



# UST LAW REVIEW

A.Y. 2017-2018





## JOURNAL CONTENTS

### FORM AND STYLE

#### I. ARTICLES/ FEATURES

1 File

Font Style: Garamond

Title of the Article: size 13(bold, all caps)

e.g.

**POWER AND PARADOX**

Sub-Title: size

12(bold) e.g.

**POWER AND PARADOX...**

**A Survey of Protective...**

Name of the Author: size 12 (bold, all caps)

e.g.

**MISCHELLE R. MAULION**

Body of the Article: size 11; space- 1.5

Paragraph Sub-Title: size 12 (bold,  
center) e.g.

## I. Introduction

Block Quotations: size 10; 1.5 spacing (indented, 0.5 left and 0.5 right)

Epigraph: size 10, italics

Footnotes: size 9; single space

Spacing Between Paragraphs: 1.5 spacing

## II. BOOK REVIEWS

1 File

Font Style: Garamond

Main Title: size 13 (bold, all caps)

LAW IN THE SERVICE OF HUMANITY

Author: size 12, bold, all caps

Sub-Title: size 12 (bold)

ESSAYS IN HONOR OF JUSTICE FLORENTINO FELICIANO

Author and Publisher of the Book Reviewed: size 12 (italics)

Steve Charnovitz, Debra Steger & Peter Van Den Bossche, eds.  
Cambridge: Cambridge University Press, 2005, Pp. Xv, 425

Footnotes: size 9

Body of the book review: size 10

Format:

- I. Introduction
- II. Summary of the Book
- III. Discussion
- IV. Recommendation

### III. RECENT JURISPRUDENCE

1 File

Font Style: Garamond

Main Title: size 13 (bold, all caps)

**RECENT JURISPRUDENCE**

Sub-Title: size 12

(bold) e.g.

**POLITICAL LAW**

Case Title:

size 12 (all caps,bold)

e.g.

KILUSANG MAYO UN O, et.al. v. THE DIRECTOR-GENERAL OF  
THE NATIONAL ECONOMIC DEVELOPMENT AUTHORITY, *et.al.*

size 11, bold

e.g.

GR Number, Date, Division, Ponente

Body of the case: size 11

#### IV. RECENT LEGISLATION

1 File

Font Style: Garamond

Main Title: size 14 (bold)

#### RECENT LEGISLATIONS

Sub-Title: size 13 (bold, all

caps) e.g.

REPUBLIC ACT NO. 9344

Law Title: size 12 (bold, all caps)

e.g.

AN ACT ALLOWING...

Body of the Law: size 11

Section Number: size 11, bold, italics

Spacing Between Paragraphs: double space

## V. COMMENTARIES

Font Style: Garamond

Main Title: size 14 (bold)

Sub-Title: size 13 (bold, all caps) e.g.

REPUBLIC ACT NO. 9344

Law Title: size 12 (bold, all caps) e.g.

AN ACT ALLOWING...

Body of the Law: size 11

Section Number: size 11, bold, italics

Spacing Between Paragraphs: 1.5 spacing

Format:

I. Introduction

- a. The law
- b. Basis/policy of the law
- c. Salient points

II. Areas for improvement (points of the law which are lacking, flawed, or misplaced)

III. Proposed changes

IV. Basis/grounds relied upon

V. Conclusion





## STYLE AND CITATION GUIDE

### CHAPTER 1 INTRODUCTION

Utility, more than the staff's fascination with aesthetics spurred the birth of the UST Law Review Style Guide. Since, its revival in A.Y. 2003-2004, the UST Law Review staff has constantly faced various questions of form and style in the drafting and editing of articles and other material. This led the staff to gather different rules on form and style for editorial guidance.

The Guide hopes to achieve three purposes. First, it is intended to be a tool in achieving consistency or uniformity in the presentation of articles. Second, it integrates informal rules on form and style culled by the staff. Lastly, the Guide likewise hopes to elevate the journal to the status of a reader-friendly publication without sacrificing scholarly quality. The Guide codifies the first rules on form and citation compiled by the staff and likewise incorporates additional rules on quotations, abbreviations and acronyms.

## CHAPTER II

# LEGAL CITATIONS

### *RULE 1 – CONSTITUTIONS*

The Constitution is cited by reference to article, section and paragraph. When the citing a previous Constitution, put the year in parenthesis.

*Examples:*

CONST., art. VI, sec. 1.

CONST. (1973), art. VI, sec. 1, par. 1.

If a Constitution of a foreign country,

*Example:*

U.S. CONST. art. 1.

### *RULE 2 – CODES*

As a general rule, cite the code name, legislation type and number with amendment if applicable, article number or section number. When the Code is no longer in force, or has been subsequently revised, put the year of effectivity in parenthesis.

*Examples:*

CIVIL CODE, R.A. 386 as amended, art. 10.

FAMILY CODE, E.O. 209 as amended.

CIVIL CODE (1889), art. 67.

