for commercial transactions can be grounded to a practical halt. The "civil-coding" of key commercial areas in the Philippine legal system has tended to render our commercial system inefficient by making transactions more costly, retarding the velocity of commerce transactions, and thereby raising the effective cost of goods and services in society.

It has also to a great extent undermined the dynamic growth of commercial law system in the Philippines, where the trial judges, being essentially steep into the Civil Law principles, often refuse to recognize that commercial laws are meant to reflect a system of commercial practice and are not to be confined to the language of the law. Notice how the proclamation of the Supreme Court in *De los Santos v. Republic*,[53] has tended to show the tendency of judges to refuse to decide issues out of the statutory language, thus:

> Needless to say, this fact negates our authority -- which is limited to the interpretation of the law, and its application, with all its imperfections -- to abandon what the dissenting opinion characterizes as the 'civil law standpoint,' and substitute, in lieu thereof, the commercial viewpoint, by

52. Ocejo, Perez & Co. v. International Banking Corp., 37 Phil. 631 (1918); Angeles v. Calasanz, 135 SCRA 323 (1985).

53. De los Santos v. Republic, 96 Phil. 577 (1955).

> applying said section 5 of the Uniform Stock Transfer Act, although not a part of the law of the land. Indeed, even in matters generally considered as falling within 'commercial territory', the Roman Law concept has not given way in the Philippines to the Common Law approach, except when there is *explicit* statutory provision to the contrary.

The incongruity with which Philippine courts feel towards proceeding outside the language of the statutory law has continued down to contemporary times. In *National Housing Authority v. Grace Baptist Church*,[54] the Supreme Court held that:

> [o]n the application of equity, it appears that the crux of the controversy involves the characterization of equity in the context of contract law. Preliminarily, we reiterate that this Court, while aware of its equity jurisdiction, is first and foremost, a court of law. While equity might tilt on the side of one party, the same cannot be enforced so as to overrule positive provisions of law in favor of the other. Thus, before we can pass upon the propriety of an application of equitable principles in the case at bar, we must first determine whether or not positive provisions of law govern.

B. *Universal and Progressive Nature of Commercial Laws*

1. From Globular Code to the Schedular Model

The fractionalization of the Philippine Commercial Law system began under the old civil code when the American authorities promulgated commercial statues with the twin objective of retaining, as much as possible, the private and criminal law systems influenced by the Spanish Civil Law systems, and at the same time, introduce the American Commercial Law system to enable the exploitation of the island's natural resources. Within a short period of time, the American colonial authorities, in almost quick succession, promulgated the following commercial statues:

1. 1906 – Corporation Law[55]
2. 1906 – The Chattel Mortgage Law[56]
3. 1909 – Insolvency Law[57]

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54. 424 SCRA 147 (2004) (citing Lacanilao v. Court of Appeals, 262 SCRA 486 (2001)).
55. Act No. 1459, and replaced by the Corporation Code (Batas Pambansa Blg. 68) (1980).
56. Act No. 1508 (1906).
57. Act No. 1956 (1909).

4. 1911 – Negotiable Instruments Law[58]
5. 1912 – Warehouse Receipts Law[59]
6. 1914 – The Insurance Act[60]
7. 1916 – Salvage Law[61]
8. 1916 – The Usury Law[62]
9. 1930 – Act Against Frauds in Commerce[63]
10. 1931 – Business Names Law[64]
11. 1931 – General Bonded Warehouse Act[65]
12. 1932 – Unclaimed Balances Law[66]
13. 1932 – The Bulk Sales Law[67]
14. 1936 – The Securities Act[68]
15. 1936 – The Anti-Dummy Law[69]
16. 1936 – The Philippine Flag Law[70]
17. 1936 – Public Service Act[71]
18. 1936 – Carriage of Goods by Sea Act[72]

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58. Act No. 2031 (1911).
59. Act No. 2137 (1912).
60. Act No. 2427 (1914). The governing law is now the Insurance Code (1977).
61. Act No. 2616 (1916).
62. Act No. 2655 (1916).
63. Act No. 3740 (1930).
64. Act No. 3883, amended later by Act No. 4147 (1931).
65. Act No. 3893 (1931).
66. Act No. 3936 (1932).
67. Act No. 3952 (1932).
68. Commonwealth Act No. 83 (1936). The Securities law is now contained in The Securities Regulation Code [SECURITIES REGULATION CODE], Republic Act. No. 8799 (2000).
69. Commonwealth Act No. 108 (1936).
70. Commonwealth Act No. 138 (1936).
71. Commonwealth Act No. 146 (1936).
72. Commonwealth Act No. 65 (1936) (This made applicable the law covered by Public Act No. 521, 74th U.S. Congress).

All attempts over the decades to enact a revised Code of Commerce had proven to be in vain. Not only therefore do we lack an effective mother Code of Commerce in Philippine jurisdiction upon which our commercial law system can develop. It seems inevitable that with the progress taken by science and technology, the innovativeness of new types of commercial contracts and transactions being put into play in quick phase, and the effects of globalization and "internetization" of world commerce, as well as the creation of regional and international commercial and economic groupings, have all contributed not only to an internationalization of commercial laws, but also to the quickness required for their changes and up-dating to world standard, perpetuate a continued fractionalization of our Commercial Law system into various and varied statutes.

In the last few years, the Philippine legal system saw the passage of commercial transactions that reflect not only new "products," but are based entirely on western models, and some enacted upon the behest or pressure of international organizations, such as the International Monetary Fund (IMF), United Nations Commission on International Trade Law (UNCITRAL), Organisation for Economic Cooperation and Development (OECD), Asian Development Bank (ADB), United States Agency for International Development (USAID), *etc.*, thus:

1. New Central Bank Act[73]
2. General Banking Law of 2000[74]
3. Anti-Money Laundering Act[75]
4. Electronic Commerce Law[76]
5. Access Devices Regulation Act[77]
6. Foreign Investments Act of 1991[78]

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73. Republic Act No. 7653.
74. *See* note 35.
75. An Act Defining the Crime of Money Laundering, Providing Penalties therefore and for Other Purposes, Republic Act No. 9160 (2001)
76. An Act Providing for the Recognition and Use of Electronic Commercial and Non-commercial Transactions and Documents, Penalties for Unlawful Use thereof and for Other Purposes, Republic Act No. 8792 (2000).
77. An Act Regulating the Issuance and Use of Access Devices, Prohibiting Fraudulent Acts Committed Relative thereto, Providing Penalties and for Other Purposes, Republic Act No. 8484 (1998).
78. An Act to Promote Foreign Investments, Prescribe the Procedures for Registering Enterprises Doing Business in the Philippines and for Other Purposes, Republic Act No. 7042, amended by Republic Act No. 8179 (1991).

7. Special Purpose Vehicle Act of 2002[79]
8. Securitization Act of 2004[80]
9. The Securities Regulation Code[81]
10. The Intellectual Property Code[82]
11. Safeguard Measures Act[83]
12. Retail Trade Liberalization Act of 2000[84]
13. Investment Houses Law[85]

The areas covered in the field of Commercial Laws have become so varied, shifting in coverage, as businessmen, entrepreneurs and multinational corporations are able to meet new demands or able to find new ways of meeting old demands, that the continued enactment of stand-alone commercial statutes may have to be the way in the foreseeable future. In other words, the enactment of a mother code of commerce embodying general principles and doctrines that would govern the commercial law system may be a thing of the past. Any attempt to do so may in fact provide a stumbling block to the commercial market of the country.

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79. An Act Granting Tax Exemptions and Fee Privileges to Special Purpose Vehicles Which Acquire or Invest in Non-performing Assets, Setting the Regulatory Framework therefore, and for Other Purposes, Republic Act No. 9182, (2002).
80. An Act Providing the Regulatory Framework for Securitization and Granting for the Purpose Exemptions from the Operation of Certain Laws, Republic Act No. 9267 (2004).
81. Republic Act No. 8799.
82. An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers And Functions, and for Other Purposes, Republic Act No. 8293, amended by Republic Act No. 9150 (1997).
83. An Act Protecting Local Industries by Providing Safeguard Measures to be Undertaken in Response to Increased Imports and Providing Penalties for Violation thereof, Republic Act No. 8800 (2000).
84. An Act Liberalizing the Retail Trade Business, Repealing for the Purpose Republic Act No. 1180, as amended, and for Other Purposes , Republic Act No. 8792 (2000).
85. An Act Liberalizing the Philippine Investment House Industry, Amending Certain Sections of Presidential Decree No. 129, as amended, otherwise known as The Investment Houses Law, Republic Act No. 8366 amending P.D. No. 129 (1997).

