Litigation 2018 Philippines

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Overview

Court system
 Describe the general organisation of the court system for civil litigation.

The Philippine judicial system is organised according to the following hierarchy:

- Supreme Court;
- Court of Appeals and Court of Tax Appeals (an institutionalised tax tribunal);
- Regional Trial Courts (RTCs); and
- Municipal Trial Courts (MTCs), Metropolitan Trial Courts (MeTCs) and Municipal Circuit Trial Courts (MCTCs).

Civil cases generally originate in the RTCs, MTCs, MeTCs and MCTCs. The RTCs have limited appellate jurisdiction over all cases decided by the MTCs, MeTCs and MCTCs within the RTCs' territorial jurisdiction. The Court of Appeals has appellate jurisdiction over all cases emanating from the RTCs. However, if only questions of law are involved, the appeal must be made directly to the Supreme Court. The Supreme Court exercises appellate jurisdiction over the decisions of the Court of Appeals and the Court of Tax Appeals.

The judiciary is independent and co-equal with the legislative and executive branches. Members of the Supreme Court and judges of lower courts are appointed by the President.

Courts of equal and coordinate jurisdiction cannot interfere with each other's orders and cannot review each other's actions and decisions

There is no jury system in the Philippines.

2 The legal profession Describe the general organisation of the legal profession.

Any person who is duly admitted as a member of the Philippine Bar and who is in good and regular standing is entitled to practise law. To be admitted to the bar, the applicant must be a Filipino citizen, at least 21 years of age, of good moral character, and residing in the Philippines. He must have graduated from an accredited Philippine law school and passed the Philippine Bar examination. There is no fused or split bar.

The Philippine Constitution prohibits foreign lawyers from engaging in the practice of law in the Philippines, and must be represented by a member of the Philippine Bar in all matters connected with such practise.

3 General

Give a brief overview of the political and social background as it relates to civil litigation.

Litigation is the primary mode of dispute resolution in the Philippines. According to the Philippine Statistics Authority, judges have an average annual workload of 644 cases. In 2015, the Supreme Court rolled out the piloting of a new system for speedy court trial in certain designated courts based on the proposed New Rules of Civil Procedure. Broadly, the new rules centre on making court proceedings less adversarial by requiring the parties to undergo two-stage mediation before actually filing a case in court, and conducting face-to-face trials.

Activist plaintiffs are typically concerned with constitutional challenges to legislative or executive measures.

Jurisdiction

4 Jurisdiction and venue What are the criteria for determining the jurisdiction and venue of the competent court for a civil matter?

Venue is prescribed under the Rules of Court. Generally, for actions affecting real property, the venue is where the real property is located. For personal actions involving the enforcement of some liability or actions other than those involving real property, the venue is where the plaintiff or any principal plaintiff resides, or where the defendant or any principal defendant resides, upon the election of the plaintiff. If the defendant does not reside and is not found in the Philippines, the venue is generally where the plaintiff resides, or where the property subject of the action is located. Venue may be waived and stipulated upon.

Jurisdiction is conferred by law. It cannot be the subject of agreement or waiver save in limited instances where estoppel applies. Exclusive original jurisdiction depends on the subject matter, and the nature or amount of the claim.

5 Forum shopping Does your jurisdiction commonly attract disputes that have a nexus with other jurisdictions?

Increasing globalisation and the movement from nationalistic or purely domestic business models led to an increase in cross-border economic activity and disputes in the country. Given the level of confidence that foreign counter parties have in national courts, and the legal landscape in general, international arbitration is emerging as the preferred mode of resolving disputes for transnational commercial transactions. Parallel efforts are being adopted in the Philippines for judicial reform in general and the promotion of arbitration.

6 Pendency in another forum How will a court treat a request to hear a dispute that is already pending before another forum?

Courts may refuse to treat a request to hear a dispute that is already pending before another forum in view of the policy against forum shopping, ie, the act by a party of availing of several remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts or circumstances, and all raising substantially the same issues either pending or already resolved adversely by some other court. A finding of forum shopping is a cause for the summary dismissal of the multiple petition or complaint.

