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## REVENUE MEMORANDUM ORDER NO. 5-2009 PRESCRIBES THE POLICIES AND GUIDELINES IN THE ISSUANCE OF LETTERS OF AUTHORITY BY THE VARIOUS INVESTIGATING OFFICES OF THE BUREAU OF INTERNAL REVENUE

The Policies and Guidelines to be observed are as follows:

### A. PRIMARY JURISDICTION:

**General Rule:** The Investigating Office -

- Where the taxpayer is registered, or
- Which has specific jurisdiction over a taxpayer

◇ For the Regional Offices:

REVENUE DISTRICT OFFICES— for taxpayers registered in several Revenue Districts

◇ For the Large Taxpayers Service:

LARGE TAXPAYERS AUDIT AND INVESTIGATION DIVISION I— for regular Large Taxpayers

LARGE TAXPAYERS AUDIT AND INVESTIGATION DIVISION II— for Excise Taxpayers

LARGE TAXPAYERS AUDIT AND INVESTIGATION DIVISION I— for regular Large Taxpayers

LARGE TAXPAYERS DISTRICT OFFICE— Makati

LARGE TAXPAYERS DISTRICT OFFICE— Cebu

**Exception:** Primary jurisdiction shall pertain *directly* to:

- The National Investigation Division OR
- The Regional Special Investigation Divisions

if :

◇ There is a prima facie evidence of tax fraud

◇ The case falls under the Run After Tax Evaders Program

In either instance, jurisdiction to conduct the appropriate audit/investigation shall rest with:

- National Investigation Division (NID); or
- Regional Special Investigation Division (SIDs)

### B. DETERMINATION OF PRIMA FACIE EVIDENCE OF TAX FRAUD

The procedures are as fol-

lows:

1. If after the preliminary investigation the NID/SID believes that *prima facie* evidence of tax fraud exists, it shall submit the case, together with a *memorandum* stating the justifications for the conduct of an audit/investigation for tax fraud (and the documentary evidence to support the allegation of fraud), thru the Assistant Commissioner (ACIR), Enforcement Service (ES), to the Deputy Commissioner (DCIR) of the Legal and Inspection Group (LIG), for evaluation.

1.1. If, upon careful evaluation of the merits of a case, the DCIR-LIG should determine that *prima facie* evidence of fraud exist, he shall submit the report of the NID/SID to the Commissioner, for final evaluation.

2. If the Commissioner approves the conduct of an audit/investigation of a taxpayer by the NID/SID, the report and its supporting documents, shall be returned to the Office of the DCIR-LIG.

2.1. Upon receipt of the report, the ACIR-ES

Inside this issue:

Continuation of 2  
BIR Revenue  
Memorandum

Revenue Regu- 2  
lation 3-2009

Renewable 2  
Energy Act

Law on Man- 4  
datory Legal

Latest Jurispru- 6  
dence

JL's corner 10

**REVENUE MEMORANDUM ORDER NO. 5-2009 continued...**

shall inform the Regional Office having jurisdiction over the Investigating Office concerned/ACIR—Large Taxpayers Service, using the *pro forma* notification stating that:

◊The case shall be considered as tax fraud case to be investigated by the NID/SID; and

◊Any LA issued by the Investigating Office to the concerned taxpayer for the same taxable period shall be deemed **automatically cancelled**.

2.2. The Head of the Investigating Office shall, upon receipt of the notification from the ACIR-ES, immediately direct the Revenue Officers concerned to cease all activities on the case.

2.2.1. In the event that no LA has yet been issued to the taxpayer for the aforesaid taxable period, the RDO is advised that it is precluded from issuing an LA for the taxpayer, covering the said taxable period.

2.2.2. Within five (5) days from the receipt of the notification from the ACIR-ES, the Investigating Officer shall:

- (a.) inform the taxpayer of the change of jurisdiction;
- (b.) transmit the entire docket of the case to the NID/SID;
- (c.) furnish the Enforcement Service with a copy of the "Notice of Change of Jurisdiction".

The ACIR-ES shall prepare the appropriate LA mandating the audit/investigation of the taxpayer by the NID/SID, for the signature of the DCIR-LIG.

3. If the Commissioner approves the conduct of a tax fraud investigation by the NID/SID against a particular taxpayer, the report, and all the supporting documents, shall be returned to the Office of the DCIR-LIG.