The situation therefore manifest two of the important characteristics of commercial laws, namely: that of being *universal or international*, and that of being *progressive*. In today's modern world where the ideals of globalization and impetus of borderless trading through the internet highways have become the norm in commercial transactions, the *universality of commercial laws*, or the need to upgrade intramural commercial laws and practice to global best-practice norm, has become the leading concerns of each country, while competing with other countries in luring foreign investments.

Commercial Law, being *progressive* in character, will continue to accumulate new ideas and keep abreast with contemporary developments.[86] This dynamism by which commercial world moves would often mean that the covering statutory system would lag behind commercial law developments. As a result, three salient developments are the hallmarks of Philippine Commercial Law:

Firstly, that in specialized fields of commercial endeavors, say corporation law, securities transactions, anti-money laundering, insurance law, banking law, *etc.*, we will see the continuation of the legislative practice to create and constitute an administrative agency to handle each specialized field, with *quasi*-legislative and/or *quasi*-judicial powers to be able to have control and supervision over the rapid developments in each of such specialized area.[87]

Secondly, in the absence of the passage of general enabling statutory provisions that would invoke reference to commercial usages and practice as a means to settle disputes, we would see more and more the Judiciary creating within jurisprudence the over-arching principles that would characterize and animate the system.

Thirdly, it will usher in a counter-cycle on the role of judges, as such developments will compel more and more Philippine judges, in the settlement of disputes in commercial transactions, to delve into commercial and economic policies underlying commercial transactions, and to go into interdisciplinary application of legal principles, like those pertaining to finance, accounting, *etc.*, to settle controversies and issues, which eventually evolve into doctrines and jurisprudential tenets.

Tañada v. Angara,[88] has recognized this inevitability in the development of our commercial system, thus:

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86. NOLLEDO, COMMERCIAL LAW, *supra* note 13, at 2.

87. This phenomenon have led to jurisprudential doctrines that had to sort out issues on causes of action and jurisdiction, such as the doctrine of exhaustion of administrative remedies and the doctrine of primary jurisdiction or prior resort.

88. Tañada v. Angara, 272 SCRA 18 (1997).

> The emergence on January 1, 1995 of the World Trade Organization, abetted by the membership thereto of the vast majority of countries, has revolutionized international business and economic relations amongst states. It has irreversibly propelled the world towards trade liberalization and economic globalization. Liberalization, globalization, deregulation and privatization, the third-millennium buzz words, are ushering in a new borderless world of business by sweeping away as mere historical relics the heretofore traditional tariffs, export subsidies, import quotas, quantitative restrictions, tax exemptions and currency controls. Finding market-driven and export-oriented global scenario are replacing age-old 'beggar-thy-neighbor' policies that unilaterally protect weak and inefficient domestic producers of goods and services. In the words of Peter Drucker, the well-known management guru, '[i]ncreased participation in the world economy has become the key to domestic economic growth and prosperity.'[89]

III. ADMINISTRATIVE AGENCIES AND SPECIAL COMMERCIAL COURTS

The intricacies and dynamism of commercial areas (*i.e.*, the *progressive* nature of the law), brought about by the need for a developing country to compete in the world trade and the necessity to attract foreign investments (*i.e.*, the *international* or *universal* nature of the law), has given way to the enactment of special commercial statutes, and necessarily, of special administrative bodies that would have the expertise and the resources to oversee the particular area. Thus, we have seen over the decades that the enactment of a commercial statute is almost always accompanied by the creation of an administrative agency to oversee its implementation: the Securities and Exchange Commission (SEC) for corporate and securities law; the Office of Insurance Commissioner (OIC) for the insurance business; the Bangko Sentral ng Pilipinas (BSP) for the banking industry, the Board of Investments (BOI) for foreign investments, the Philippine Export Processing Zone Authority (PEZA) for export and special economic zones, the Anti-Money Laundering Council (AMLC) for the Anti-Money Laundering Law, and so on and so forth.

Since often such administrative bodies are vested not only with administrative authority, but also with quasi-legislative and/or quasi-judicial powers, then the development in Commercial Law gains its impetus not only from the language of statute, but from the implementing rules and regulations issued, and the administrative decisions rendered in the exercise of quasi-judicial powers.

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89. *Id.* at 28.

A. Illustrative Case: SEC and Philippine Corporate Law

Take the case of Philippine Corporate Law, which until the early 1980's mimicked mainly American doctrines and Supreme Court decisions advancing corporate principles and doctrines tended to be few and far in-between. Since Corporate Law was central to the Philippine system of attracting both local and foreign investments and to improve the country's capital market, President Ferdinand E. Marcos, using his decree powers, in 1982 amended Presidential Decree No. 902-A[90] (hereinafter referred to as "P.D. 902-A") to grant to the SEC original and exclusive jurisdiction in what may be termed as "corporate cases" under Sections 5 of said decree. These cases include corporate fraud, intra-corporate dispute, election and removal of directors and officers, and corporate suspension of payments and rehabilitation.[91] P.D. 902-A, through its whereas clauses, recognized that there was a need to invest the SEC with ample powers:

> [t]o make it a more potent, responsive and effective arm of the government, in order to achieve the State's policy of encouraging investments, both domestic and foreign, and more active public participation in the affairs of private corporations and enterprises through which desirable activities may be pursued for the promotion of economic development; and to promote a wider and more meaningful equitable distribution of wealth[92].

The effect of creating a special corporate court within the SEC was to be almost tectonic in effect. From 1983 up to the present time, the number of cases decided by the Supreme Court involving corporate policies, issues, doctrines and principles, had mushroomed, practically covering almost all fields of Corporate Law.

It seems that when corporate cases were being litigated before ordinary civil courts, the intricacies of the subject, had pressured the trial judges to resolve the issues using principles that they were more familiar with, *i.e.*, civil law concepts. Worse, whatever corporate discussions were left for appellate review continued to be diluted within the appellate level of the Court of Appeals, simply because appellate justices were more at ease deciding issues based on civil law principles. Consequently, if decisions reached the Supreme Court on final review, the issues and controversies have been "civil-coded" to the extent that very few decisions involved the

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90. Reorganization of the Securities and Exchange Commission with Additional Powers and placing the said Agency under the Administrative Supervision of the Office of the President [P.D. No. 902-A] (1976).

91. *Id.* Amendment of Pres. Decree No. 902-A was effected through Pres. Decree No. 1758.

92. *Id.*

application of, or the need for development in, Philippine Corporate Law. With the SEC acting as a special commercial court, corporate rules and principles have been applied to cases involving corporate issues. It is inevitable therefore that these corporate issued remained primary for the Supreme Court to rule upon. This resulted to the exponential growth in the jurisprudential area of Philippine Corporate Law.

This experiment of brining special cases in Commercial Law to special commercial courts with the expertise to match the intricacies of issues raised brought about lessons that were not lost to the Legislature. Thus, when the Securities Regulation Code (SRC) was enacted into law in response to the local and international-investments fall out of the *Best World Resources* scam, the Legislature, in taking away the corporate cases from the jurisdiction of the SEC, ensured that they would be transferred to selected branches of the Regional Trial Courts (RTC) designated as special commercial courts within each judicial district.

Consequently, special commercial courts handling what used to be SEC corporate cases, not only worked within the same framework under P.D. 902-A, but the presiding RTC judges were chosen only from a select list of judges who demonstrated competence in commercial laws. In addition, the judges of special commercial courts underwent special training with the Philippine Judicial Academy (PHILJA), the judicial training academy of the Supreme Court, to familiarize themselves not only with the intricacies of Philippine Corporate Law, corporate suspension of payments and rehabilitation, but to also to understand the principles of the market system and the field known as "Law and Economics." Moreover, these trainings equipped them with the skills and the confidence to read and understand the intricacies of the capital market, financial transactions, and financial statements. Judges presiding over special commercial courts therefore are expected to take on the role of judges in common law jurisdiction rather than be passive civil law judges applying merely the statutory law.

IV. COMMERCIAL LAW JURISDICTION: CONFLICT OF JURISDICTION

The emerging special commercial law jurisdiction has spawned three critical developments in Philippine Commercial Law, namely: (a) allowance of the splitting of causes of action to ensure the preservation of the "commercial aspect development," within the special commercial courts, and perhaps insulate them from the general jurisdiction of the civil courts; (b) the enactment of special rules of procedure for commercial cases; and (c) the emergence of the application of the "doctrine of primary jurisdiction."