7 Deference to arbitration

How will the courts treat a dispute that is, or could be, subject to an arbitration clause or an agreement to arbitrate, including in interim proceedings?

Under the Alternative Dispute Resolution Act of 2004, the court shall refer the parties to arbitration where it finds that the action brought before it relates to a matter that is the subject matter of an arbitration agreement.

8 Judicial review of arbitral awards on jurisdiction May courts in your country review arbitral awards on jurisdiction?

An arbitral award is final and binding and thus a party is precluded from filing an appeal or a petition for certiorari questioning the merits of an arbitral award. However, the court may vacate or set aside an award rendered in a domestic arbitration on limited grounds that do not relate to the merits of the dispute, eg, corruption or misconduct on the part of the arbitrator. Similarly, the court may set aside or refuse enforcement of an award rendered in an international arbitration on grounds that are substantially similar to those set out in the New York Convention. Notably, the Philippines is a signatory to the Convention, which entered into force in the country in 1962.

9 Anti-suit injunctions Are anti-suit injunctions available?

Anti-suit injunctions are an unfamiliar concept in the Philippines. However, in view of the general tenets of an injunction in civil law, the court may grant an injunction to restrain the parties to continue proceedings in another jurisdiction or forum which have been commenced in breach of an arbitration agreement.

10 Sovereign immunity

Which entities are immune from being sued in your jurisdiction? In what circumstances? In what circumstances can creditors enforce a court judgment or arbitral award against a sovereign or a state entity?

State entities are generally immune from suit based on the premise that the state may not be sued without its consent. The doctrine of state immunity is also applicable to complaints filed against officials of the state for acts performed by them in the discharge of their duties. However, the immunity of the sovereign is recognised only with regard to public acts or acts jure imperii of a state, but not with regard to private acts or acts jure gestionis.

Creditors may enforce a court judgment or arbitral award against the state when the state has given its consent to be sued, either expressly or impliedly, such as through a general law or a special law or when the state itself commences litigation. In a 2012 case, the Supreme Court ruled that an arrangement to submit any dispute to arbitration may be construed as an implicit waiver of immunity from suit.

Procedure

11 Commencement and conduct of proceedings in general

How are proceedings commenced? To what extent will a court actively lead the proceedings and to what extent will the court rely on the parties to further the proceedings?

Proceedings in civil cases are generally commenced by the filing of a complaint or petition before the court that has jurisdiction over the subject matter of the action. After the filing of the complaint, the court shall issue a summons directing the other party to file an answer within 15 days. The plaintiff or claimant can then file a reply to address any new issue raised in the answer. Thereafter, the plaintiff must file a motion to set the case for a mandatory pre-trial conference. When the conference terminates, the court shall issue a pretrial order that shall set out the issues to be heard during trial, and limit the conduct of subsequent proceedings. If no settlement is reached at this stage, trial will ensue within 30 days from the issuance of the pretrial order. During trial, the claimant must produce evidence in support of his or her complaint or petition, and the defendant must produce evidence in support of his defences, counterclaims and cross-claims.

12 Statement of claim

What are the requirements for filing a claim? What is the pleading standard?

A claim is generally initiated by a complaint. The complaint must state the ultimate facts constituting the plaintiff's cause of action, including the names and residences of the parties. It must be verified by the plaintiff through an affidavit attesting to the correctness of the allegations set out in the complaint. It shall also contain a certification against forum shopping.

13 Statement of defence

What are the requirements for answering claims? What is the pleading standard?

In the answer to the complaint, the defendant shall specifically deny all the allegations that he or she does not admit and set out the substance of the matters on which he or she relies for his denial. Material averments in the complaint not specifically denied shall be deemed admitted, except as to the amount of unliquidated damages. The defendant shall also raise all the defences and counterclaims available to him or her in the answer; otherwise, they are deemed waived.