**C. RESOLUTION OF EXISTING CONFLICTS JURISDICTION**

All issues concerning duplicate or multiple Letters of Authority (LA) issued to a single taxpayer for a particular taxable period prior to the promulgation of this Order shall be immediately elevated by the Offices that issued the LA's to the Office of the Commissioner, for review and evaluation.

- ◊ Each case must be supported by a memorandum report prepared by the concerned Investigating Office and by the NID/SID
- ◊ Each memorandum must contain a segment where the Commissioner will indicate his decision in the case.



The decision of the Commissioner in a particular case shall be conveyed to the concerned Offices by the Office of the Commissioner and the Head of the Office that shall give up jurisdiction of a particular audit/examination shall immediately direct the Revenue Officers concerned to cease all activities on the case, and shall, within five (5) days from its receipt of the notification of the decision of the Commissioner.

**In all instances, the decision of the Commissioner shall be final and executory.**

**REVENUE REGULATIONS 3-2009**

SUBJECT: AMENDING FURTHER REVENUE REGULATIONS (RR) NO. 9-2001, AS AMENDED BY RR NO. 2-2002, RR NO. 9-2002, RR NO. 26-2006, RR NO. 5-2004, and RR NO. 10-2007 EXPANDING THE EFPS COVERAGE TO INCLUDE THE TOP 20,000 PRIVATE CORPORATIONS DULY IDENTIFIED UNDER RR NO. 14-2008

Section 3 of RR No. 9-2001, as last amended by RR No. 10-2007, is hereby further amended to read as follows:

*"Section 3. Coverage—"*xxx xxx xxx

*"3.2 Non-large taxpayers.—The following Non-Large Taxpayers including their branches located in the computerized revenue district offices shall file their returns and pay their taxes thru EFPS, to wit:*

*"3.2.1. The volunteering two hundred (200) or*

*more Non-Large Taxpayers xxx xxx xxx*

*"3.2.2. Non-Large Taxpayers belonging to the top 20,000 private corporations duly identified under RR No. 14-2008 and notified by the Commissioner as such shall make use of the EFPS in filing their returns and in paying their taxes due thereon. Returns of said non-large taxpayers shall include those of their branches, provided, they are located in the computerized revenue district offices. The provisions hereof shall apply to returns to be filed starting April 1, 2009.*

*3.2.3. Other Taxpayers— xxx xxx xxx*

The provisions of other revenue issuances inconsistent herewith are hereby repealed, modified or amended accordingly.

This Regulations shall take effect on **April 1, 2009**, or after fifteen (15) days following publication in a newspaper of general circulation, whichever comes later.



**RENEWABLE ENERGY ACT OF 2008**

[REPUBLIC ACT No. 9513] AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES

## PHILIPPINES AT A GLANCE continued..



### ON-GRID RENEWABLE ENERGY DEVELOPMENT

All stakeholders in the electric power industry shall contribute to the growth of the renewable energy industry of the country. The National Renewable Energy Board (NREB), shall set the minimum percentage of generation from eligible renewable energy resources and determine to which sector Renewable Portfolio Standards (RPS) shall be imposed on a per grid basis within one (1) year from the effectivity of this Act.

### FEED-IN TARIFF SYSTEM

To accelerate the development of emerging renewable energy resources, a feed-in tariff system for electricity produced from wind, solar, ocean, run-of-river hydropower and biomass is hereby mandated. Towards this end, the Energy Regulatory Commission in consultation with the NREB shall formulate and promulgate feed-in tariff system rules within one (1) year upon the effectivity of this Act which shall include, but not limited to the following:

(a.) Priority connections to the grid for electricity generated from emerging renewable energy resources such as wind, solar, ocean, run-of-river hydropower, and biomass power plants within the ter-

ritory of the Philippines;

(b.) The priority purchase and transmission of, and payment for, such electricity by the grid system operators;

(c.) Determine the fixed tariff to be paid to electricity produced from each type of emerging renewable energy and the mandated number of years for the application of these rates, which shall not be less than twelve (12) years;

(d.) The feed-in tariff to be set shall be applied to the emerging renewable energy to be used in compliance with the renewable portfolio standard as provided for in this Act and in accordance with the RPS rules that will be established by the DOE.