A. Splitting of Causes of Action in Commercial Cases

The realization that special commercial laws needed to evolve and to be governed by a system that is essentially "commercial" (for example, "corporate") rather than "civil law", began to emerge from the decisions of the Supreme Court enforcing the original and exclusive jurisdiction of the SEC under Section 5 of P.D. 902-A, over the following "corporate cases:"

1. Corporate Fraud Cases
2. Intra-Corporate Controversies
3. Election, Appointment, or Termination, of Directors, Trustees, Officers and Managers
4. Petition for Corporate Suspension of Payments and Rehabilitation

Cases involving fraud as a cause of action essentially fall within the general jurisdiction of RTC, and usually involved the application of civil law doctrines on fraud. The Supreme Court took sometime to develop the issues of whether a fraud case that happens to involve a corporate entity fell within the exclusive and original jurisdiction of the SEC or within the general jurisdiction of the RTC. Another issue would be whether a controversy involving stockholders, officers and corporations automatically fell within the exclusive and original jurisdiction of the SEC, or is it heard within the general jurisdiction of the RTC.

It seemed then from the decisions of the Supreme Court that the language of P.D. 902-A which reconstituted the charter of the SEC required the development of corporate law to be within the control and supervision of the SEC, and therefore, could not be allowed to straddle within the "civil law" jurisdiction of the regular courts, as an imperative to Philippine Corporate Law development.

In order to develop the proper jurisdiction over "corporate cases" under Section 5 of P.D. 902-A, a key doctrine that evolved from the Supreme Court decisions was to provide the "exclusiveness" of such jurisdiction to essentially "corporate parties," *i.e.,* parties that fall within the definition of "intra-corporate relationships." Intra-corporate relationships, as defined in the case of *Union Glass & Container Corporation v. SEC*,[93] cover the following relationships:

1. Between the corporation, partnership or association and the public;
2. Between the corporation, partnership or association and its stockholders, partners, members, or officers;

93. Union Glass & Container Corporation v. SEC, 126 SCRA 31 (1983).

3. Between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; and

4. Among the stockholders, partners or associates themselves.[94]

The *Union Glass* test of "existence of intra-corporate relationship" was later augmented with the second test which provides that the issue to be resolved must be necessarily "corporate in nature," to fall within the original and exclusive jurisdiction of the SEC.[95] The existence of any of such intra-corporate relationships was so critical in placing the controversy under Section 5, such that in *Abejo v. de la Cruz*,[96] the Supreme Court held that main case over issues pertaining to the proper sale of shares of stock fell within the jurisdiction of the SEC. But insofar as parties who did not fall within the relationship, the issues as to them were not within SEC jurisdiction and had to be filed with the regular trial courts.

When it came to proceedings in corporate rehabilitation, *Union Bank v. Court of Appeals*,[97] held that corporate officers and stockholders cannot qualify to be petitioners with the corporate debtor under the provisions of Section 5(d) of P.D. 902-A. The stay order issued cannot be effected against the creditors of such individuals.

In *Traders Royal Bank v. Court of Appeals*,[98] and *Modern Paper Products, Inc. v. Court of Appeals*,[99] it was held that although the individual petitioner was impleaded as a party to the proceedings, the SEC could not assume jurisdiction over his person and properties since the SEC was empowered, as rehabilitation receiver, to take custody and control of the assets and properties of the petitioning corporation only. An entirely separate case can therefore be filed with the regular courts by creditors of the corporate officers fully independent of the rehabilitation proceedings in spite of the fact that the obligations were incurred by the individual officers as surety for, or for the complete benefit of, the corporate debtor.

Even in the field of "corporate fraud" the Supreme Court practically adopted a doctrine that would allow the petitioners to invoke the original

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94. *Id.* at 38 (emphasis supplied).

95. CMH Agricultural Corp. v. Court of Appeals, 378 SCRA 545 (2002); Vesagas v. Court of Appeals, 371 SCRA 509 (2002); Intestate Estate of Alexander T. Ty v. Court of Appeals, 356 SCRA 661 (2001); and TCL Sales Corp. v. Court of Appeals, 349 SCRA 35 (2001).

96. Abejo v. de la Cruz, 149 SCRA 654 (1987).

97. Union Bank v. Court of Appeals, 290 SCRA 198 (1998).

98. Traders Royal Bank v. Court of Appeals, 177 SCRA 788 (1989).

99. Modern Paper Products, Inc. v. Court of Appeals, 286 SCRA 749 (1998).

and exclusive jurisdiction of the SEC by simply alleging in the petition that the corporate entity was used primarily as a means to commit fraud or as the basis to escape the consequences of a fraudulent transaction.[100]

The creation of special commercial courts, especially within an administrative agency set-up, therefore tends to usher in a doctrine of "exclusiveness of jurisdiction" over controversies involving such commercial law area to allow its full development within the dynamic administrative setting upon which it has been structured. The "exclusiveness" feature for commercial cases has reached a point where the Supreme Court is willing to countenance a splitting of causes of action over the same controversy between the special commercial courts and the regular trial court, to preserve the "*commercialness*" of the issues pertaining to the commercial aspect, and to prevent it from being "infected" by civil law considerations.

B. Interim Rules of Procedure Genre

With the transfer under Section 5.2 of the SRC of the jurisdiction of the SEC over "corporate cases" over to the specially-designated RTC branches,[101] it is posited that the "splitting of causes" of action for corporate cases can no longer happen, since the specially-designated RTC commercial courts both have general jurisdiction and special jurisdiction over all aspects of corporate controversies. Unfortunately (or perhaps fortunately), the current set-up on corporate cases under RTC special commercial courts is not that simple.

Firstly, it is important to consider that when Section 5.2 of the SRC transferred SEC jurisdiction over corporate cases under Section 5 of P.D. 902-A to now specially-designated RTC special commercial courts,[102] it did

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100. Macapalan v. Bethel Katalbas-Moscardon, 227 SCRA 49 (1993); A&A Continental v. SEC, 225 SCRA 341 (1993); Magalad v. Premiere Financing Corp., 209 SCRA 260 (1992); Banez v. Dimensional Construction Trade & Dev. Corp., 140 SCRA 249 (1985).

101. Through SC Administrative Memorandum 00-11-03-SC (21 November 2000), the Supreme Court designated particular RTC branches of the National Capital Region and the other twelve (12) judicial regions of the Philippines to act as the "special commercial courts" to "try and decide Securities and Exchange Commission (SEC) cases enumerated in Sec. 5 of P.D. No. 902-A (Reorganization of the Securities and Exchange Commission) arising within their respective territorial jurisdictions."

102. The Securities Regulations Code [Securities Regulations Code] Republic Act 8799, § 5.2. The subsection provides that:

> [t]he Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to

not effectively create a new type of jurisdiction, but transferred "in whole" the same SEC-jurisdiction under Section 5 of P.D. 902-A to the RTC, as it had been interpreted by the Supreme Court for almost twenty years.

Those corporate cases now fall within the original and exclusive jurisdiction of RTC special commercial courts, and consequently, some of the case-law that have evolved pertaining thereto while still under the SEC jurisdiction, would now apply and be relevant to the RTC special commercial courts as they hear and resolve such corporate cases. Although the RTC commercial courts still have general jurisdiction over civil cases when deciding "corporate cases" under Section 5 of P.D. 902-A, it must exercise a role that is more of the common law court type, typified by the nature of exercise by the SEC of its former quasi-judicial powers under said decree.

Secondly, the corporate cases under Section 5 of P.D. 902-A, even under the special jurisdiction of specially-designated RTC commercial courts, are governed by special types of rules of procedure, to wit:

1. Interim Rules of Procedure on Corporate Rehabilitation[103]
2. Interim Rules of Procedure on Intra-Corporate Controversies[104]

These rules shall be referred to as "Interim Rules" in the remainder of this article.

Since the *Interim Rules* can only apply to corporate cases falling under Section 5 of P.D. 902-A, they can only cover the "corporate aspects" of the case or only the parties falling within the intra-corporate relationship rule. This conclusion is clear in the case of petitions for corporate rehabilitation since under the *Interim Rules of Procedure for Corporation Rehabilitation*, they shall apply only to corporate debtors, and the stay order issued cannot cover individual officers and stockholders who are sureties or solidarily liable on the corporate debts.

> the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

103. Supreme Court Administrative Memorandum No. 00-8-10-SC (Nov. 21, 2000).

104. Supreme Court Administrative Memorandum No. 01-2-04-SC (Mar. 13 2001).

The *Interim Rules* can be considered a rather bold experimentation of the Supreme Court in that they offer the following special features:

1. They have been expressly adopted from the SEC Rules on corporate cases, and thereby follow the commercial law genre of proceedings, rather than the civil law model;
2. The proceedings are summary in nature:
    a. Evidence is adduced by the process of filing of sworn statements, attaching therewith the documentary evidence;
    b. There are specifically prohibited pleadings and motions that tend to delay proceedings;
    c. They provide for defined short periods within which the controversies are to be resolved, otherwise the proceedings are deemed resolved or abandoned, as the case may be;
3. Judges assigned to special commercial courts are subject to administrative discipline if they do not conform to the defined periods within which controversies and issues are to be resolved; and
4. The decisions and orders issued are immediately executory even when there is an appeal, unless the appellate court orders otherwise, to ensure that the essentially the commercial law controversies are essentially 'resolved' after the first level of proceedings.

