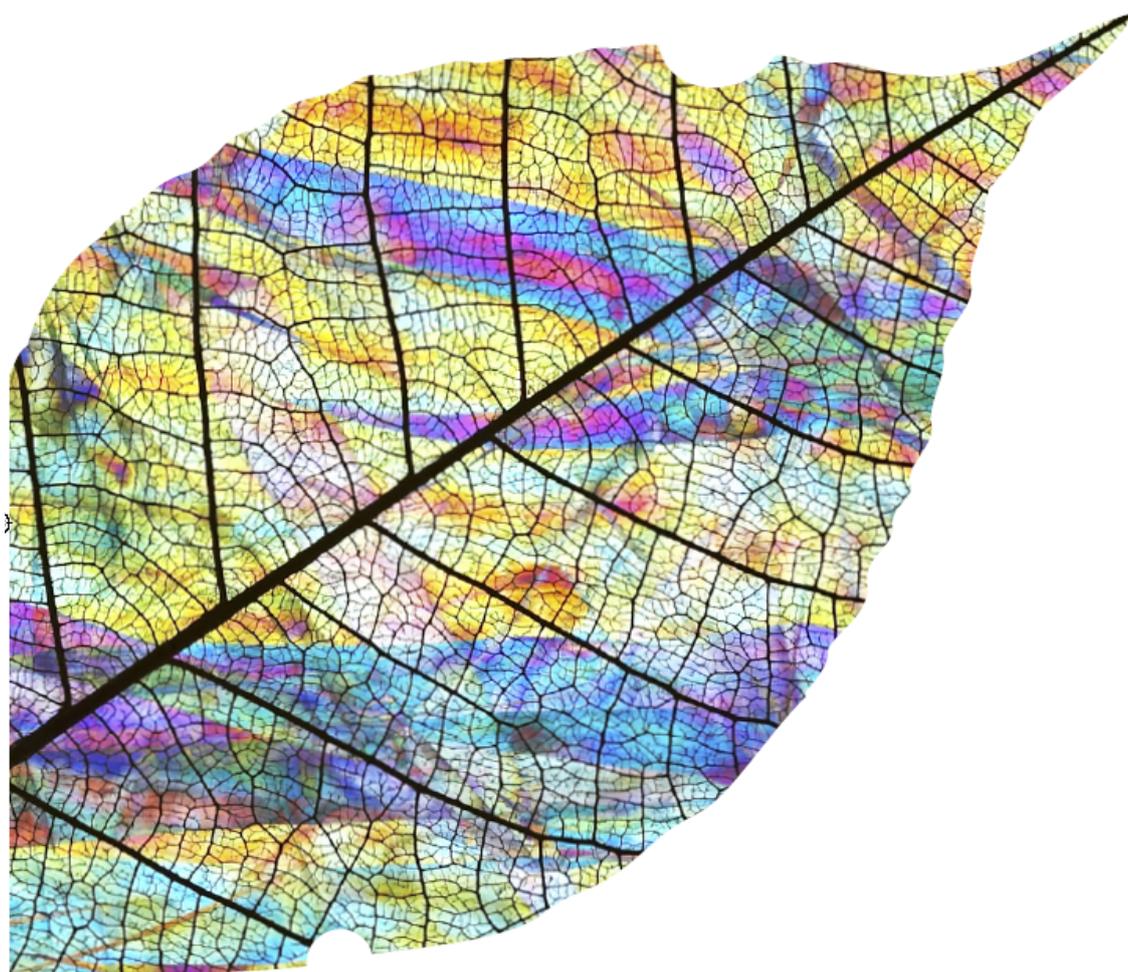


World Universities Comparative Law Project

Legal rating of the Philippines

carried out by students at the University of the Philippines

A production of the Allen & Overy Global Law Intelligence Unit

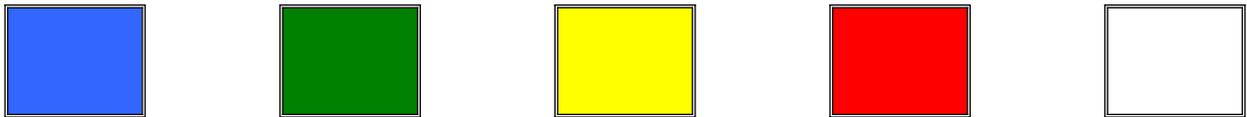


September 2016

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World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of the Philippines was carried out by students at the College of Law of the University of the Philippines.