### RENEWABLE ENERGY MARKET

The DOE shall establish the Renewable Energy Market (REM) and shall direct Philippine Electricity Market Corporation (PEMC) to implement changes to the Wholesale Electricity Spot Market (WESM) Rules in order to incorporate the rules specific to the operation of the REM under the WESM.

The PEMC shall, under the supervision of the DOE, establish a Renewable Energy Registrar within one (1) year from the effectivity of this Act and shall issue, keep and verify RE Certificates corresponding to energy generated from eligible RE facilities. Such certificates will be used for compliance with the Renewable Portfolio Standards.

The DOE shall establish a Green Energy Option program which provides end-users the option to choose RE resources as their source of energy.

The ERC, in consultation with the NREB and the electric power industry participants, shall establish net-metering interconnection standards and pricing methodology and other commercial arrangements necessary to ensure success of the net-metering for renewable energy program within one (1) year upon the effectivity of this Act.

### GOVERNMENT SHARE

The government share on existing and new RE development projects shall be equal to one (1) percent of the gross income of RE resource developers resulting from the sale of renewable energy produced and such other income incidental to and arising from the renewable energy generation, transmission, and sale of electric power except for indigenous geothermal energy, which shall be at one and a half (1.5) percent of gross income.

=All RE explorations, developments, utilization, and RE systems operations shall be conducted in accordance with existing environmental regulations as prescribed by the Department of Environment and Natural Resources (DENR) and/or any other concerned government agency.

### INCOME TAX HOLIDAY (ITH)

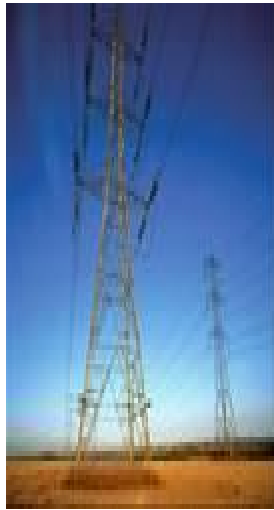
For the first seven (7) years of its commercial operations, the duly registered RE developer shall be exempt from income taxes levied by the National Government.

Additional investments in the project shall be entitled to additional income tax exemption on the income attributable to the investment: *Provided*, That

the discovery and development of new RE resource shall be treated as a new investment and shall therefore be entitled to a fresh package of incentives: *Provided, further*, That the entitlement period for additional investments shall not be more than three (3) times the period of the initial availment of the ITH.

Within the first ten (10) years upon the issuance of a certification of an RE developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties: *Provided, however*, That the said machinery, equipment, materials and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: *Provided, further*, That endorsements of the DOE is obtained before the importation of such machinery, equipment, materials and parts is made.

Endorsement of the DOE must be secured before any sale, transfer or disposition of the imported capital equipment, machinery or spare parts is made: *Provided*, That if such sale, transfer or disposition is made within ten (10)-year period from the date of importation, any of the following conditions must be present:



*to enhance the duty of lawyers to society as agents of social change and to the courts as officers thereof by helping improve access to justice by the less privileged members of society and expedite the resolution of cases involving them*



## PROPOSED RULE ON MANDATORY LEGAL AID SERVICE

(i) If made to another RE developer enjoying tax and duty exemption on imported capital equipment;

(ii) If made to a non-RE developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;

(iii) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and

(iv) For reasons of proven technical obsolescence.

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer or disposition shall no longer be subject to the payment of taxes and duties.

**Zero Percent Value-Added Tax Rate**—The sale of fuel of power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and fuels, shall be subject to zero percent (0%) value-added tax (VAT) pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by RA 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchase of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and

developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.

### FINANCIAL ASSISTANCE PROGRAM

Government financial institutions such as Development Bank of the Philippines (DBP), Land Bank of the Philippines (LBP), Philippine Exim Bank and other government financial institutions shall, in accordance with and to the extent allowed by the enabling provisions of their respective characters or applicable laws, provide preferential financial packages for the development, utilization and commercialization of RE projects as duly recommended and endorsed by the DOE.

### RULE ON MANDATORY LEGAL AID SERVICE

Every practicing lawyer is required to render a minimum of sixty (60) hours of free legal aid services to indigent litigants in a year. Said 60 hours shall be spread within a period of twelve (12) months, with a minimum of five (5) hours of free legal aid services each month.