The *Interim Rules* represent an important development where, through an act of judicial activism, the Supreme Court has institutionalized a system of commercial courts within the Philippine legal system, bounded by rules of procedure that are administrative, summary and efficient in nature. The *Interim Rules* represent a response of our country to the demands of world competition to present to both national and international investors an efficient system of commercial controversies resolution within a specially-designated special commercial court system. Consequently, the *international* and *progressive* nature of our commercial laws have given the impetus by which even within the civil law system and civil law courts, there is being carved out a commercial law system that would be responsive of the need for our country to be an effective competitor in the world commercial system.

V. APPLICATION OF THE DOCTRINE OF PRIMARY JURISDICTION

Since most areas of commercial laws now fall within the specialized supervision of administrative agencies (for example, OIC on insurance matters, SEC on corporations, partnerships and securities, Intellectual Property Office (IPO) on intellectual properties, Housing and Land Use Regulatory Board (HLURB) on land development, Land Registration Authority (LRA) on land registration, Bureau of Foods and Drugs (BFAD) on food and drugs, Department of Trade and Industry (DTI) on consumer

protection, *etc.),* more and more the issues pertaining to the applicability of the *doctrines of primary jurisdiction* or the *doctrine of prior resort*, have become critical in the exercise of adjudicative power by regular courts over commercial cases that fall within their original jurisdiction.

A. Distinguished from the Doctrine of Exhaustion of Administrative Remedy

The doctrine of primary jurisdiction is not to be confused with the *doctrine of exhaustion of administrative remedies* or *the doctrine of ripeness for judicial review*, which is based on the principle of convenience of the party-litigants and respect for a co-equal government office. Essentially, the doctrine of exhaustion of administrative remedies provides that if a remedy is available within the administrative or executive branch of government, a litigant cannot go to court before he has availed of such remedy, and failure to do so would affect his cause of action.[105] It is also expected that such party should not only initiate the administrative process, but to pursue them to their appropriate conclusion before seeking court remedies in order to allow not only the administrative agency concerned an opportunity to decide the matter by itself correctly but also to prevent unnecessary and premature resort to the courts.[106]

The doctrine of exhaustion of administrative remedies is based on the underlying principle that if afforded complete opportunity, an administrative agency will decide upon a matter that lies within its competence and expertise correctly.[107] Consequently, if a party goes to court without first pursuing his administrative remedies, his case shall not be considered ripe for judicial determination and for that reason, he is deemed to have no cause of action.[108]

B. Restatement of the Doctrine of Primary Resort

Where exhaustion of administrative remedies goes into the *very* cause of action of a party litigant, since the resolution of the issues are within the

105. Atlas Consolidated Mining & Dev. Corp. v. Mendoza, 2 SCRA 1064 (1961).

106. Manuel v. Jimenez, 17 SCRA 55 (1966); Ledesma v. Vda. De Opinion, 14 SCRA 973 (1965); Cruz v. Del Rosario, 9 SCRA 755 (1963); Gonzales v. Secretary of Education, 5 SCRA 657 (1962); Arnedo v. Aldanese, 63 Phil. 768 (1936); Lamp v. Philipps, 22 Phil. 456 (1912) and Jao Igco. v. Shuster, 10 Phil. 448 (1908).

107. Delos Reyes v. Limbaga, 4 SCRA 224 (1962).

108. Abe-abe v. Manta, 90 SCRA 524 (1979); Aboitiz & Co., Inc. v. Collector of Customs, 83 SCRA 265 (1978); Pestanas v. Dyogi, 81 SCRA 574 (1978); Allied Brokerage Corp. v. Collector of Customs, 40 SCRA 555 (1971).

original jurisdiction of an administrative agency, the doctrine of primary jurisdiction operates under the premise that the case lies within the original jurisdiction of the regular courts:

> Put otherwise, there may be a primary jurisdiction situation even where there is no concurrent jurisdiction [for] [c]oncurrent jurisdiction is relatively rare, in view of the deliberate efforts of our rule-drafters to minimize confusing situations of concurrent jurisdiction. Primary jurisdiction requires that an issue be passed upon first in administrative proceedings as a premise for judicial action. The doctrine of primary jurisdiction requires a complainant in court first to seek relief in an administrative proceeding before a remedy will be supplied by the courts even though the matter is properly presented to the court in a matter within its jurisdiction.[109]

In looking at the rationale of the doctrine, we refer to the words of Fr. Ranhilio C. Aquino:

> The Legislature entrust to administrative agencies the regulation and supervision of matters calling for specialized knowledge and skills. When properly applied, the doctrine respects legislative intent by allowing the pertinent administrative agency to administer uniformly and completely the specialized concern assigned to it. Then too, the doctrine allows the Courts to adjudicate on economic, industrial and technical matters aided by the invaluable input of specialized agencies. Finally, it restrains the courts from premature intervention when matters are best left to the initial attention and disposition of administrative agencies.[110]

In another paper written by Fr. Aquino entitled *A Pre-face to the Restatement of the Doctrine of Primary Jurisdiction,*[111] he distinguished between the doctrine of primary jurisdiction, or doctrine of prior resort, from the issue of original jurisdiction. After reviewing Philippine cases that have applied the doctrine, he writes:

> Primary jurisdiction then does not have to do with choosing between the jurisdiction of the court and that of an administrative agency. In fact, the doctrine finds relevance precisely where courts have jurisdiction, but where initial determinations call for the specialized competence of administrative

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109. FR. RANHILIO C. AQUINO, BENCHBOOK FOR TRIAL JUDGES OF PRIMARY JURISDICTION AND RELATED CONSIDERATION 1 (2002) [hereinafter AQUINO, BENCHBOOK] (citing 2 AM. JUR. 2D, *Administrative Law*, §. 788).

110. *Id.* at xxiii.

111. A Study Under the Sponsorship of USAID-AIGLE and The Philippine Judicial Academy (Supreme Court of the Philippines).

> agencies. The… doctrine as a posture of 'judicial restraint' in the face of administrative agency competence…[112]

Citing a renowned administrative law author, Fr. Aquino then proceeds to distinguish the doctrine of primary jurisdiction from the doctrine of exhaustion or ripeness, thus:

> Davis, a frequently cited authority in administrative law, delineates the function of the doctrine of primary jurisdiction: It determines whether the court or the agency should make the initial decision. The doctrines of exhaustion and of ripeness have to do with the timing of judicial review of administrative action.
>
> The precise function of the doctrine of primary jurisdiction is to guide a court in determining whether the court should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.
>
> Primary jurisdiction then is, strictly speaking, not the issue when it is a question of determining whether or not it is a court or an administrative agency that has jurisdiction.
>
> x x x
>
> Davis does not make reliance on the specialized competence of an administrative agency the cornerstone of the doctrine. Rather, it is the desirability of unified and coordinated requirements, as well as the need on the part of the court for the contribution of the administrative agency statutorily tasked to administer some particular concern.
>
> Put otherwise, the doctrine of primary jurisdiction is not a doctrine of jurisdictional ouster. It is a doctrine that allows an administrative agency to discharge its functions without premature interference from courts. It is likewise a doctrine that directs courts to take into consideration the input of a specialized administrative agency. A court should not act without knowing the agency's specific regulatory policy with respect to the particular problem in the particular circumstances. While Davis continues to insist that uniformity and consistency in the treatment by agencies of problems within their cognizance is the principle reason for the doctrine -- rather than specialization -- it does seem to me that one need not choose between the two reasons. There can be consistency and rationality in the treatment of specialized problems by specialized agencies because of the specialization that it is assumed they possess.[113]

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112. AQUINO, BENCHBOOK, *supra* note 109, at ix.

113. FR. RANHILIO C. AQUINO, ADMINISTRATIVE LAW TEXT 373-374, 379 (3rd ed.).

Based on American practice from where it was patterned, Fr. Aquino's paper found that the doctrine of primary jurisdiction has three possible applications, to wit:

> [f]irst, when the court determines that the dispute itself is within the primary jurisdiction of an agency; in this case, the court dismisses the action on the ground that the dispute should first be brought before the agency; second, when the court determines that an issue raised in an action before the court is within the primary jurisdiction of an agency, the court will defer judgment on the dispute until the agency has resolved the issue that lies within its jurisdiction. In the latter case, however, the court retains jurisdiction over the dispute itself, without proceeding to resolve it until the issue within the primary jurisdiction of the administrative agency is resolved by the agency itself... [third] withhold grant of relief, keep the case in its docket, or rule that once the agency has reached a decision, the matter shall be deemed disposed of. The latter, of course, would be tantamount to a holding that the agency has not only primary but also exclusive jurisdiction...