The following is a list of Philippine Codes and how they are cited:

Civil Code	CIVIL CODE
Code of Commerce	COMMERCIAL CODE
Family Code	FAMILY CODE
Fire Code	FIRE CODE
Insurance Code	INS. CODE
Intellectual Property Code	INTELLECTUAL PROP. CODE
Labor Code	LABOR CODE
Land Transportation & Traffic Code	TRANSP & TRAFFIC CODE
Local Government Code	LOCAL GOVT. CODE
Muslim Code of Personal Laws	MUSLIM CODE
National Building Code	BLDG. CODE
National Internal Revenue Code	TAX CODE
Omnibus Election Code	ELECT. CODE
Revised Administrative Code	REV. ADM. COD
Revised Penal Code	REV. PEN. CODE
Tariff and Customs Code	TARIFF CODE
Water Code	WATER CODE

### *RULE 3 – STATUTES*

For the *initial citation* of statutes cite its full title, the statute number, subdivisions, and year.

Put the year in parenthesis.

*Example:*

An Act Penalizing the Making of Drawing and Issuance of a Check Without Sufficient Funds or Credit and for Other Purposes, Batas Pambansa Blg. 22, sec. 6 (1978).

*Subsequent citation* for statutes: {abbreviated statute number}, {subdivisions}.

*Example:*

B.P. 22, sec. 6.

## RULE 4 – CASES

### SUPREME COURT

Generally: {*Case Name*}, {Volume Number} {Reporter} {1 page}, {cited page; do not include for initial citation. However, if author consistently cites the page even in his initial citation, this may be allowed} ({year}).

*Examples:*

*Tatad v. Garcia, Jr.*, 243 SCRA 436 (1995).

*Id.* at 456.

*Tatad*, 243 SCRA at 456.

If an *advance sheet* containing the decision is used: {Case Name}, {G.R. Number}, {Date}.

*Examples:*

*Agan et al. v. PLATCO et al.*, G.R. No. 155001, May 5, 2003.

*Agan*, G.R. No. 155001 at 5.

Advance sheets are only used when the reported versions have not yet been published.

### OTHER COURTS<sup>1</sup>

{*Case Name*}, {Volume Number} {Reporter, usually the Court of Appeals Reports or the Official Gazette} {1st page}, {cited page; do not include for the initial citation} ({Court} {Year}).

*Example:*

*People v. Collantes*, 37 O.G. 1804 (Court of Appeals 1926).

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<sup>1</sup> For additional rules, See the Philippine Manual of Legal Citations.

## ADMINISTRATIVE DECISIONS

Cite by the name of the agency (when there is an abbreviated form, use abbreviation or acronym), case number and date of promulgation.

*Example:*

*Tinio v. Diizon*, DENR Case No. 2734, April 24, 1967.

## RULE 5 – EXECUTIVE AND LEGISLATIVE MATERIALS

### EXECUTIVE AND ADMINISTRATIVE MATERIALS

As a general rule, {issuing agency}, {title}, {official source}, {page}, and {date}.

*Example:*

Bureau of Internal Revenue, Revenue Memorandum Circular No. 37-93, 89 O .G. 4476,  
Aug. 9, 2003.

### LEGISLATIVE MATERIALS

As a general rule, {title}, {legislature}, {session} {date of session} in {publication, if  
any} {subdivision} ({date}).

*Example:*

S 2404, 97th Cong, 2d Sess (April 13, 1982), in 128 Cong Rec S 7091 (April 20, 1982).

*Committee or Subcommittee Reports:* {title of the report}, {S or HR} Rep No. xx, xxth Cong,  
x Sess {page} ({year}).

*Example:*

Martin Luther King, Jr. Federal Holiday Commission, HR Rep No 98-893, 98th  
Cong, 2d Sess 4 (1984).

*Committee or Subcommittee Hearings:* {title, including bill number and committee  
name}, xxth Cong, x Sess {page} ({year}).

*Example:*

Service Industries Commerce Development Act of 1982, Hearings on HR 5519 before the Subcommittee on Commerce, Transportation and Tourism of the House Committee on Energy and Commerce, 97 Cong, 2d Sess 69 (1982) (Statement of the Gordon J. Cloney, II, Chamber of Commerce of the United States).

## RULE 6 – BOOKS AND TREATISES

Generally cited as: Volume (if more than one), author (complete name), title of book, page, edition and date in parenthesis.

\When there are two authors, separate their names with “&.”

*Example:*

2 FREDERICK POLLOCK & FREDERIC WILLIAM MAITLAND, THE HISTORY OF ENGLISH LAW 205-06 (2d ed. 1911).

## RULE 7 – JOURNAL ARTICLES

Materials published in periodicals which are paged consecutively throughout a volume are cite using the full name of author, followed by *title of article* in italics, volume number and name of the journal, page and year in parenthesis.

If the part being quoted is found in the middle of the article, always cite the first page of the article and then the particular page where the quoted part is located.

*Example:*

Charles A. Reich, *The New Property*, 73 YALE L.J. 733, 737-38 (1964).

For non-consecutively paginated journals, cite using the full name of author, followed by *title of article* in italics, name of the journal, Month and Year of publication, and page number where the quoted part can be found.

*Example:*

Cesar L. Villanueva, *Corporate Contract Laws: Unifying Theme on Theories Relating to Promoter's Contracts, De Facto Corporations, Corporations by Estoppel, Articles of Incorporation, By-Laws and Ultra Vires Acts*, ATENEO L.J., June 1994, at 4.

If the periodical has no volume number, use the year of publication as volume number.

*Example:*

Emilio Abello, *Constitution under the Commonwealth and under the Republic*, 1965 PHILCONSA YRB. 67.

## RULE 8 – NEWSPAPERS

Titles of newspapers are cited with the date of issue, page and column.