14 Further briefs and submissions What are the rules regarding further briefs and submissions?

Further briefs or submissions in a typical civil case may refer to replies and memoranda. Even if a party does not file a reply in response to the defendant's answer, all the new matters alleged in the answer are

A party may amend his or her pleading as a matter of right before a responsive pleading thereto is served. Where issues not raised in the pleadings are tried with the express or implied consent of the parties, pleadings may be amended to conform to the evidence upon motion of a party. All other substantial amendments may be made with leave of court

Experienced and impartial attorneys may be invited by the court to appear as amici curiae to help in the disposition of issues submitted to it

15 Publicity

To what degree are civil proceedings made public?

Court hearings are open to the public, except under certain circumstances when the court directs otherwise.

TV cameras and photographers are not allowed in court. However, in a very rare instance, the Supreme Court allowed the live coverage of a trial of public importance subject to certain guidelines. The court also allowed the press to conduct live coverage of the promulgation of the decision in another sensational case, upon request from the media.

It is permitted to access official records or decisions, such as court records, subject to limitations. However, court records and documents are deemed confidential in cases involving violence against women and children, family cases and adoption proceedings.

Pretrial settlement and ADR

16 Advice and settlement proposals

Will a court render (interim) assessments about any factual or legal issues in dispute? What role and approach do courts typically take regarding settlement? Are there mandatory settlement conferences between the parties at the outset of or during the litigation?

Philippine courts generally do not render such interim assessments. All parties in civil cases, except those that by law may not be compromised in the Civil Code, are referred to the Philippine Mediation Center for Court-Annexed Mediation before proceeding to the pretrial conference. If the parties do not settle, they will undergo Judicial Dispute Resolution (JDR) wherein the judge facilitates the conciliation or mediation. If the JDR fails, the case will proceed to trial.

17 Mediation

Is referral to mediation or another form of ADR an option, or even mandatory, before or during the litigation?

Court-Annexed Mediation is generally mandatory in civil cases, except those which by substantive law may not be compromised. The mandatory mediation takes place before the pretrial conference.

In certain cases, pre-litigation conciliation is required before the barangay, ie, the smallest unit of the local government in the Philippines. Failure to undergo such proceedings renders an action dismissible outright on the basis of failure to comply with a condition precedent for filing a claim.

Interim relief

18 Forms of interim relief

What are the forms of emergency or interim relief?

Under the Rules of Court, a party may apply for any of the following interim remedies at any stage of an action or proceeding, and prior to the judgment or final order:

- preliminary attachment;
- · preliminary injunction;
- receivership;
- · claim and delivery (replevin);
- support pending litigation.

When there is an arbitration agreement, a party may apply for any of the following interim measures of protection:

- preliminary attachment;
- preliminary injunction;
- appointment of a receiver;
- detention, preservation, delivery or inspection of property;

 assistance in the enforcement of an interim measure of protection granted by the arbitral tribunal that it cannot enforce effectively.

19 Obtaining relief

What must a petitioner show to obtain interim relief?

Generally, in order to obtain interim relief, a petitioner must show that (i) he or she has a clear and unmistakable right; (ii) there is a material and substantial invasion of such right; (iii) there is an urgent need for the relief to prevent irreparable injury to him or her; and (iv) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

Decisions

20 Types of decisions

What types of decisions (other than interim relief) may a court render in civil matters?

In civil matters, local courts may issue a final judgment; a summary judgment; a judgment on the pleadings (upon motion by the adverse party, if the defendant fails to tender an issue or otherwise admits the material allegations of the adverse party's pleading); several judgments (when the action is against several defendants, and the court only renders judgment against one or more of them, leaving the action to proceed against the others); a separate judgment (where there are several claims in one action); or a judgment nunc pro tunc (to correct clerical not judicial errors, to enter into the record acts already done but that do not yet appear in the record).

The courts may also issue interlocutory orders which do not finally dispose of a case and do not adjudicate the parties' rights and liabilities.

21 Timing of decisions

At what stage of the proceedings may a court render a decision? Are motions to dismiss and summary judgment available?