Finally, the paper found that the doctrine's importance springs from the following considerations: "... first, the extent to which the agency's specialized expertise make it a preferable forum for resolving the issue; second, the need for a uniform resolution of the issue; third, the potential that judicial resolution of the issue will have an adverse impact on the agency's performance of its regulatory responsibilities."

C. Illustrative Application: Corporate Law, Securities Law and Insurance Law

We now proceed to determine whether the doctrine of primary jurisdiction may be applicable or even relevant to commercial law cases being tried by RTC commercial courts under Section 5 of P.D. 902-A, as well as securities cases under the SRC.

In the particular field of corporate law, SEC's expertise in corporate matters has long-been recognized in *Abejo v. De la Cruz*,[114] which reviewed SEC's powers and competence to act on corporate matters based on the following premise:

> ... [u]nder the 'sense-making and expeditious doctrine of primary jurisdiction... the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal, where the question demands the exercise of sound administrative discretion requiring *the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a*

114. *Abejo*, 149 SCRA at 670.

> *uniformity of ruling essential to comply with the purposes of the regulatory statute administered.'*[115]
>
> In this era of clogged court dockets, the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters, subject to judicial review in case of grave abuse of discretion, has become well nigh indispensable... Between the power lodged in the administrative body and a court, the unmistakable trend has been to refer it to the former.[116]

Unfortunately, much of the relevance of the pronouncements in *Abejo* on the doctrine of primary jurisdiction are diluted by the fact that the main issue was "who, between the Regional Trial Court and the Securities and Exchange Commission (SEC), has original and exclusive jurisdiction over the dispute between the principal stockholders of the corporation." This question essentially involved issues of jurisdiction of the subject matter of the case, calling into application the doctrine of exhaustion of administrative jurisdiction. There was no doubt therefore of the outcome of the case since the case covered an intra-corporate controversy, the SEC was vested with original and exclusive jurisdiction to the exclusion of the regular trial courts under Section 5 of P.D. 902-A.

What perhaps matters more with the *Abejo* ruling was the rationale upon which it upheld SEC's primary jurisdiction, summarizing in the process the doctrinal development in the leading cases of *DMRC Enterprises v. Este del Sol Mountain Reserve, Inc.*,[117] *Philex Mining Corp. v Reyes*,[118] *Union Glass & Container Corp. v. SEC.*[119] In essence, the Court ratiocinated as follows:

1. Section 3, 5, and 6 of P.D. 902-A, grants to the SEC primary and exclusive jurisdiction over corporate controversies, 'in line with the government's policy of encouraging investments, both domestic and foreign, and more active public participation in the affairs of private corporations and enterprises through which desirable activities may be pursued for the promotion of economic development; and, to promote a wider and more meaning equitable distribution of wealth.'

2. The restraining orders issued by the RTC 'patently encroached upon the SEC's exclusive jurisdiction over such specialized corporate

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115. Pambujan Sur United Mine Workers v. Samar Mining Co., Inc., 94 Phil. 932, 941 (1954).

116. *Id.* at 669-670. *See also* Malayan Integrated v. Mendoza, 154 SCRA 548 (1987).

117. DMRC Enterprises v. Este del Sol Mountain Reserve, Inc., 132 SCRA 293 (1984).

118. *Philex*, 118 SCRA at 602.

119. *Union*, 126 SCRA at 31.

controversies calling for its special competence…' '[n]owhere does the law [P.D. 902-A] empower any Court of First Instance [now Regional Trial Court] to interfere with the orders of the Commission,'[120] and consequently 'any ruling by the trial court on the issue of ownership of the shares of stock is not binding on the Commission' for want of jurisdiction;

3. As held in *DMRC Enterprises:* 'Considering the announced policy of P.D. 902-A, the expanded jurisdiction of the respondent Securities and Exchange Commission under said decree extends exclusively to matters arising from contracts involving investments in private corporations, partnerships and associations.'

4. As resolved in *Philex Mining Corp.*, 'the Court rejected the stockholders' theory of excluding his complaint (for replacement of a lost stock [dividend] certificate which he claimed to have never received) from the classification of intra-corporate controversies as one that 'does not square with the intent of the law, which is to segregate from the general jurisdiction of regular Courts controversies involving corporations and their stockholders and to bring them to the SEC for exclusive resolution.'[121]

5. Section 143 of the Corporation Code specifically vests the SEC with the rule-making power in the discharge of its task of implementing the provisions of the Code and particularly charges it with the duty of preventing fraud and abuses on the part of controlling stockholders, directors and officers.[122]

6. As held in *Union Glass & Container Corp.*, '[t]his grant of jurisdiction [in Section 5] must be viewed in the light of the nature and functions of the SEC under the law. Section 3 of P.D. 902-A confers upon the latters' absolute jurisdiction, supervision, and control over all corporations, partnerships or associations…' '[t]he principal function of the SEC is the supervision and control over corporations, partnerships and associations with the end in view that investment in these entities may be encouraged and protected, and their activities pursued for the promotion of economic development. It is in aid of this office that the adjudicative power of the SEC must be exercised.'[123]

The disquisition in *Abejo* and the companion cases that it cited and discussed, shows that based on the history and peculiar language of P.D. 902-A, all matters pertaining to corporations, partnerships and associations are placed under "exclusionary parameters" within both the regulatory and

120. Phil. Pacific Fishing Co., Inc. v. Luna, 112 SCRA 604, 613 (1982).

121. *Philex*, 118 SCRA at 667.

122. *Id.* at 670.

123. *Id.* at 671.

adjudicative powers of the SEC on controversies falling within the enumerations under Section 5 of P.D. 902-A.

Taking the same rationale of *Abejo* now, it may be posited that with the clear intention under Subsection 5.2 of the SRC to transfer all such cases under Section 5 of P.D. 902-A to the original and exclusive jurisdiction of the RTC, then it is the intention of Legislature that the resolution of such matters are completely placed within the original and exclusive jurisdiction of the RTC commercial courts to the exclusion of the SEC.

In another way of proposing it, if the original rationale under Section 5 of P.D. 902-A was the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters, subject to judicial review in case of grave abuse of discretion, we must take it now that with the specific mandate of Subsection 5.2 of SRC, there is a complete turn-around of the principle. We no longer rely on the SEC as the specialized agency on corporate matters. Rather, these matters should all be resolved and should fall within complete competence of the RTC commercial courts.

This thesis seems to be confirmed in the recent decision in *Fabia v. Court of Appeals*,[124] which held that "[i]n the light of the amendment brought about by SRC, the doctrine of primary jurisdiction no longer precludes the simultaneous filing of the criminal case [arising from corporate fraud and intra-corporate controversies] with the corporate/civil case... The rationale behind the prior referral of intra-corporate controversies to the SEC before the public prosecutor could act on them for purposes of criminal prosecution loses significance since the "newly enacted law [SRC] recognizes that the specially designated RTC branches now have the legal competence to decide intra-corporate disputes."[125]

1. Taking a Cue from Insurance Law

Perhaps a classic example of how the doctrine of primary jurisdiction may no longer matter in Corporate Law is the recent decision of the Supreme Court in *Go v. Office of the Ombudsman*,[126] which although in the field of Insurance Law, nevertheless creates good comparison case, since both Insurance Law and Corporate Law belong in the same specialized field of commercial "transactions and concept" as differentiated from other specialized fields that go into technology (telecommunications), science, energy and natural

124. Fabia v. Court of Appeals, 388 SCRA 574 (2002).

125. *Id.* at 584-585 (emphasis supplied).

126. Go v. Office of the Ombudsman, 413 SCRA 608 (2003).

resources (*e.g.*, coal mining, public utilities). Even prior to the creation of specialized administrative agencies, Insurance Law and Corporation Law, both where deemed to be areas that judges of regular courts can competently grapple with.