*Example:*

Philippine Daily Inquirer, June 3, 2000, p. 5, col. 3.

A *signed article* (but not a news report) is cited by author and *title*.

*Example:*

Arroyo, *2 Months Behind the Iron Curtain*, Philippine Star, December 15, 2001, p. 1, col. 3.

## RULE 9 – TREATIES

Cite the name of the agreement and the exact date of signature by the Philippines. The effectivity date or date of entry into force may be given parenthetically at the end of the citation. Shorten title of the cited agreement by substituting “with” for “Between the Republic of the Philippines and.” Give the source of the text of the treaty.

*Example:*

Treaty of Friendship with India, July 11, 1952 (1953), II-2 DFATS 1, 2 P.T.S.

## *RULE 10 – INTERNET SOURCES*

Format if dated: {Author, if available}, {*title of article*}, {publisher}, {(date)}, {internet address}

*Example:*

Elizabeth McNichol & Iris J. Lav, *New Fiscal Year Brings No Relief From Unprecedented State Budget Problems*, CTR. ON BUDGET & POLICY PRIORITIES, 1 (Sept. 3, 2009), <http://www.cbpp.org/9-8-08sfp.pdf>

Format if not dated: {Author, if available}, {title}, {internet address} (last accessed {date}).

*Example:*

Protected Areas and Wildlife Bureau, Tamaraw Conservation Project, <http://www.pawb.gov.ph/progs/tamaraw.htm> (last accessed Dec. 27, 2002).

## *RULE 11 – UNPUBLISHED MANUSCRIPT*

Format: Complete name, working title, page (date) (unpublished manuscript) (on file with author)

*Example:*

Anatoliy Bizhko, *Capitalism and Democracy* 25 (Feb. 29, 2000) (unpublished manuscript) (on file with author)

## *RULE 12 – SHORT CITATIONS*

*Id.*

Use “id.” only if the authority is the sole authority cited in the immediately preceding citation.

It should be capitalized only if it is the first word in a sentence. “Id.” may not be used to refer



to the Constitution. It may, however, be used for all other laws and rulings of courts.

Format: Id. at {page cited}.

### *Supra*

The *supra* form may be used to subsequently cite an authority when it has already been fully cited previously.

Format: {last name of author}, *supra* note {footnote number of initial citation}, at {page cited}.

### *Example:*

BALANE, *supra* note 1, at 103.

### Hereinafter

Hereinafter is used when it would be cumbersome to cite with the usual *supra* form or for which the regular shortened form may confuse the reader. This short citation form is used in an article where there are several authors of a work or several works by the same author.

Format for *initial citation*: {author}, {title}, {cited page} ({year}) [hereinafter last name of author and short title]}

### *Examples:*

J. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 156 (2003) [hereinafter BERNAS, COMMENTARY].

J. BERNAS, S.J., AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW, 25 (2002) [hereinafter BERNAS, PUBLIC INT'L LAW].

*Subsequent citation*: {last name of authors and short title}, *supra* note {footnote number of initial citation}, at {page cited}.

### *Examples:*

BERNAS, COMMENTARY, *supra* note 2, at 200.

## STANDARDIZED SIGNALS

Signal	Explanation
<i>“Accord”</i>	Indicates substantial support of a proposition although there are differences in facts.
<i>“Contra”</i>	Indicates a holding which contradicts or opposes the proposition.
<i>“cf.”</i>	Indicates a case which is parallel to or supports the proposition but contains substantially different facts.
<i>“See”</i>	Indicates a dictum which supports the proposition.
<i>“See”</i> (In Roman type)	Introduces secondary authority which supports the proposition.
<i>“But see”</i>	Indicates a dictum which opposes or contradicts the proposition.
<i>“But see”</i> (In Roman type)	Indicates secondary authority which contradicts the proposition.
<i>“E.g.”</i>	Indicates support of a proposition by numerous holdings but illustrated by a selective citation of one or a few cases preceded by “E.g.”

Note: For the complete rules on legal citations, consult the Philippine Manual of Legal Citations published by the U.P. Law Complex.

## CHAPTER III

# DIRECT QUOTATIONS

### A. Quotations Run into Text

Direct quotations of prose that are shorter than five typewritten lines should be run into the text and enclosed in double quotation marks.

*Example:*

From an indulgence in the presumption of constitutionality, the Court goes on to say: "As the essence of R.A. 9189 is to enfranchise overseas qualified Filipinos, it behooves the Court to take a holistic view of the pertinent provisions of both the Constitution and R.A. 9189."

### B. Quotations Set Off from Text

A direct quotation of five or more typewritten lines of prose should be set off from the text by indention. The paragraphing of the original source should be retained. If the quotation spans two or more paragraphs in the original, your set-off quotation should indicate paragraph breaks with additional three-space indentions.

*Example:*

Given the foregoing reality, and looking at the legal and political landscape, the Court says: "To put matters in their right perspective, it is necessary to dwell first on the significance of absentee voting. The concept of absentee voting is relatively new," quoting in the process certain sections from *Corpus Juris Secundum*, including the following discussion:

Absentee voting is an outgrowth of modern social and economic conditions devised to accommodate those engaged in military or civil life whose duties make it impracticable for them to attend their polling place on the day of the election, and the privilege of absentee voting may flow from constitutional provisions or be conferred by statutes, existing in some

jurisdictions, which provide in varying terms for the casting and reception of ballots by soldiers and sailors or other qualified voters absent on election day from the district or precinct of their residence.