A court may render a final decision or judgment after the submission of the evidence of the parties has been concluded.

Interim reliefs or provisional remedies may be rendered by the court while the main action is being litigated.

A motion to dismiss is available; however, it must be filed within the time provided to file an answer and before the answer is filed in court

A summary judgment is available when the court finds that there is no genuine issue as to any material fact, except as to the damages recoverable, and if the movant is entitled to a judgment as a matter of law based on the pleadings, affidavits, depositions and admissions of the parties.

22 Default judgment

Under which circumstances will a default judgment be rendered?

If the defendant fails to file an answer within the required period, the plaintiff may file a motion to declare him in default. If the motion is granted, the court shall proceed to render judgment granting the plaintiff such relief as his pleadings may warrant, unless the court requires the plaintiff to submit further evidence.

23 Duration of proceedings

How long does it typically take a court of first instance to render a decision?

Under the Philippine Constitution, all cases or matters must be decided or resolved by all lower courts within three months after the case or matter is deemed submitted for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum. However, this period may be extended for meritorious reasons upon certification by the presiding judge to that effect.

Parties

24 Third parties – joinder, third-party notice, intervenors How can third parties become involved in proceedings?

Third parties may be joined in the proceedings as plaintiffs or defendants in one complaint where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action.

Indispensable parties, ie, parties in interest without whom no final determination can be had of an action are mandated to be joined. The burden of procuring the presence of all indispensable parties is on the plaintiff. In a case, the Supreme Court ruled that the failure to implead indispensable parties is a curable error.

Necessary parties who are not indispensable but who ought to be joined as a party if complete relief is to be accorded to existing parties, may be joined as parties. The non-inclusion of a necessary party does not prevent the court from proceeding in the action, and the judgment rendered in the action shall be without prejudice to the rights of such necessary party.

Third parties who have a legal interest in the matter in litigation may be allowed to intervene in the action by filing a complaint for intervention.

Court decisions bind only those who are parties to the action and persons in privity with them or their successors in interest.

Evidence

25 Taking and adducing evidence

Will a court take or initiate the taking of evidence or will it rely on the parties to request the taking of evidence and to present it?

The court does not play an active role in evidence taking. It is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defence by the amount of evidence required by law.

26 Disclosure

Is an opponent obliged to produce evidence that is harmful to it in the proceedings? Is there a document disclosure procedure in place? What are the consequences if evidence is not produced by a party?

Although it is the duty of each contending party to lay before the court the facts in issue and to present to the court all the material and relevant facts known to him, there is no direct provision that specifically requires the disclosure of documents. However, the court, on motion from either party, can order any party to produce documents that are not privileged and that constitute or contain evidence material to any matter involved in the action.

There is a disputable presumption that evidence that is wilfully suppressed would be adverse if produced. However, such presumption does not apply when (i) the evidence is at the disposal of both parties; (ii) the suppression was not wilful; (iii) it is merely corroborative or cumulative and (iv) the suppression is an exercise of a privilege.

27 Witnesses of fact

Please describe the key characteristics of witness

evidence in your jurisdiction. Is witness preparation allowed?

A witness may only testify on facts based on his personal knowledge. The number and names of witnesses that a party intends to present should be indicated in the pretrial brief that is submitted to the court before the pre-trial conference. The direct testimony of the witnesses is in the form of a judicial affidavit which is submitted to the court before the pretrial conference, and witnesses take the witness stand only for cross-examination, redirect, and recross examination.

Witnesses may be prepared for their testimony. However, coaching the witness on his testimony is not allowed.

28 Expert witnesses

Who appoints expert witnesses? What is the role of experts?

The parties generally appoint the expert witnesses, and the determination of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court. An expert witness generally provides an opinion on a matter requiring special knowledge, skill, experience or training which he has been shown to possess, as matters of opinion are generally inadmissible in evidence if provided by an ordinary witness of fact. Expert witnesses are expected to provide independent advice to the courts.

29 Party witnesses

Can parties to proceedings (or a party's directors and officers in the case of a legal person) act as witnesses? Can the court draw negative inferences from a party's failure to testify or act as a witness?

