APPELLATE PRACTICE

- Appeal: A proceeding by which sees from a higher court the review of judgment or final order of a lower court on the ground that the judgment or final order is against the evidence or the law
- An appeal may be taken from a particular matter when declared by the rules to be appealable.
- An appeal is not a constitutional but a statutory right.

Final Judgment Rule: An appeal may be taken only from a judgment or final order that completely disposes of the case or a particular matter which the rules declare to be appealable?

An appeal may be taken only from a

- 1. Judgment: Decision after the trial of merits.
 - Check Section 1 Rule 41 : Those final judgment which are not appealable.
- Final order that completely disposes case (appeal)
 - Vs interlocutory: It can still proceed with the case an order denying a MTD on the ground of res judicata it will proceed with the case (certorari)
- Particular matter in the case when declared by the rules to be appealable.

Example: Here the person who is making an appeal must file both a record of appeal and record of appeal (30 days from order-Record of appeal is needed because the trial court is still deciding the case)

- a. Order of exprepriation:
- Order of partition: Order of partition issued however the court still has to render decision.
- c. Order allowing or disallowing the will: The order allowing the will does not mean that the court is done with the case it will still render decision as to division of the property, pay the heirs etc.
- An judgment on foreclosure is appealable within 30 days from the filing of the notice of appeal and record on appeal

In appeal the oritorion is not grave abuse of discretion but reversible error. This must a differentiated from certionari which ground is GADALEJ

Q: Can a party file a notice of appeal even if there is a pending MR by the adverse party?

A: Yes. The party can file a notice of appeal even if there is a pending motion for reconsideration by the adverse party. This must be differentiated from the motion for execution pending appeal, if there is a MR you cannot file a motion for execution pending appeal.(JP Latex Technology vs Balloon rangers)

Dual Function of appellate court

1. Review of Correctness of function

Institutional Function: Progressive development of the law for general application in the judicial system.

Classification of appeal

- Appeal as a mater of right / Ordinary appeal (Rule 40 and 41)
- Discretionary appeal Petition for review (Rule 42 and 43) * Petition : initiatory pleading
 - The appellate court can refuse to give due course to the appeal

MEMORIZE: Ground to Dismiss: MTD:1. Without ment 2. Dilutory 2. TURK: The issues raised are too unsubstantial to require consideration.

 Appeal by certiorari/ Petition for review on certiorari (Rule 45): Discretionary appeal: Rule 45: SC

General Rule: Go to the SC appeal only through rule 45.

Exception:

- Notice on appeal. Criminal cases where the penalty of reclusion perpetua is imposed. Notice of annual to the SC.
- 2. An appeal from the Sandiganbayan criminal case

Modes of appeal

- Rule 40: MTC (First level courts)to RTC.
- Rule 41: Appeal from the RTC (original)
- 3. Rule 42: Appeal from the RTC(Appellate)
- 4. Rule 43 : Appeal from Quasi Judicial bodies
- 5. Rule 45 : Certionari to SC

Question of law: The appellant does not have an issue as to the fact the issue here is how the application of law on state of facts.

Markey

 A board resolution authorizing representative to initiate the appeal is not required for the purpose of filing a notice of appeal. A board resolution is required in petition for review, but in notice of appeal a board resolution is no longer necessary.

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Participation of the SOLGEN: Seigen is the lawyer of the government of the republic of the Philippines. In the appeals of the criminal cases before the CA and the SC the OSG represents the people. (If appeal to the CA and SC it is the OSG who represents the SC).

a. OSO has deputized coursel he still retains supervision and control of the case. Hence the period to appeal a depision is redicated form the service of the OSO and not on deputized coursel.

Audgment or order NOT APPEALABLE (SPACE ID)

Rhode Island Appellate Practice 1 Vol Thru Rel3 1993

Rhode Island. Supreme Court

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