When the quotation begins in the middle of a paragraph, follow the preceding format without indenting the first line.

*Example:*

The court ruled that:

The law has reserved that privilege for its citizens who have cast their lot with our country 'without mental reservation or purpose of evasion.' The assumption is that those who are resident aliens of a foreign country are incapable of such entire devotion to the interest and welfare of their homeland for with one eye on their public duties here, they must keep another eye on their duties under the laws of the foreign country of their choice in order to preserve their status as permanent residents thereof.

### C. Emphasis of Certain Passages in a Direct Quotation

To emphasize certain passages in a direct quotation, simply italicize the selected portion.

*Example:*

*The law has reserved that privilege for its citizens who have cast their lot with our country 'without mental reservation or purpose of evasion. The assumption is that those who are resident aliens of a foreign country are incapable of such entire devotion to the interest and welfare of their homeland for with one eye on their public duties here, they must keep another eye on their duties under the laws of the foreign country of their choice in order to preserve their status as permanent residents thereof.*

### D. Epigraphs

The epigraph should be wholly italicized in bold font with the first line indented. It should be

situated on the right side below the author's name.

*Example:*

POWER AND PARADOX:  
DECONSTRUCTING OMBUDSMAN INDEPENDENCE AMIDST THE  
THICKET OF THE CONSTITUTION, LAW AND JURISPRUDENCE.

MISCHELLE R. MAULLION

*“Nation or government cannot achieve salvation where the  
rights of the depressed, destitute and suppressed are not guarded,  
and where mighty and powerful persons are not forced to accede to these  
rights.”*

## CHAPTER IV

# ABBREVIATIONS AND ACRONYMS

Administrative Agencies and Boards exercising regulatory and quasi-judicial functions

	Cite As
Bureau of Food and Drugs	BFAD
Bureau of Lands	BL
Central Board of Assessment Appeals	CBAA
Civil Aeronautics Board	CAB
Civil Service Commission	CSC
Commission on Audit Commission	COA
on Elections Commission on	COMELEC
Higher Education Commission on	CHED
Human Rights Department of	CHR
Agriculture Department of Energy	DA
	DE
Department of Environment and Natural Resources	DENR
Department of Finance	DOF
Department of Foreign Affairs	DFA
Department of Interior and Local Government	DILG
Department of Justice	DOJ
Department of Labor and Employment	DOLE
Department of National Defense	DND
Department of Public Works and Highways	DPWH
Department of Science and Technology	DOST
Employees Compensation Commission	ECC
Government Service Insurance System	GSIS
Housing Land Use Regulatory Board Laguna	HLURB
Lake Development Authority	LLDA
Land Registration Authority	LRA
Land Transportation Franchising and Regulatory Board	LTFRB
Local Water Utilities Administration	LWUA

Maritime Industry Authority	MAR INA
Merit Systems Board	MSB
Metropolitan Waterworks & Sewerage System	MWSS
Monetary Board	MB
Movie and Television Review and Classification Board	MTRCB
National Bureau of Investigation	NBI
National Conciliation and Mediation Board	NCMB
National Economic Development Authority	NEDA
National Food Authority	NFA
National Housing Authority	NHA
National Irrigation Administration	NIA
National Labor Relations Commission	NLRC
National Library	NL
National Telecommunications Commission	NTC
Office of the Solicitor General	OSG
Office of the Ombudsman	OMBUDSMAN
Office of Government Corporate Counsel	OGCC
Overseas Workers Welfare Administration	OWWA
Philippine Coast Guard	PCG
Philippine Coconut Authority	PCA
Philippine Export Zone Authority	PEZA
Philippine National Railways	PNR
Philippine Overseas Employment Administration	POEA
Philippine Sports Commission	PSC
Philippine Veterans Administration	PVA
Professional Regulation Commission	PRC
Securities and Exchange Commission	SEC
Social Security System	SSS

Laws

	Cite As
Republic Act	R.A.
Batas Pambansa	B.P.

Presidential Decree	P.D.
Commonwealth Act	C.A.
Act	Act

Executive Issuances	Cite As
Executive Order	E.O.
Administrative Order	A.O.
Letter of Instruction	L.O.I

Bills, Resolutions and Committee Reports	Cite As
Senate or House Bill	S. No.
	H. No.
Senate or House Resolution	S. Res.
	H. Res.
Senate or House of Representatives Concurrent Resolutions	S. Con Res.

	H. Con Res.
Senate or House or Representatives Joint Resolution	S. J. Res.

	H. J. Res.
Senate or House Committee Reports	S. Rpt.
	H. Rpt.
Resolution of both Houses when sitting together but voting separately	R.B.H.

Philippine Reports	Cite As
Philippine Reports	Phil.