However, where it is necessary for the practicing lawyer to render legal aid service for more than five (5) hours in one month, the excess hours may be credited to the said lawyer for the succeeding periods.

◊ a practicing lawyer shall coordinate with

the Clerk of Court for cases where he may render free legal aid service.

◊ He may also coordinate with the IBP Legal Aid Chairperson of the IBP Chapter to inquire about cases where he may render free legal aid service.

In this connection, the IBP Legal Aid Chairperson of the IBP Chapter shall regularly and actively coordinate with the Clerk of Court.

The practicing lawyer shall report compliance with the requirement within ten (10) days of the last month of each quarter of the year.

A practicing lawyer shall be required to secure and obtain a certificate from the Clerk of Court attesting to the number of hours spent rendering free legal aid services in a case.

The certificate shall contain the following information:

(i) The case or cases where the legal aid service was rendered, the party or parties in the said case(s) for whom the service was rendered, the docket number of the said case(s) and the date(s) the service was rendered.

(ii) The number of hours actually spent attending a hearing or conducting trial on a particular case in the court or quasi-judicial body.

(iii) The number of hours actually spent attending mediation, conciliation or any other mode of ADR on a particular case.

(iv) A motion (except a motion for extension of time to file a pleading or for post-

### PROPOSED RULE ON MANDATORY LEGAL AID SERVICE continued...

ponement of hearing or conference) or pleading filed on a particular case shall be considered as one (1) hour of service.

The Clerk of Court shall issue the certificate in triplicate:

- (i) one (1) copy to be retained by the practicing lawyer;
- (ii) one (1) copy to be retained by the Clerk of Court; and
- (iii) one (1) copy to be attached to the lawyer's compliance report.

(c) Said compliance report shall be submitted to the Legal Aid Chairperson of the IBP Chapter within the court's jurisdiction. The Legal Aid Chairperson shall then be tasked with immediately verifying the contents of the certificate with the issuing Clerk of Court by comparing the copy of the certificate attached to the compliance report with the copy retained by the Clerk of Court.

(d) The IBP Chapter shall, after verification, issue a compliance certificate to the concerned lawyer. The IBP Chapter shall also submit the compliance reports to the IBP's NCLA for recording and documentation. The submission shall be made within forty-five (45) days after the mandatory submission of compliance reports by the practicing lawyers.

(e) Practicing lawyers shall indicate in all pleadings filed before the courts or quasi-judicial bodies the number and date of issue of their certificate of compliance for the immediately preceding compliance period. Failure to disclose the required information would cause the

dismissal of the case and the expunction of the pleadings from the records.

#### FOR LAWYERS COVERED UNDER SECTION 4 (a)(i) and (ii)

Before the end of a particular year, lawyers covered by the category under Section 4(a)(i) and (ii) [Government employees and incumbent elective officials not allowed by law to practice and Lawyers who by law are not allowed to appear in Court] shall fill up a form prepared by the NCLA which states that, during that year, they are employed with the government or incumbent elective officials not allowed by law to practice or lawyers who by law are not allowed to appear in court. The form shall be sworn to and submitted to the IBP Chapter or IBP National Office together with the payment of an annual contribution of Two Thousand Pesos (P2,000). Said contribution shall accrue to a special fund of the IBP for the support of its legal aid program.

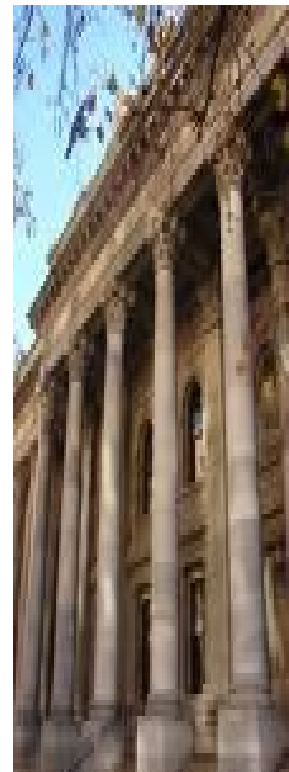
(f) Before the end of a particular year, lawyers covered by the category under Section 4(a)(iii) [Supervising lawyers of students enrolled in law student practice in duly accredited legal clinics of law schools and lawyers of non-governmental organizations (NGOs) and peoples' organizations (POs) like the Free Legal Assistance Group who by the nature of their work already render free legal aid to indigent and pauper litigants] shall secure a certification from the director of the legal clinic or of the concerned NGO or PO to the effect that, during that year, they have served as supervising lawyers in a legal clinic or actively participated

in the NGO's or PO's free legal aid activities.