Parties may be witnesses provided they are not disqualified by some other rule. The court generally does not draw negative inferences from a party's failure to testify unless his or her appearance had been ordered by the court. In such a case, the failure to appear may be considered as contempt of court.

30 Foreign law and documentation

How is foreign law or foreign-language documentation introduced into the proceedings and considered by the courts?

Philippine courts do not take judicial notice of foreign laws, hence they must be alleged and proven. To prove a foreign law, the party invoking it must present either an official publication which sets out the foreign law, or a copy of such official publication duly attested to by the legal custodian of the publication as being a correct copy of the original.

31 Standard of proof

What standard of proof applies in civil litigation? Are there different standards for different issues?

In civil cases, the standard of proof is preponderance of evidence. It refers to the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term greater weight of the evidence or greater weight of the credible evidence.

Appeals

32 Options for appeal

What are the possibilities to appeal a judicial decision? How many levels of appeal are there?

There are multiple levels of appellate review.

Decisions rendered by the Metropolitan Trial Courts (MeTC) and other first level courts are appealable to the Regional Trial Court (RTC). Generally, the RTCs' decisions may be appealed to the Court

of Appeals. However, an appeal from an RTC decision may be made directly to the Supreme Court through a Petition for Review on Certiorari if based on pure questions of law.

The Court of Appeals reviews appeals from the RTC and quasijudicial agencies, and its decision is appealable to the Supreme Court. The Supreme Court is the last level of appeal.

33 Standard of review

What aspects of a lower court's decisions will an appeals court review and by what standards?

The RTC may review questions of law, or of fact, or of mixed questions of law and fact.

The Court of Appeals may review questions of fact or mixed questions of fact and law in an appeal from the RTC involving a judgment rendered in the RTC's exercise of its original jurisdiction. If the judgment was rendered in the RTC's exercise of its appellate jurisdiction, the Court of Appeals may review questions of fact, of law, or mixed questions of fact and law.

When the appeal reaches the Supreme Court, review is generally limited to questions of law as the Supreme Court is not a trier of facts.

34 Duration of appellate proceedings How long does it usually take to obtain an appellate decision?

The process usually takes six months to three years.

Special proceeding

35 Class actions

Are class actions available?

Yes, a class suit is allowed when the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties. A number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all.

In determining the question of fair and adequate representation of members of a class, the courts generally consider (i) whether the interest of the named party is coextensive with the interest of the other members of the class; (ii) the proportion of those made parties as it so bears to the total membership of the class; and, (iii) any other factor bearing on the ability of the named party to speak for the rest of the class

A judgment in a class suit binds all members of the class, regardless of whether they were ever formally before the court.

36 Derivative actions

Are derivative actions available?

Derivative suits are available in a corporate context, which refer to an action brought by a shareholder on behalf of the corporation to enforce corporate rights against the corporation's directors, officers or other insiders. There is no specific provision in the Corporation Code which sets out the right to file a derivative suit, but the matter is directly addressed in Philippine jurisprudence.

For a shareholder to have the right to bring a derivative suit, he must be a shareholder of the company both at the time of the relevant transaction, as well as at the time when the action was filed. Second, he must have exhausted all intra-corporate remedies that may be available under the articles of incorporation or by laws. Third, there must be no appraisal rights available for the act or transaction complained of, and the suit should not be a harassment or nuisance suit.

37 Fast-track proceedings Are fast-track proceedings available?

Fast-track proceedings are generally available for small claims cases and summary proceedings where the value of the claim does not exceed Php100,000 or Php200,000, depending on the territorial jurisidiction of the court.

There are also expedited trial procedures for cases covered by the Rules on Summary Procedure, like forcible entry and unlawful detainer. The rules prohibit certain types of pleadings and limit allowable filings to complaints, compulsory counterclaims, and answers. Judgment must be rendered within 30 days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same.