Supreme Court Reports Annotated	SCRA
Supreme Court Advance Decisions	SCAD
Court of Appeals Reports Annotated	CARA
NITAFAN'S Supreme Court Unpublished Decisions	SCUD

#### Philippine Legal Periodicals

Title	Abbreviation
Ateneo Law Journal	ATENEO L.J.
Baguio Colleges Foundation Law Journal	B.C.F.L.J.
Commission on Audit Journal	C.O.A.J.
Court Systems Journal	Ct. Systems J.
Diplomats Review	DIPLOMATS REV
Far Eastern Law Review	FAR EAST L. REV
Filipino Lawyer	FILIPINO LAW
Foreign Relations Journal	FOR . REL . J.
Foundation Law Review	FOUNDATION L. REV
Francisco College Law Journal	FRANCISCO C.L.J.
Journal of the Constitutional Convention of the Philippines	J.C.C. PHIL
Journal of the Integrated Bar of the Philippines	J. INTEG. BAR PHIL.
Judges Journal	JUDGES J.
Jurisprudence	JUR.
Labor Review	LAB. REV.
Law Journal and Magazine of the Integrated Bar of the Philippines	IBP L.J. & Mag.
Lawyers Review	LAW. REV.
Lyceum of the Philippines Law Review	LY. PHIL. L. REV.
M.L.Q. University Law Quarterly	MLQU L.Q.
Mindanao Law Journal	MINDANAO L.J.
Monthly Business & Tax Bulletin	MON. BUS & TAX BULL
PHILCONSA Journal	PHILCONSA J.
Philippine Journal of Industrial Relations	PHIL J. INDUS. REL.
Philippine Journal of Librarians	P.J.L.L.
Philippine Journal of Public Administration	PHIL. J. PUB. ADM.
Philippine Labor Relations Journal	PHIL. LAB. REL. J.
Philippine Law Gazette	PHIL. L. GAZ.

Philippine Law Journal	PHIL. L.J.
Philippine Law Report	
	PHIL. L. REP.
Philippine Yearbook of International Law	PHIL. YRBK. INT'L. L.
Philippines Judicial Weekly	PHIL. JUD. WEEK.
San Beda Law Journal	SAN BEDA L.J.
S.E.C. Bulletin	S.E.C. BULL.
Silliman Law Journal	SILLIMAN L.J.
Studies on Philippine Labor	STUD. PHIL. LAB.
Tala Industrial Relations Bulletin	TALA INDUS REL.BULL.
Tax Monthly	TAX MON.
University of San Carlos Law Review	U.S.C. L. REV.
University of Santo Tomas Law Review	U.S.T. L. REV.
University of the East Law Journal	U.E.L.J.
University of Manila Law Gazette	U.M. L. GAZ.
World Bulletin	WORLD BULL.

Note: For the complete list of abbreviations, check the Philippine Manual of Legal Citations published by the UP Law Complex.

# CHAPTER V

## SAMPLES

### ARTICLE

#### **THE ANTIQUATED BANK SECRECY LAW: LEAVING AN ERA OF BANK SECRECY AND ENTERING A NEW AGE IN FAVOR OF DISCLOSURE**

**TEFFANIE MARIE N. QUIBOD<sup>1</sup>**

#### **I. INTRODUCTION**

A. Purpose and Scope

#### **II. BANK SECRECY IN THE PHILIPPINES**

A. Governing Law

B. Exceptions and Jurisprudence

C. Confidentiality of Foreign Currency Bank Deposits

#### **III. BANK SECRECY IN THE GLOBAL ARENA**

A. Various Bank Secrecy Laws Around the World

B. The Global Trend in favor of Disclosure

#### **IV. DISCUSSION**

A. Relaxation of Bank Secrecy Laws in the Philippines

B. Possible Effects of Relaxation to the Philippine Government and Economy

C. The Philippine Response towards Relaxation

#### **V. CONCLUSION**

*“Everything secret degenerates, even the  
administration of justice; nothing is safe that does not  
show how it can bear discussion and publicity.”- Lord Acton*

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<sup>1</sup>Editor-in-Chief, UST Law Review, (Vol. 60); LLB Candidate, University of Sto. Tomas Faculty of Civil Law (2016); B.S. Economics, University of Sto. Tomas, Faculty of Arts and Letters.

The author would like to express her sincerest gratitude to Terence Luke B. Domingo for his invaluable contributions leading to the completion of this work.

## I. INTRODUCTION

The limits of information disclosure over the last decade have taken on an entirely different perspective. What was thought to be full of boundaries are now bordering on the limitless as the fight against bank secrecy heats up. More and more jurisdictions are now joining the bandwagon of disclosure, setting information exchange mechanisms as the international yardstick of transparency. At the outset, bank secrecy laws may seem harmless, especially when one of its avowed purposes is the attraction of capital to spur economic growth, but beneath its surface, a myriad of economic repercussions take place, with its magnitude unknown and most probably overwhelming.

On September 9, 1955, the Law on Secrecy of Bank Deposits<sup>2</sup> was enacted. As the first of its kind in the Philippines, the timeliness of the law cannot be gainsaid, considering that the banking system at that time was still beginning to take flight. With Philippine markets barely developed, the House and the Senate passed House Bill No. 397718 and Senate Bill No. 351, respectively, with both bills intended to generate savings as explicitly declared in the preambles of both.<sup>3</sup>

Ultimately, 58 representatives voted to pass the Bill while 17 senators voted in favor of the Senate version,<sup>4</sup> leading to what is presently known as R.A. No. 1405 or the Law on Secrecy of Bank Deposits.