The members of the Faculty of Law at the University of the Philippines who assisted the students were:

Concepcion L. Jardeleza, Associate Dean

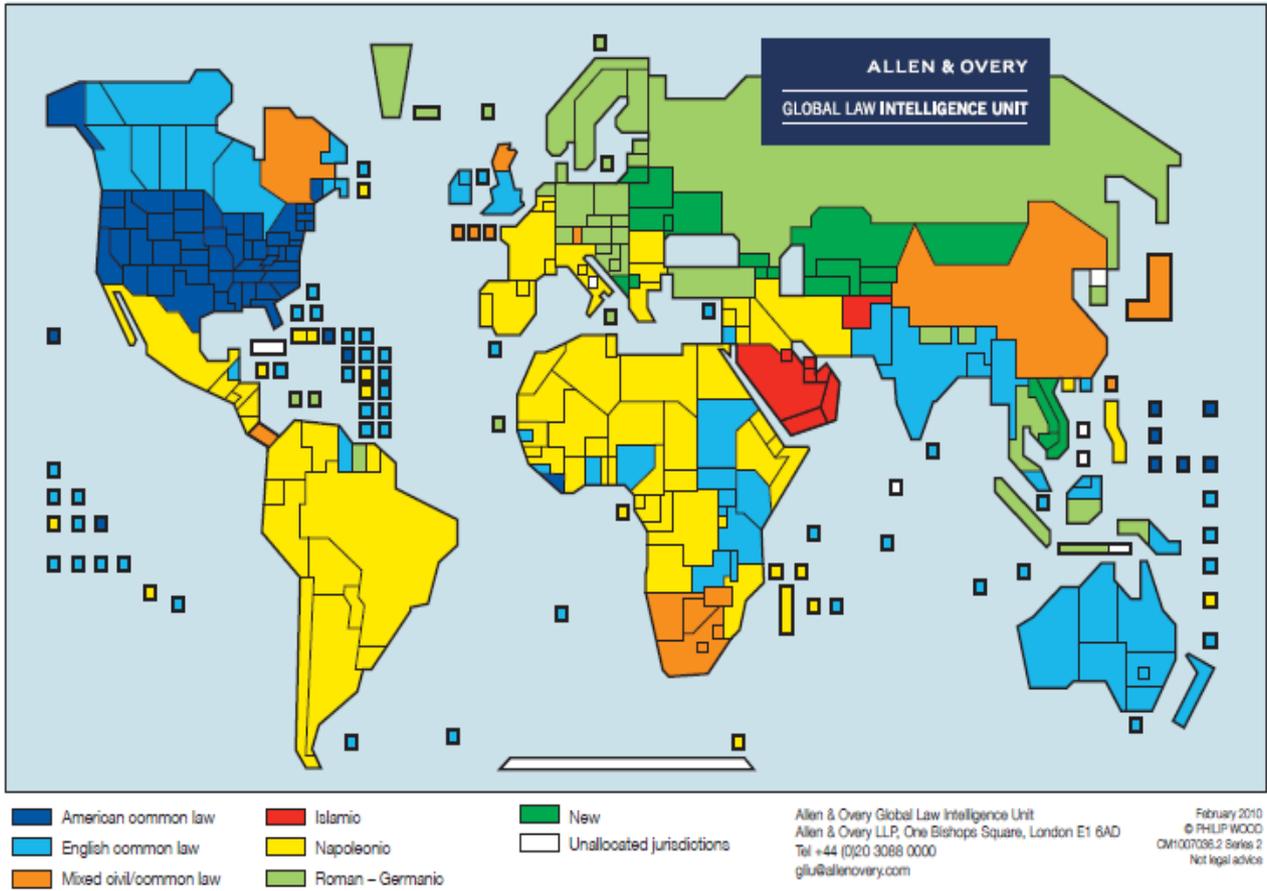
Rafael A. Morales, Professorial Lecturer

The students discussed the questions in the survey with Prof. Rafael A. Morales.

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

As Dean of the College of Law of the University of the Philippines, I am gratified that our law students were chosen as legal raters for the Philippines in the World Universities Comparative Law Project of the Allen & Overy Global Intelligence Unit headed by the renowned Philip R. Wood. Our College is at the forefront of legal scholarship in the Philippines and we encourage and foster participation in comparative law projects, such as this significant endeavour initiated by Mr. Wood.

I congratulate the students who joined the project, under the guidance of Prof. Rafael A. Morales in coordination with Associate Dean Concepcion L. Jardeleza. Indeed, the project has diversified our students' interaction with their counterparts outside of the Philippines, quite apart from their regular participation in international moot court competitions.

Our College would welcome further involvement in similar or related projects of Mr. Wood in the future.

Danilo L. Concepcion
The 14th Dean

Description of the legal rating method

Introduction

This paper assesses aspects of the law in the Philippines with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

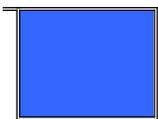
The survey was carried out by students at the College of Law of the University of the Philippines. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of the University of the Philippines, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

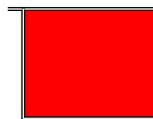
Methodology

The survey uses colour-coding as follows:

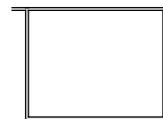
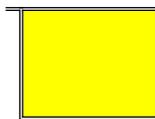
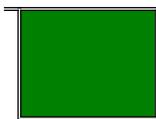
True



False



Can't say



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of the Philippines. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

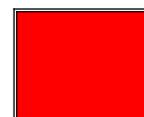
Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In the Philippines, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True



False



Can't say



Comment:

Set-off, known as “compensation” in the Civil Code of the Philippines, is one of the modes of extinguishing obligations between persons who are mutually creditor and debtor of each other.