The certification shall be submitted to the IBP Chapter or IBP National Office.

(g) Before the end of a particular year, lawyers covered by the category under Section 4(a)(iv) shall fill up a form prepared by the NCLA which states that, during that year, they are neither practicing lawyers nor covered by Section (4) (a)(i) to (iii). The form shall be sworn to and submitted to the IBP Chapter or IBP National Office together with the payment of an annual contribution of Four Thousand Pesos (P4,000) by way of support for the efforts of practicing lawyers who render mandatory free legal aid services. Said contribution shall accrue to a special fund of the IBP for the support of its legal aid program.

Failure to pay the annual contribution shall subject the lawyer to a penalty of Two Thousand Pesos (P2,000) for that year which amount shall also accrue to the special fund for the legal aid program of the IBP.



## PROPOSED RULE ON MANDATORY LEGAL AID SERVICE continued...

### NCLA

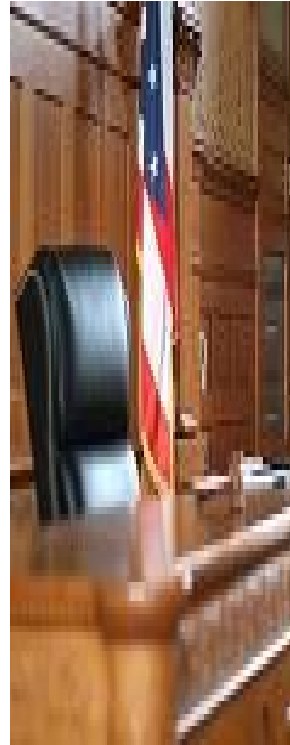
(a) The NCLA shall coordinate with the various legal aid committees of the IBP local chapters for the proper handling and accounting of legal aid cases which practicing lawyers can represent.

(b) The NCLA shall monitor the activities of the Chapter of the Legal Aid Office with respect to the coordination with Clerks of Court on legal aid cases and the collation of certificates submitted by practicing lawyers.

(c) The NCLA shall act as the national repository of records in compliance with this Rule.

(d) The NCLA shall prepare the following forms: certificate to be issued by the Clerk of Court and forms mentioned in Section 5(e) and (g).

(e) The NCLA shall hold in trust, manage and utilize the contributions and penalties that will be paid by lawyers pursuant to this Rule to effectively carry out the provisions of this Rule. For this purpose, it shall annually submit an accounting to the IBP Board of Governors. The accounting shall be included by the IBP in its report to the Supreme Court in connection with its request for the release of the subsidy for its legal aid program.



## LATEST JURISPRUDENCE

### CENTRAL BANK OF THE PHILIPPINES vs. CITYTRUST BANKING CORPORATION

**G.R. No. 141835 – February 4, 2009**

Respondent Citytrust Banking Corporation (Citytrust), maintained a demand deposit account with petitioner Bangko Sentral ng Pilipinas.

Flores, the roving teller, presented for payment to petitioner's Senior Teller Iluminada dela Cruz (Iluminada) two Citytrust checks of even date, payable to Citytrust, both of which were signed and indorsed by Citytrust's authorized signatory-drawers.

After the checks were certified by petitioner's Accounting Department, Iluminada verified them, prepared the cash transfer slip on which she affixed her signature, stamped the checks with the notation "Received Payment" and asked Flores to, as he did, sign on the space above such notation. Instead of signing his name, however, Flores signed as "Rosaura C. Cayabyab" – a fact Iluminada failed to notice.

Iluminada thereupon sent the cash transfer slip and checks to petitioner's Cash Department where an officer verified and compared the drawers' signatures on the checks against their specimen signatures pro-

vided by Citytrust, and finding the same in order, approved the cash transfer slip and paid the corresponding amounts to Flores. Petitioner then debited the amount of the checks from Citytrust's demand deposit account.

More than a year and nine months later, Citytrust, alleged that the checks were already cancelled because they were stolen, demanded petitioner to restore the amounts covered thereby to its demand deposit account. Petitioner did not heed the demand, however.



Citytrust filed before the Regional Trial Court (RTC) of Manila a complaint for recovery of sum of money with damages against petitioner which it alleged erred in encashing the checks.