38 Foreign-language proceedings Is it possible to conduct proceedings in a foreign language?

No, as English is generally the only language that is used in court proceedings. The use of Filipino and other vernacular languages and dialects of the Philippines is allowed only in limited instances such as to aid an illiterate or child witness, and always subject to English translation or interpretation by the court interpreter.

Effects of judgement and enforcement

39 Effects of a judgment

What legal effects does a judgment have?

A judgment or final order binds only the parties to the action, and persons in privity with them or their successors in interest.

A judgment or final order results in res judicata which involves both the concepts of bar by former judgment and conclusiveness of judgment. First, it operates as a bar to the prosecution of a second action upon the same claim, demand, or cause of action (claim preclusion); and precludes the relitigation of a particular fact of issue in another action between the same parties on a different claim or cause of action (issue preclusion). Second, a judgment estops the parties from raising in a later case the issues or points that were raised and controverted, and were determinative of the ruling in the earlier case. The dictum laid down in the earlier final judgment becomes conclusive and continues to be binding between the same parties, their privies and successors in interest, as long as the facts on which the judgment was predicated continue to be the facts of the case or incident before the court in a later case.

40 Enforcement procedure

What are the procedures and options for enforcing a domestic judgment?

A domestic judgment that has become final and executory may be enforced by filing a motion for execution in the court that rendered it, or in the court of origin in cases of appeal. There are limited instances wherein execution pending appeal may be allowed upon the posting of a bond and a showing of good causes for the execution.

41 Enforcement of foreign judgments Under what circumstances will a foreign judgment be enforced in your jurisdiction?

The effect of a foreign judgment of a tribunal having jurisdiction to render the judgment produces a conclusive effect upon the title of the specific thing which is the subject matter of the foreign judgment. The foreign judgment is also a presumptive evidence of a right as between the parties and their successors in interest, in case the foreign judgment is against a person. It may be repelled by evidence of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law

or fact. The foreign judgment will also not be enforced if it contravenes Philippine public policy.

In order to enforce a foreign judgment, it is necessary for an action to be filed with the appropriate local court, following the same rules on the enforcement of domestic judgments.

Costs

42 Costs

Will the successful party's costs be borne by the opponent?

Generally, costs are awarded to the prevailing party as a matter of course, but courts have the power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided as may be equitable.

43 Legal aid

May a party apply for legal aid to finance court proceedings? What other options are available for parties who may not be able to afford litigation?

The court may authorise a litigant to prosecute his action or defense as an indigent upon a proper showing that he has no means to that effect by affidavits and government certifications. The authority includes an exemption from payment of legal fees and from filing appeal bond, printed record and printed brief. The legal fees shall be a lien on any judgment rendered in the case favourable to the pauper or indigent, unless the court otherwise provides.

Parties who pass the merit test and indigency test may be represented by the Public Attorney's Office (PAO). There are also several free legal aid clinics and programs catering to litigants who cannot afford to engage their own counsel.

44 Contingency fees

Are contingency fee arrangements permissible? Are they commonly used?

Contingency fee arrangements are permissible provided that they are set out in a written contract, and the arrangement does not amount to a champertous agreement. Otherwise, the amount of fees due is that set out in the retainer contract. In the absence of such contract, an attorney can recover on the basis of quantum meruit (reasonable value of services). Lawyers in the Philippines typically charge clients in litigation matters by way of retainer fees, appearance fees and success fees. Timerated charges based on the hourly work rendered on a case is also common among large law firms.

45 Third-party funding ls third-party funding allowed in your jurisdiction?

There are currently no regulations in the Philippines with respect to third-party funding, as it is not yet a common or recognised practice in the country. Notably, the Philippine legal profession disallows champertous contracts.

46 Fee scales

Are there fee scales lawyers must follow? Are there upper or lower limits for fees charged by lawyers in your jurisdiction?

There are no fee scales prescribed by law. Parties are free to negotiate and agree with their lawyers on their fee arrangements, including scales, if necessary, taking into account the limitations set out in the Code of Professional Responsibility on fees determination (eg, time spent, skill demanded and novelty of questions involved).

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