In *Go*, the review of the Supreme Court stemmed from Ombudsman resolution dismissing the charges against the Insurance Commissioner (IC) for alleged corrupt practices in proceeding with the administrative case brought before the IC to cancel the certificates of registration of several insurance companies which refused to pay insurance claims, when in fact, there was already a civil case pending before the regular courts to recover on the same insurance policies. One of the primary issues raised before the Supreme Court was "can an administrative case pending before an administrative tribunal be pursued unabated and independently despite subsequent filing of a civil case in a regular court of justice wherein in both cases, it *(sic)* involve the same parties and relatively involve the same incident?"[127]

Go recognized that under the Insurance Code, the IC is vested with regulatory powers and adjudicatory authority, thus:

> Under its *adjudicatory authority*, the Insurance Commission has the original jurisdiction to adjudicate and settle insurance claims and complaints where the amount being claimed does not exceed in any single claim one hundred thousand pesos, as provided in Section 416 of the Code... concurrent with that of the Metropolitan Trial Courts, the Municipal Trial Courts and the Municipal Circuit Trial Courts.
>
> In addition to such adjudicatory power, the Commissioner has the *regulatory authority* to revoke or suspend the certificate or authority of an insurance company upon finding the legal grounds for such revocation or suspension under Sections 241 and 247 of the Insurance Code...[128]

The Court held that the filing of actions in the regular courts to recover on fire insurance claims (the amounts being beyond the adjudicatory jurisdiction of the IC), was different from the administrative case filed with the IC itself which "called upon to determine whether there was unreasonable delay or withholding of the claims, as petitioner's action is one for the Revocation and/or Suspension of Licenses." The Court stressed that:

> [t]he jurisdiction of the Commission in this case is one that calls for the exercise of its regulatory *or non-quasi-judicial duty, i.e.,* the authority to revoke or suspend an insurer's certificate of authority. Aside from the revocation/suspension of license, the Insurance Commission also has the discretion to impose upon the erring insurance companies and its directors,

127. *Id.* at 613.

128. *Id.* at 621-622.

> officers and agents, fines and penalties as set out in Section 415 [of the Insurance Code].[129]

Unfortunately, the doctrine of primary jurisdiction was neither invoked nor directly discussed in *Go*, but the issue to be resolved essentially required the determination of the applicability of the doctrine. Thus, on the issue of whether the determination of the IC in the administrative proceedings would unduly prejudice the claims of the petitioner in the civil action, the Court held that:

> The findings of the trial court will not necessarily foreclose the administrative case before the Commission, or vice versa. True, the parties are the same, and both actions are predicated on the same set of facts, and will require identical evidence. But the issues to be resolved, the quantum of evidence, the procedure to be followed and the reliefs to be adjudged by these two bodies are different.
>
> Petitioner's causes of action in Civil Case No. Q-95-23135 are predicated on the insurer's refusal to pay her fire insurance claims despite notice, proofs of losses and other supporting documents… [t]he matter of whether or not there is unreasonable delay or denial of the claims is merely an incident to be resolved by the trial court, necessary to ascertain petitioner's right to claim damages, as prescribed by Section 244 of the Insurance Code.
>
> On the other hand, the core, if not the sole bone of contention in Adm. Case No. RD-156, is the issue of whether or not there was unreasonable delay or denial of the claims of petitioner, and if in the affirmative, whether or not that would justify the suspension or revocation of the insurer's licenses.
>
> Moreover, in Civil Case No. Q-95-23135, petitioner must establish her case by a preponderance of evidence, or simply put, such evidence that is greater weight or more convincing than that which is offered in opposition to it. In Administrative Case No. RD-156, the degree of proof required of petitioner to establish her claim is substantial evidence, that a reasonable mind might accept as adequate to justify the conclusion.
>
> In addition, the procedure to be followed by the trial court is governed by the Rules of Court, while the Commission has its own set of rules and it is not bound by the rigidities of technical rules of procedure. These two bodies conduct independent means of ascertaining the ultimate facts of their respective cases that will served as basis for their respective decisions.[130]

If one carefully reviews the Court's reasoning in *Go* afore-quoted, it stresses precisely the difference of functions being performed by the regular

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129. *Id.* at 622-623 (emphasis supplied).

130. *Id.* at 623-624.

courts and administrative agency on the same area in Administrative Law. The issue is not concurrent jurisdiction, but precisely the application of the doctrine of primary jurisdiction -- that when the issue to be resolved in the court proceedings lies primarily within the competence of the administrative agency vested with authority over the matter, and in order to allow a uniformity of rulings coming from one forum (*i.e.*, the administrative agency tasked with supervision and control on the matter), it would have been appropriate for the regular court in *Go* to have suspended its proceedings to allow the IC to decide on the issue of the merit of the insurance claims. Instead, the Court in *Go* held that

> [i]f, for example, the trial court finds that there was no unreasonable delay or denial of her claims, it does not automatically mean that there was in fact no such unreasonable delay or denial that would justify the revocation or suspension of the licenses of the concerned insurance companies. It only means that petitioner failed to prove by preponderance of evidence that she is entitled to damages. Such finding would not restrain the Insurance Commission, in the exercise of its regulatory power, from making its own finding of unreasonable delay or denial as long as it is supported by substantial evidence.[131]

The Court went on to conclude that:

> While the possibility that these two bodies will come up with conflicting resolutions on the same issue is not far-fetched, the finding or conclusion of one would not necessarily be binding on the other given the difference in the issues involved, the quantum of evidence required and the procedure to be followed.[132]

Such reasoning in *Go* flies in the face of the very rationale enunciated by the Supreme Court itself on the doctrine of primary jurisdiction.

2. From *Saavedra* to *Fabia*

Another way to effectively show how the SRC has effectively diluted the application of the doctrine of primary jurisdiction in corporate cases may be achieved by looking at the pre-SRC twin *Saavedra, Jr.* decisions (*Saavedra, Jr. v. SEC*[133] and *Saavedra, Jr. v. Department of Justice*[134]) to the post-SRC twin *Fabia* decisions.

In *Saavedra, Jr. v. SEC*, the petitioner filed with the regular courts an action for damages over disputed stock sale agreement, and thereafter, the

131. *Id.* at 624-625.

132. *Go*, 413 SCRA at 625.

133. Saavedra, Jr. v. SEC, 159 SCRA 57 (1988).

134. Saavedra, Jr. v. Department of Justice, 226 SCRA 438 (1993).

respondents filed a separate case with the SEC praying for the rescission of the sale agreement for petitioner's failure to comply. The Court held that since

> [t]he dispute at bar is an intra-corporate dispute that has arisen between and among the principal stockholders of the corporation due to the refusal of the defendants (now petitioners) to fully comply with what has been covenanted by the parties… [then] [p]ursuant to P.D. 902-A, as amended, particularly Section 5(b) thereof, the primary and exclusive jurisdiction over the present case properly belongs to the SEC.[135]

It was during the pendency of the SEC proceedings in the first *Saavedra, Jr.* case, that a criminal case for perjury against the petitioner was filed with the provincial prosecutor alleging that petitioner perjured himself when he declared in the verification of the complaint filed with the regular courts that he was the President of the company.

In *Saavedra, Jr. v. Department of Justice*, (decision penned by Justice Bellosillo), the Court applied the doctrine of primary jurisdiction to rule that the provincial prosecutor was without authority to determine probable cause when the issues of ownership and rescission over the disputed shares of stock were still being determined by the SEC, thus:

> Under the doctrine of primary jurisdiction, courts cannot and will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal having been so placed within its special competence under a regulatory scheme. In such instances the judicial process is suspended pending referral to the administrative body for its view on the matter in dispute.
>
> Consequently, if the courts cannot resolve a question which is within the legal competence of an administrative body prior to the resolution of that question by the administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative agency to ascertain technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered, *much less can the Provincial Prosecutor arrogate to himself the jurisdiction vested solely with the SEC.*
>
> Considering that it was definitely settled in *Saavedra, Jr. v. SEC* that the issues of ownership and automatic rescission are intra-corporate in nature, then the Provincial Prosecutor, clearly, has no authority whatsoever to rule on the same. In fact, if we were to uphold the validity of the DOJ Resolutions brought before us, as respondents suggest, we would be

135. *Id.* at 60.

> sanctioning a flagrant usurpation or preemption of that primary and exclusive jurisdiction which SEC already enjoys.[136]

Although the first *Saavedra, Jr.* decision applied the doctrine of primary jurisdiction as it was characterized in *Industrial Enterprises, Inc. vs. CA*[137], what was really involved was the issue of which tribunal had original jurisdiction over the controversy. It was found that the SEC, under Section 5(b) of P.D. 902-A, had "original and exclusive" jurisdiction, to the exclusion of the regular trial courts to decide on issues governing ownership and rescission over shares of stock. It was in the second *Saavedra, Jr.* decision, where the doctrine of primary jurisdiction was relevantly applied by Justice Bellosillo, almost in the context of a prejudicial question, *i.e.*, the prosecutorial arm of the government in a criminal proceeding would have no authority to decide upon probable cause which would require making a finding on civil matters that were within the primary and original jurisdiction of the SEC.