### A. Purpose and Scope

There is a kaleidoscope of reasons why bank secrecy laws are enacted. For other countries, the objective is usually to attract mobile capital. For the Philippines, as expressly stated in R.A. No. 1405, the enactment of the law has two allied purposes. It hopes to discourage private hoarding and at the same time to encourage the people in depositing their money in banking institutions, so that it may be utilized by way of authorized loans and thereby assist in economic development. The absolute confidentiality rule in R.A. No. 1405 actually aims to give protection from unwarranted inquiry or investigation if the purpose of such inquiry or investigation is merely to determine the existence and nature as well as the amount of the deposit in any given bank account.<sup>5</sup> Owing to this legislative enactment, the secrecy of bank deposits has remained a basic state policy in the country. Section 2 of the law institutionalized this

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<sup>2</sup>An Act Prohibiting Disclosure Of Or Inquiry Into, Deposits With Any Banking Institution And Providing Penalty Therefor, Republic Act No. 1405, Section 6 (1955).

<sup>3</sup>Franz David Ong Lim, *Bank Secrecy Law: A Historical and Economic Analysis*, 77 Philippine Law Journal (Phil. L.J.) 220 (2002).

<sup>4</sup>*Id.*

<sup>5</sup>*BSB Group, Inc. v. Go*, 612 SCRA 596 (2010).

policy by characterizing as absolutely confidential in general, all deposits of whatever nature with banks and other financial institutions in the country. It declares:

“Section 2. All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.”<sup>6</sup>

Subsequent statutory enactments<sup>7</sup> have expanded the list of exceptions to this policy yet the secrecy of bank deposits still lies as the general rule, falling as it does within the legally recognized zones of privacy.<sup>8</sup> There is, in fact, much disfavor to construing these primary and supplemental exceptions in a manner that would authorize unbridled discretion, whether governmental or otherwise, in utilizing these exceptions as authority for unwarranted inquiry into bank accounts. It is then perceivable that the present legal order is obliged to conserve the absolutely confidential nature of bank deposits.<sup>9</sup> The framers of the 1987 Constitution likewise recognized that bank accounts are not covered by either the right to information under Section 7, Article III or under the requirement of full public disclosure under Section 28, Article II. Unless the Bank Secrecy Act is repealed or amended, the legal order is obliged to conserve the absolutely confidential nature of Philippine bank deposits.<sup>10</sup>

The prohibited acts of R.A. No. 1405 encompass all kinds of disclosure of any information concerning deposits of whatever nature by officials or employees of a bank to any person other than those covered by the exceptions. Notwithstanding, disclosures by non-bank officials or employees are not covered by the prohibition, as well as any disclosure by bank employees to co-employees in the course of performance of such employees’ duties.<sup>11</sup> On the other hand, the prohibition on the act of examining, inquiring and looking into all deposits of whatever nature with banks or banking institutions in the Philippines extends to all kinds of persons, whether of private or government affiliation.

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<sup>6</sup>*Id.*

<sup>7</sup>*Id.* Citing The New Central Bank Act, R.A. No. 7653; Anti-Graft and Corrupt Practices Act, R.A. No. 3019; Anti-Money Laundering Act of 2001, R.A. No. 9160.

<sup>8</sup>*BSB Group, supra* note 5.

<sup>9</sup>*Id.* Citing *Republic v. Eugenio*, G.R. No. 174629, February 14, 2008.

<sup>10</sup>*Republic, supra* note 9.

<sup>11</sup>R.A. No. 1405, section 2.

## II. BANK SECRECY IN THE PHILIPPINES

### A. Governing Law

All Philippine currency bank deposits of whatever nature with banks, including investment in bonds issued by the government of the Philippines, its political subdivisions and instrumentalities are covered by the term “deposits of whatever nature.” Trust funds and any sum of money invested in the bank which the bank may use for loans and similar transactions are now included in the phrase “deposits of whatever nature,” which no longer limits the scope of the protection of the statutory enactment to those governed by the law on loans giving rise to debtor-creditor relationship.<sup>12</sup> The Supreme Court had the occasion to rule in the case of *Ejercito v. Sandiganbayan*:

The money deposited under the trust agreement (“Trust account”) is intended not merely to remain with the bank but to be invested by it elsewhere. To hold that this type of account is not protected by R.A. No. 1405 would encourage private hoarding of funds that could otherwise be invested by banks in other ventures, contrary to the policy behind the law.<sup>13</sup>

It is worthy to note that the Bureau of Internal Revenue (BIR) issued a statement on August 12, 2014, declaring that investments which are not bank deposits or government securities, such as corporate bonds, purchases of shares of stock, purchases of receivables of business and purchases of foreign exchange, do not fall within the purview of the exception.<sup>14</sup> Moreover, the Secretary of Justice opined that the confidentiality granted by law does not extend to other documents and records like letter of credits, trust receipts, bank drafts and promissory notes.<sup>15</sup> From this, it can be deduced that the scope of the protection on investments extends only to investments on government securities.

### B. Exceptions and Jurisprudence

As enunciated by Section 2 of the R.A. No. 1405, all deposits of whatever nature with banks or banking institutions in the Philippines cannot be disclosed, examined, inquired or looked into by any person, government official, bureau or office. However, like all general rules, this one is not without exceptions, which exceptions have been provided for by R.A. No. 1405 itself and others by various statutory enactments.

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<sup>12</sup>*Ejercito v. Sandiganbayan*, G.R. Nos. 157294-95, November 30, 2006.

<sup>13</sup>*Id.*

<sup>14</sup>Mayvelin U. Caraballo, Investments not covered by bank secrecy law – BIR, <http://www.manilatimes.net/investments-covered-bank-secrecy-law-bir/118506/> (last accessed March 3, 2016).