**ISSUE:** Is the bank negligent when it encashed the checks?

**RULING:** The bank is negligent.

The contract between the bank and its depositor is governed by the provisions of the Civil Code on simple loan. Article 1980 of the Civil Code expressly provides that "x x x savings x x x deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan." There is a debtor-creditor relationship between the bank and its depositor. The bank is the debtor and the depositor is the creditor. The depositor lends the bank money and the bank agrees to pay the depositor on demand. The savings deposit agreement between the bank and the depositor is the contract that determines the rights and obligations of the parties.

The law imposes on banks high standards in view of the fiduciary nature of banking. Section 2 of Republic Act No. 8791 ("RA 8791"), which took effect on 13 June 2000, declares that the State recognizes the "fiduciary nature of banking that requires high standards of integrity and performance." This provision in the general banking law, introduced in 2000, is a statutory affirmation of Supreme Court decisions, holding that "the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in

mind the fiduciary nature of their relationship."

This fiduciary relationship means that the bank's obligation to observe "high standards of integrity and performance" is deemed written into every deposit agreement between a bank and its depositor. The fiduciary nature of banking requires banks to assume a degree of diligence higher than that of a good father of a family. Article 1172 of the Civil Code states that the degree of diligence required of an obligor is that prescribed by law or contract, and absent such stipulation then the diligence of a good father of a family. Section 2 of RA 8791 prescribes the statutory diligence required from banks – that banks must observe "high standards of integrity and performance" in servicing their depositors. Although RA 8791 took effect almost nine years after the unauthorized withdrawal from L.C. Diaz's savings account, jurisprudence at the time of the withdrawal already imposed on banks the same high standard of diligence required under RA No. 8791.

Citytrust's failure to timely examine its account, cancel the checks and notify petitioner of their alleged loss/theft should mitigate petitioner's liability, in accordance with Article 2179 of the Civil Code which provides that if the plaintiff's negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded. For had Citytrust timely discovered the loss/theft and/or subsequent encashment, their proceeds or part thereof could have been recovered.

**NORGIE CRUZ y CASTRO,  
vs.  
PEOPLE OF THE PHILIPPINES**

**G.R. No. 164580—  
February 6, 2009**

A buy-bust operation was conducted which resulted in the arrest of Petitioner who was subsequently charged of the illegal sale of shabu.

Later, petitioner led the police officers to his residence in Malabon City. Petitioner retrieved a large package containing shabu from a hole dug into the stairway of his house.

Petitioner was charged with Illegal Sale of shabu and Illegal Possession of shabu.



**ISSUES:**

1. Is the testimony of the poseur-buyer material and indispensable when the accused denies having committed the prohibited act?
2. Did the police officers violate the Constitution casting doubt on the presumption of regularity of the apprehension made upon petitioner?

**RULING:**

The Supreme Court affirmed the conviction of the petitioner for illegal sale and the acquittal for illegal possession stating for its justification the following:



*The law imposes on banks high standards in view of the fiduciary nature of banking.*



## LATEST JURISPRUDENCE continued...



*As long as there is proof that the sale actually took place, coupled with the presentation in court of the corpus delicti as evidence, a conviction for illegal sale of shabu can be sustained.*



1. A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. For the successful prosecution of the illegal sale of shabu, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence. Thus, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.

2. The failure of the poseur-buyer to testify on the actual purchase is not fatal to the prosecution's cause. The members of the team witnessed the whole transaction where the marked money was exchanged for two sachets of shabu. As long as there is proof that the sale actually took place, coupled with the presentation in court of the corpus delicti as evidence, a conviction for illegal sale of shabu can be sustained.

Petitioner was arrested in flagrante delicto during the buy-bust operation. Unless there is clear and convincing evidence that the police officers were inspired by any

improper motive or were not properly performing their duty, and none has been adduced by the defense, their testimonies with respect to the buy-bust operation deserve full faith and credit. The identity of petitioner cannot be doubted having been caught in flagrante delicto in an entrapment operation conducted by the police.

3. The failure to present the buy-bust money is likewise not fatal. The marked money used in the buy-bust operation is not indispensable but merely corroborative in nature. In the prosecution for the sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation. What is material to a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence. The prosecution duly established both in this case.

The absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. Furthermore, if a police operation requires immediate implementation, time is of the essence and only hasty preparations are sometimes possible.

Moreover, when a person is apprehended in flagrante delicto, the police is not only authorized, but duty-bound,

to arrest him even without a warrant.

There is no connection between the prior entrapment of petitioner, which the Court of Appeals and this Court found to be regular, legal and valid, and the subsequent search of his house, which the Court of Appeals found to be irregular. In the prior entrapment, petitioner was charged with and convicted of illegal sale of shabu, an offense separate and distinct from the offense of illegal possession of shabu for which he was acquitted.

**EDWARD KENNETH NGO  
TE,  
vs.  
ROWENA ONG  
GUTIERREZ YU-TE,**

**G.R. No. 161793  
February 13, 2009**

Around three months after their first meeting, Rowena and Edward eloped. Thus, they left Manila and sailed to Cebu.

However, Edward's money lasted for only a month. They could not find a job. They decided then to go back to Manila. Rowena proceeded to her uncle's house and Edward to his parents' home. Rowena kept on calling him, threatening him that she would commit suicide. Hence, Edward agreed to stay with Rowena at her uncle's place.

Rowena's uncle brought the two to a court to get married. He was then 25 years old, and she, 20. The two then continued to stay at her uncle's place where Edward was treated like a prisoner—he was not allowed to go out unaccompanied and was even threatened by Rowena's uncle. Edward suggested to Rowena if they

## LATEST JURISPRUDENCE continued...

could stay with him so he could get his inheritance so that they could live on their own.

After a month, Edward escaped from the house of Rowena's uncle, and stayed with his parents. His family then hid him from Rowena and her family whenever they telephoned to ask for him.

Finally, Edward was able to talk to Rowena. Unmoved by his persistence that they should live with his parents, she said that it was better for them to live separate lives. They then parted ways.

Edward filed a petition before the Regional Trial Court (RTC) for the annulment of his marriage to Rowena on the basis of the latter's psychological incapacity.

### *RULING:*

Both parties being afflicted with grave, severe and incurable psychological incapacity, the precipitous marriage which they contracted on is thus, declared null and void.

Article 36 of the Family Code 32 provides:

Article 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

Conscious of the law's intention that it is the courts, on a case-to-case basis, that should determine

whether a party to a marriage is psychologically incapacitated.

Lest it be misunderstood, **we are not suggesting the abandonment of Molina in this case.** We simply declare that, as aptly stated by Justice Dante O. Tinga in Antonio v. Reyes, there is need to emphasize other perspectives as well which should govern the disposition of petitions for declaration of nullity under Article 36. At the risk of being redundant, we reiterate once more the principle that each case must be judged, not on the basis of a priori assumptions, predilections or generalizations but according to its own facts.



And, to repeat for emphasis, courts should interpret the provision on a case-to-case basis; guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals.

The seriousness of the diagnosis and the gravity of the disorders considered, the Court, in this case, finds as decisive the psychological evaluation made by the expert witness; and, thus, rules that the marriage of the parties is null and void on ground of both parties' psychological incapacity. We further consider that the trial court, which had a first-hand view of the wit-

nesses' deportment, arrived at the same conclusion.

Indeed, petitioner, who is afflicted with dependent personality disorder, cannot assume the essential marital obligations of living together, observing love, respect and fidelity and rendering help and support, for he is unable to make everyday decisions without advice from others, allows others to make most of his important decisions (such as where to live), tends to agree with people even when he believes they are wrong, has difficulty doing things on his own, volunteers to do things that are demeaning in order to get approval from other people, feels uncomfortable or helpless when alone and is often preoccupied with fears of being abandoned. As clearly shown in this case, petitioner followed everything dictated to him by the persons around him. He is insecure, weak and gullible, has no sense of his identity as a person, has no cohesive self to speak of, and has no goals and clear direction in life.

Although on a different plane, the same may also be said of the respondent. Her being afflicted with anti-social personality disorder makes her unable to assume the essential marital obligations. This finding takes into account her disregard for the rights of others, her abuse, mistreatment and control of others without remorse, her tendency to blame others, and her intolerance of the conventional behavioral limitations imposed by society. Moreover, as shown in this case, respondent is impulsive and domineering; she had no qualms in manipulating petitioner with her

threats of blackmail and of committing suicide.



# JL's corner