With the Subsection 5.2 of the SRC transferring the corporate cases under Section 5 of P.D. 902-A to the RTC, the *Fabia* decisions came out, both penned by Justice Bellosillo, and both recognizing the applicability of the doctrine of primary jurisdiction only when the SEC had primary and exclusive jurisdiction over the corporate cases governed by Section 5 of P.D. 902-A. In the second *Fabia* decision (which was really meant to clarify the first *Fabia* decision), it was held that:

> Respondent further claims that *RA 8799* rendered the doctrine of primary jurisdiction moot and academic since the rationale behind the prior referral of intra-corporate controversies to the then SEC before the public prosecutor could act on them for purposes of criminal prosecution, *i.e.*, to implore the special knowledge, experience and services of the administrative agency to ascertain technical and intricate matters, *no longer stands since the newly enacted law recognizes that the regular courts now have the legal competence to decide intra-corporate disputes.*[138]

Justice Bellosillo, knowing fully well the central role of the doctrine of primary jurisdiction in the *Saavedra, Jr.* decisions and after reiterating a clear discussion of the same doctrine in the second *Fabia* decision, held that:

> [h]owever, as correctly observed by respondent MTCP, the rationale behind the prior referral of intra-corporate controversies to the SEC before the public prosecutor could act on them for purposes of criminal prosecution loses significance since the newly enacted law recognizes that

136. *Id.* at 442-443.

137. Industrial Enterprises, Inc. vs. CA, 184 SCRA 426 (1990).

138. *Fabia*, 388 SCRA at 578.

> the specially designated RTC branches now have the legal competence to decide intra-corporate disputes.[139]

In effect, it was the *quasi*-judicial jurisdiction of the SEC under Section 5 of P.D. 902-A that the Supreme Court considers as the basis upon which SEC was considered to be the tribunal which will hold the "expertise" on corporate issues. Furthermore, with the lost of the *quasi*-judicial powers of the SEC over corporate cases, it also loses such central role. In the end, the doctrine of primary jurisdiction, insofar as it was made to apply to the SEC, was merely looked upon as an adjunct of the primary doctrine of exhaustion of administrative remedies.

D. Prognosis on the Application of the Doctrine to Corporate and Securities Cases

The early indications coming from recent decisions of the Supreme Court is that in spite of the "absolute jurisdiction" of the SEC on corporate matters in the exercise of administrative or regulatory functions over corporations, partnership and associations, all cases falling under Section 5 of P.D. 902-A would generally not allow a successful invoking of the doctrine of primary jurisdiction because the RTC commercial courts are deemed to have the competence and wherewithal to decide fully and completely corporate issues without needing to invoke the special knowledge or expertise of the SEC, except in areas which are expressly within the exclusive determination of the SEC. These are as follows:

1. The fact of registration of a corporation as a juridical entity;[140]
2. Approval, amendment or revocation of articles of incorporation;[141]
3. Approval, amendment or repeal of by-laws;[142]
4. The revocation or suspension of a corporation's certificate of registration;[143]

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139. *Id.* at 585.

140. CORPORATION CODE, § 21. (The provision provides that "a private corporation commences to have corporate existence and juridical personality and is deemed incorporated from the date the SEC issues a certificate of incorporation.").

141. *Id.* §§16-17. *See also* G&S Transport Corp. v. Court of Appeals, 382 SCRA 262 (2002).

142. *Id.* §§ 46 and 48 Sections 46 and 48.

143. P.D. 902-A § 6(l). (This law gives the SEC power to suspend or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, as well as enumerating the grounds upon which such powers may be exercised).

5. The priority or similarity in the use of corporate names;[144]
6. The determination of whether there has been valid merger or consolidation;[145]
7. The determination of whether there has been dissolution of a corporation;[146] and
8. The grant and revocation of license to do business in the Philippines by foreign corporations.[147]

In the afore-enumerated instances, the provisions of the Corporation Code and P.D. 902-A clearly give exclusive authority to the SEC to make those determinations and rulings. The same prognosis would also go into the exercise of regulatory powers relating to securities and the securities market and players, since the same are by express provisions of the SRC within the exclusive authority of the SEC to make determinations and rulings.

An example where the doctrine of primary jurisdiction can properly be applied post-SRC would be the controversy in *Vesagas v. Court of Appeals*,[148] where in order to determine the merits of the controversies, it had to be decided whether to resolve the allegation that the sports club was duly incorporated and registered with the SEC. In that decision, the Court held:

> [i]t ought to be remembered that the question of whether the club was indeed registered and issued a certification or not is one which necessitates a factual inquiry. On this score, the finding of the Commission, as the administrative agency tasked with among others the function of registering and administering corporations, is given great weight and accorded high respect. We therefore have no reason to disturb this factual finding relating to the club's registration and incorporation.[149]

Another recent example of the limited applicability of the doctrine in Corporate Law, is the decision in *G&S Transport Corp. v. Court of Appeals*,[150]

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144. CORPORATION CODE, § 18. (This provision recognizes the power of the SEC to regulate the use of corporate names. *See also* Vesagas v. Court of Appeals, 371 SCRA 508 (2001)).

145. *Id.* § 79. (This provision provides that a plan of merger or consolidation becomes valid only upon approval of the SEC).

146. *Id.* §§ 118 -120 Sections 118, 119, 120 and 121. (These provisions allow only a dissolution of every corporation, whether done voluntarily or involuntarily, to be effective only upon approval of the SEC).

147. *Id.* §§ 124, 125, 126, 134.

148. *Vesagas v. Court of Appeals*, 371 SCRA 508 (2001).

149. *Id.* at 514.

150. G&S Transport Corp. v. Court of Appeals, 382 SCRA 262 (2002).

where a court action was filed to rescind the bidding process conducted by the Manila International Airport Authority (MIAA) for coupon taxi services at the Ninoy Aquino International Airport, alleging inter alia that the winning bidder falsified its articles of incorporation with the SEC. The Court, applying the doctrine of primary jurisdiction, ruled that the court action

> [i]s premature and consequently fails to state a cause of action. The allegations of the complaint therein focused on the irregularity in the process of obtaining corporate personality that is the alleged falsification of the Articles of Incorporation… Clearly, in the absence of any finding of irregularity from the appropriate government agencies tasked to deal with these concerns, which at all the times relevant to the civil case would be the Securities and Exchange Commission [citing Section 6(l) of P.D. 902-A]… courts must defer to the presumption that these agencies had performed their functions regularly. *The ultimate facts upon which depends the complaint… would be matters which fall within the technical competence of government agencies over which courts could not prematurely rule upon and enter relief as prayed for in the complaint.*[151]

In most other areas of Corporate Law, even as to what many would consider esoteric areas (such as pre-emptive rights, appraisal rights, voting trust agreements, derivative suits, the "doing business" concept, *etc.*), it may not longer require the application of the doctrine of primary jurisdiction because the matters are essentially legal concepts that judges of regular courts are deemed capable of deciding upon, and the great body of Philippine Corporate Law has received innumerable treatment from precedent-setting decisions of the Supreme Court. In essence, there is only a small area in Corporate Law which hearing officers and lawyers in the SEC handle and decide upon, which cannot be handled, perhaps with more competence, by judges of RTC commercial courts.

In otherwise words, the application of the doctrine of prior resort may not be such a formidable obstacle in the expeditious resolution of commercial law cases. As a matter of fact, the respect to the doctrine by the courts would actually engender not only a better working relationship with the administrative agencies who have been vested with supervision and development of the various commercial areas, but would actually make judges of special commercial courts better appreciate the milieu under which they can properly dispense justice and at the same time participate meaningfully in the growth of the legal system.

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151. *Id.* at 281 (emphasis supplied).

VI. CONCLUSION

Since the field of Commercial Laws is quite expansive and often technical in coverage, the day may have long passed by which there could be enacted a mother Philippine Code of Commerce. Nevertheless, this paper has sought to show that there is a necessity to identify the framework by which to allow the Bench, Bar, and the business community to be guided by a set of principles and policies by which to relate to the underlying philosophical underpinning of our commercial law system. Judges need to know how an understanding the principles of Commercial Law would still be useful to them under the current setting where there are specially-designated commercial courts in each of the different judicial regions, having often exclusive jurisdiction over important commercial law cases.

We therefore anticipate the following developments in the field of Philippine Commercial Law:

1. The institutionalization of a special commercial court would go further towards the consolidation of more and more areas into their original jurisdiction;

2. In addition, the implementation of administrative-like rules of procedure, summary and efficient in nature, shall punctuate developments in commercial law litigation; and

3. The Supreme Court, not only in the area of rule-making, shall with special commercial cases going of on appeal to them, would develop a whole philosophical approach to the development of the Philippine Commercial Law system.