<sup>15</sup>Opinion of the Secretary of Justice No. 5, Series of 1982; Opinion of the Secretary of Justice No. 126, Series of 1989.

Exceptions which have been established by R.A. No. 1405 itself include: (1) written permission of the depositor, (2) in cases of impeachment, (3) upon order of a competent court in cases of bribery or dereliction of duty of public officials, and (4) in cases where the money deposited or invested is the subject matter of the litigation.

***Exceptions provided by R.A. No. 1405***

Court order does not only find importance in cases of bribery or dereliction of duty of public officials as it is also significant in cases where the (a) subject matter of litigation is the money deposited, (b) prosecution for violation of the Anti-Graft and Corrupt Practices Act and unexplained wealth, (c) in cases of prima-facie violation of the Anti-Money Laundering Law and finally, (d) garnishment of bank deposits.

***a. The subject matter of litigation is the money deposited***

To fall within the ambit of the law, the money so deposited must be the very thing in dispute. The Court has ruled in the case of *Union Bank of the Philippines v. Court of Appeals*:

Union Bank is now before this Court insisting that the money deposited in Account No. 0111-01854-8 is the subject matter of the litigation. Petitioner cites the case of *Mathay vs. Consolidated Bank and Trust Company*, where we defined “subject matter of the action,” thus:

xxx By the phrase “subject matter of the action” is meant “the physical facts, the things real or personal, the money, lands, chattels, and the like, in relation to which the suit is prosecuted, and not the delict or wrong committed by the defendant.”

(.....excerpt)

## JURISPRUDENCE

### **GLORIA MACAPAGAL-ARROYO v. PEOPLE OF THE PHILIPPINES AND THE SANDIGANBAYAN**

**G.R. Nos. 220598 & 220953, 19 July 2016, *EN BANC* (Bersamin, J.)**

#### **DOCTRINE OF THE CASE**

*The identification of the main plunderer was not only necessary because the law required such identification, but also because it was essential in safeguarding the rights of all of the accused to be properly informed of the charges they were being made answerable for. The main purpose of requiring the various elements of the crime charged to be set out in the Information is to enable all the accused to suitably prepare their defense because they are presumed to have no independent knowledge of the facts that constituted the offense charged. It is not about the sufficiency of the Information as to the allegation of conspiracy, but rather the identification of the main plunderer sought to be prosecuted under RA No. 7080 as an element of the crime of plunder.*

#### **FACTS:**

Former President Gloria Macapagal-Arroyo, Philippine Charity Sweepstakes Office (PCSO) Budget and Accounts Officer Benigno Aguas, PCSO General Manager and Vice Chairman Rosario Uriarte and other officers of PCSO and Commission on Audit (COA) were charged in the *Sandiganbayan* with plunder<sup>16</sup>.

They, as public officers, allegedly conspired to commit plunder by diverting the PCSO funds from the operating budget to its Confidential and Intelligence Fund (CIF) to be used for non-PCSO projects. Macapagal-Arroyo allegedly approved, through the signing of “OK”, the disbursement of the CIF, without a budget and detailed specific project proposals, in violation of the PCSO Charter and other pertinent laws, and the encashment of checks which named Uriarte as payee, allowing Uriarte to dispose the funds at her will. Aguas allegedly conspired by certifying and signing the disbursement vouchers without the necessary documents and legal requirements.

Several of the accused filed their respective applications for bail, which the *Sandiganbayan* granted. However, those of Macapagal-Arroyo and Aguas were denied as the evidence of guilt against them was strong. Thereafter, Macapagal-Arroyo, Aguas and the other accused separately filed their demurrers to evidence, which the *Sandiganbayan* granted. Conversely, in denying Macapagal-Arroyo and Aguas’ demurrers, the *Sandiganbayan* held that there was sufficient evidence that they had conspired to commit plunder.

Their motions for reconsideration were denied. Macapagal-Arroyo and Aguas filed their respective petitions for *certiorari* before the Supreme Court (SC) assailing the denial of their demurrers to evidence.

#### **ISSUES:**

1. Did the state sufficiently establish the existence of conspiracy among Macapagal-Arroyo, Aguas, and Uriarte?
2. Was there evidence of amassing, accumulating or acquiring ill-gotten wealth in the total amount of not less than Php 50,000,000.00?

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<sup>16</sup> Under Republic Act (RA) No. 7080, as amended by RA No. 7659



3. Was the predicate act of “raiding the public treasury” alleged in the Information proven by the Prosecution?

**RULING:**

1. NO. The prosecution did not properly allege and prove the existence of conspiracy among GMA, Aguas and Uriarte.

A perusal of the Information suggests that what the prosecution sought to show was an implied conspiracy to commit plunder among the accused on the basis of their collective actions prior to, during and after the implied agreement. It is notable that the prosecution did not allege that the conspiracy among all of the accused was by express agreement, or was a wheel conspiracy or a chain conspiracy.

The *Sandiganbayan*'s conclusion that GMA had been the mastermind of plunder was plainly conjectural and outrightly unfounded considering that the information did not aver *at all* that she had been the mastermind; hence, the *Sandiganbayan* thereby acted capriciously and arbitrarily. The treatment by the *Sandiganbayan* of her handwritten and unqualified "OK" as an overt act of plunder was absolutely unwarranted considering that such act was a common legal and valid practice of signifying approval of a fund release by the President. Indeed, pursuant to *People v. Lizada*, an act or conduct becomes an overt act of a crime only when it evinces a *causal relation* to the intended crime because the act or conduct will not be an overt act of the crime if it does not have an immediate and necessary relation to the offense.