PHILJA has submitted to the Supreme Court a recommended *Consolidated Rules on Corporate Insolvency and Dissolution*, which if adopted would have the effect of creating special rules for corporate insolvency cases, similar to the effects of the *Interim Rules*.

There is also pending the recommendation made through the Judicial Reform Office and the PHILJA for the Supreme Court to consolidate commercial law cases, within the original and exclusive jurisdiction of RTC special commercial courts," to cover the following areas:

1. Insolvency cases and suspension of payments cases under the Insolvency Law;

2. Receivership and liquidation of banks, quasi-banks, insurance companies and cooperatives;

3. Enforcement of arbitral agreements and recognition of arbitral awards on commercial contracts;

4. Enforcement of foreign judgments in commercial cases;

5. Cases under P.D. 87, otherwise known as the Act Creating the Videogram Regulatory Board;

6. Cases involving credit and security transactions on banks, and quasi-banks, where the principal amount involved or the value of property involved is Php 50.0 Million or more;
7. Cases under the Securities Regulation Code;
8. Cases under the Corporation Code;
9. Cases under the New Central Bank Act;
10. Cases under the General Banking Law of 2000;
11. Cases under the Electronic Commerce Act;
12. Cases under the Consumer Act of the Philippines;
13. Investment cases under the Omnibus Investment Code of 1987, Foreign Investment Act of 1991, and the Build-Operate-Transfer Law;
14. Insurance cases where the amount involved is Php 200.00 Million or more.

In a memo submitted to the Judicial Reform Office by the leading practitioner Atty. Francis Edralin Lim, he provides the legal justification for the exercise by the Supreme Court of such power, thus:

> The designation of courts to hear and decide a specific class of disputes or cases does not operate as an undue expansion of their jurisdiction, nor as a constriction of the jurisdiction of other Regional Trial Courts. On the contrary, the Supreme Court, by expanding the classification of cases which may be heard and decided by the Special Commercial Courts, shall be working within the framework of statutory courts created by Congress while, at the same time, upholding its supremacy in the administration of the Judicial Branch of Government in finding methods to declog judicial dockets and provide speedy and efficient justice to litigants.

Atty. Lim bases the statutory authority of the Supreme Court to consolidate the jurisdiction of such special RTC commercial courts on Section 23 of the Judiciary Reorganization Act of 1980,[152] which empowers the Supreme Court to "designate certain branches of Regional Trial Courts to handle exclusively... such other special cases as the Supreme Court may determine in the interest of a speedy and efficient administration of justice."

In our Judicial Activism article we noted that the designation of more cases to the original and exclusive jurisdiction of special commercial courts would be welcome in our legal system:

> The exercise by the Supreme Court of its power to designate special courts as a tool for judicial activism would be consistent with the fiscal constraints that face a poor country such as the Philippines. To illustrate, the transfer of

152. Judiciary Reorganization Act of 1980, Batas Pambansa Blg. 129 (1980).

> the quasi-judicial powers of the SEC on corporate cases under Section 5 of P.D. No. 902-A to the regular trial courts, has effectively streamlined the operations of the SEC and removed a large financial burden on the agency in having to maintain the hearing departments, without adding any additional costs on the existing RTC structure. In other words whole administrative bureaucracy has been eliminated which translates to large savings on the national budget. But more importantly, the designation of special branches of RTC within each judicial region as designated commercial courts has not only avoided having to set-up and maintain special commercial courts within the Executive Department, but has allowed corporate cases to be decided by regular courts whose proceedings and decisions fall within the high-regard that a country would accord towards its Judicial Department, and insulated from the political pressures that the SEC suffered in the exercise of its quasi-judicial powers which administratively falls within the Executive Department. And yet, but the proper selection and training of the judges who sit in specially designated RTC commercial courts, the high competence and exposure required for the expedient resolution of highly-specialized commercial and corporate issues would still be met.[153]

The imperatives of international commerce and competition put pressure on the Philippine authorities to create special courts for cases involving intellectual properties under the Intellectual Property Code, as well as for cases under the Anti-Money Laundering Act of 2000. Original and exclusive jurisdiction over these two types of commercial cases has since been consolidated with the RTC special commercial courts. Consequently, the Supreme Court has issued two separate memoranda consolidating within the original and exclusive jurisdiction IP and anti-money laundering cases.

At the time of the preparation of this paper, the Supreme Court promulgated the Rule of Procedure in Cases of Civil Forfeiture, Assets Preservation, and Freezing of Monetary Instruments, Property, or Proceedings Representing, Involving, or Relation to an Unlawful Activity or Money Laundering Offense,[154] required for the full implementation of the Anti-Money Laundering Act of 2000. Although it seems unlikely that Legislature would ever enact an organizing Code of Commerce, nevertheless under the constitutional framework of our Government, it would be the Legislature that would continue to formally enact special commercial statutes needed in our legal system. But it is the Supreme Court that would continue to provide the organizing structure for our commercial law system, from principles and doctrines enunciated in its decision, and from the exercise of its constitutional power to promulgate rules of procedure.

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153. JUDICIAL ACTIVISM, *supra* note 6.

154. Supreme Court Administrative Memorandum No. 05-11-04-SC (Nov. 15, 2005).

The continued expansion of the commercial law jurisdiction of specially-designated RTC commercial courts, equipped with powers under rule of procedure equivalent to the *Interim Rules*, would engage our courts in the field of Commercial Law into critical collaboration with administrative agencies created by Legislature to supervise developments in a special commercial field.

The existence of a great gap between the written language of the law, and that of actual practice or processes in the commercial world, and the slow grind of the legislative process that prevents the Legislature from churning out new laws needed by emerging circumstances, or the revision or amendments of existing laws in areas where actual practice have moved ahead, will continue to provide the impetus for what we call "judicial activism" in the field of Commercial Law. In the Judicial Activism article, we have defined "judicial activism" as applying in situation where the Judicial Department begins to define its role and appreciation of its powers to be beyond the traditional hearers and deciders of justiciable controversies: "[i]n the field of Commercial Laws, it partakes of the Supreme Court taking active roles in upgrading the rules that pertain to commercial and corporate issues, and restructuring the judicial set-up to allow the Philippine system to achieve world standards."[155]

The evolution of judicial activism which primarily refers to the Supreme Court, has essentially three bases:

1. Our now long-standing doctrine that Supreme Court decisions constitute an integral part of 'substantive' law in the Philippine legal system;[156]

2. The acceptance of the doctrine that the Supreme Court is the constitutional vanguard on the Philippine economic commercial philosophy laid out in the 1987 Constitution;[157] and

3. The constitutional mandate granting the Supreme Court to be the main authority to promulgate rules of practice and procedure.[158]

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155. *Id.*

156. CIVIL CODE, art. 8. (Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines).

157. *Tanada*, 272 SCRA at 18; Manila Prince Hotel v. GSIS, 267 SCRA 408 (1997).

158. PHIL. CONST. art. VIII, § 5, ¶5. The provision provides that:

> The Supreme Court shall have the power... (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts... [s]uch rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the

The field of Commercial Law is said to be "a monument... to man's ingenuity and inventiveness in fashioning the fine legal tools which he utilizes to attain more efficiently his economic ends and to expand more effectively his economic activities,"[159] and that "[t]he demands of modern business necessitate constant changes in statutory provisions to meet new conditions... [and] requires flexibility in legislation..."[160]

It would then be important, that in the quest of Filipino businessmen and entrepreneurs to be players in the world market, that their commercial laws, and the underlying principles that govern them, are not only consistent with such international standards, but at the same time consistent with the local conditions and culture. Filipino judges therefore play a pivotal role in ensuring that the Philippines become an internationally competitive niche in the world market.

In a development country like the Philippines, where the complexities of the political and social problems of our society almost seems insoluble, and at a time when our national and political leaders seem incapable of even fashioning simple workable solutions to national problems, salvation may come from entrepreneurs, businessmen, workers, employees, in meeting the needs of consumers and the market that may be relied upon to provide a system that operates and achieves results. Since the demands and pressure of international trade and competition is now a reality that impinges on the political system of a country, it may now be a truism that the survival of our country lies in the hands of our entrepreneurs, employers and businessmen, the captains of our industries, who will continue the movement towards making things work at profitable levels that will ensure movement forward, in spite of the shortcomings of our politicians. In that task of commercial nationalism must exist a partnership with a strong, reputable, and efficient Judiciary and Bar that understand the intricacies and demands of the commercial system.

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same grade, and shall not diminish, increase, or modify substantive rights..."

159. AGUEDO F. AGBAYANI, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES, PREFACE, (1975 ed.).

160. MARTIN, COMMENTARIES AND JURISPRUDENCE ON THE PHILIPPINE COMMERCIAL LAWS PREFACE (1961 Revised ed.).