Aguas' certifications and signatures on the disbursement vouchers were insufficient bases to conclude that he was into any conspiracy to commit plunder or any other crime. Without GMA's participation, he could not release any money because there was then no budget available for the additional CIFs. Whatever irregularities he might have committed did not amount to plunder, or to any implied conspiracy to commit plunder.

The law on plunder requires that a particular public officer must be identified as the one who amassed, acquired or accumulated ill-gotten wealth because it plainly states that plunder is committed by any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth in the aggregate amount or total value of at least P50,000,000.00 through a *combination* or *series* of overt criminal acts as described in Section 1(d) of Republic Act (RA) No. 7080. Surely, the law requires in the criminal charge for plunder against several individuals that there must be a main plunderer and her co-conspirators, who may be members of her family, relatives by affinity or consanguinity, business associates, subordinates or other persons.

Here, considering that 10 persons have been accused of amassing, accumulating and/or acquiring ill-gotten wealth aggregating P365,997,915.00, it would be improbable that the crime charged was plunder if none of them was alleged to be the main plunderer. As such, each of the 10 accused would account for the aliquot amount of only P36,599,791.50, or exactly 1/10 of the alleged aggregate ill-gotten wealth, which is far below the threshold value of ill-gotten wealth required for plunder.

The Court is not unmindful of the holding in *Estrada v. Sandiganbayan* to the effect that an information alleging conspiracy is sufficient if the information alleges conspiracy either: (1) with the

use of the word *conspire*, or its derivatives or synonyms, such as *confederate*, *connive*, *collude*, etc; or (2) by allegations of the basic facts constituting the conspiracy in a manner that a person of common understanding would know what is being conveyed, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts. The Court is not talking about the sufficiency of the information as to the allegation of conspiracy, however, but rather the identification of the main plunderer sought to be prosecuted under RA No. 7080 as an element of the crime of plunder. Such identification of the main plunderer was not only necessary because the law required such identification, but also because it was essential in safeguarding the rights of all of the accused to be properly informed of the charges they were being made answerable for. The main purpose of requiring the various elements of the crime charged to be set out in the information is to enable all the accused to suitably prepare their defense because they are presumed to have no independent knowledge of the facts that constituted the offense charged.

Despite the silence of the information on who the main plunderer or the mastermind was, the *Sandiganbayan* readily condemned GMA in its resolution dated September 10, 2015 as the mastermind despite the absence of the specific allegation in the information to that effect. Even worse, there was no evidence that substantiated such sweeping generalization. In fine, the Prosecution's failure to properly allege the main plunderer should be fatal to the cause of the State against the petitioners for violating the rights of each accused to be informed of the charges against each of them.

2. NO. There was no proof of amassing, or accumulating, or acquiring ill-gotten wealth of at least Php 50 Million against GMA and Aguas.

The *corpus delicti* of plunder is the amassment, accumulation or acquisition of ill-gotten wealth valued at not less than P50,000,000.00. The failure to establish the *corpus delicti* should lead to the dismissal of the criminal prosecution.

As regards the element that the public officer must have amassed, accumulated or acquired ill-gotten wealth worth at least P50,000,000.00, the Prosecution adduced no evidence showing that either GMA or Aguas or even Uriarte, for that matter, had amassed, accumulated or acquired ill-gotten wealth of any amount. There was also no evidence, testimonial or otherwise, presented by the Prosecution showing even the remotest possibility that the CIFs of the PCSO had been diverted to either GMA or Aguas, or Uriarte.

3. NO. The Prosecution failed to prove the predicate act of raiding the public treasury under Section 1 (d) of Republic Act No. (RA) 7080.

To discern the proper import of the phrase *raids on the public treasury*, the key is to look at the accompanying words: *misappropriation*, *conversion*, *misuse* or *malversation of public funds*. This process is conformable with the maxim of statutory construction *noscitur a sociis*, by which the correct construction of a particular word or phrase that is ambiguous in itself or is equally susceptible of various meanings may be made by considering the company of the words in which the word or phrase is found or with which it is associated. Verily, a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, therefore, be modified or restricted by the latter.

*To convert* connotes the act of using or disposing of another's property as if it were one's own; *to misappropriate* means to own, to take something for one's own benefit; *misuse* means "a good, substance, privilege, or right used improperly, unforeseeably, or not as intended;" and *malversation* occurs when "any public officer who, by reason of the duties of his office, is accountable for public

funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially." The common thread that binds all the four terms together is that the public officer *used* the property taken. Considering that *raids on the public treasury* is in the company of the four other terms that require the use of the property taken, the phrase *raids on the public treasury* similarly requires such use of the property taken. Accordingly, the *Sandiganbayan* gravely erred in contending that the mere accumulation and gathering constituted the forbidden act of *raids on the public treasury*. Pursuant to the maxim of *noscitur a sociis*, *raids on the public treasury* requires the raider to use the property taken impliedly for his personal benefit.

As a result, not only did the Prosecution fail to show where the money went but, more importantly, that GMA and Aguas had personally benefited from the same. Hence, the Prosecution did not prove the predicate act of *raids on the public treasury* beyond reasonable doubt.