Under Section 17(c) of the Financial Rehabilitation and Insolvency Act of 2010 (“FRIA”), set-off may be set aside by a Philippine court during a debtor’s rehabilitation proceeding, if made within 90 days prior to the issuance of a commencement order in such proceeding. However, if the debtor cannot be rehabilitated and must be liquidated, then set-off is in order. Thus, Article 124 of the FRIA provides that: “If the debtor and a creditor are mutually debtor and creditor of each other, one debt shall be set off against the other, and only the balance, if any, shall be allowed in the liquidation proceedings.”

The FRIA does not apply to banks and other financial institutions, as well as insurance companies and pre-need companies, as these entities are governed by different insolvency rules that do not have a provision similar to Section 17(c) of the FRIA.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

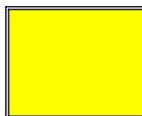
On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

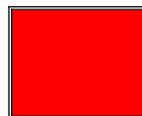
The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In the Philippines, the law offers a security interest which is highly protective of the secured creditor.

True



False



Can't say



Comment:

Universal security is generally not possible in the Philippines. The traditional security devices are a real estate mortgage if the collateral is real or immovable property, and either a chattel mortgage or a pledge for personal or movable property. It can be stipulated in a real estate mortgage that the secured obligation will include future debt and the collateral will cover real property acquired by the mortgagor after the constitution of the mortgage. This arrangement is not possible in a chattel mortgage. Turning to pledge, future debt may be secured by an existing deed of pledge but, since a pledge is a possessory lien, additional collateral must be delivered by the pledgor to the pledgee and further documentation is advisable. In any event, the secured creditor cannot simply appropriate the collateral in case the debtor defaults, for it is required by law that the mortgage or pledge be foreclosed by the secured creditor. Foreclosure may be suspended during rehabilitation proceedings and there is a requirement for creditors to confirm their contracts with a debtor under rehabilitation. Save for this, the FRIA does not diminish or impair the security interest of a secured creditor.

Universal trusts

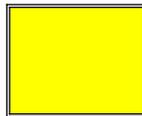
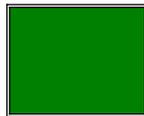
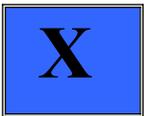
Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

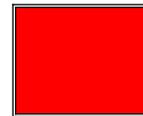
All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 The Philippines has a universal trust for all assets.

True



False



Can't say



Comment:

The Civil Code of the Philippines has a set of provisions on trust. It also adopts the “principles of the general law of trusts.” This is meant to incorporate “a large part of the American law on trusts,” according to the Code Commission that drafted the Civil Code of the Philippines.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

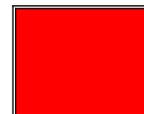
There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In the Philippines, the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True



False



Can't say



Comment:

Section 31 of the Corporation Code of the Philippines, however, provides that: “Directors or trustees who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.”

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee.

The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

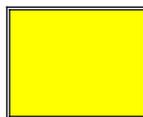
The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

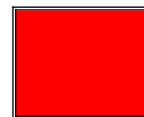
A contravening transaction is usually a criminal offence and void.

Q5 The Philippines permits a company to grant financial assistance for the purchase of its own shares.

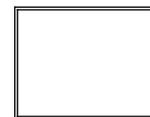
True



False



Can't say



Comment:

[There is no prohibition against financial assistance in the Philippines.](#)

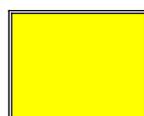
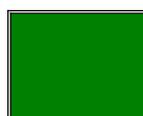
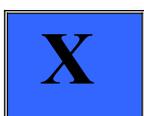
Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

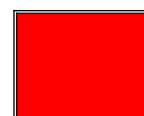
The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in the Philippines is open and has few restrictions.

True



False



Can't say



Comment:

Public takeover regime in the Philippines takes the form of a ‘mandatory tender offer,’ which applies only to “public companies.” A public company is one (a) listed on the Philippine Stock Exchange or (b) with assets exceeding 50 million pesos and with at least 200 stockholders owning not less than 100 shares each.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

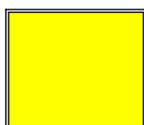
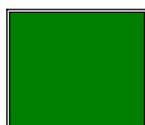
The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

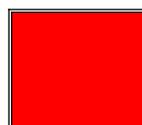
Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In the Philippines, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True



False



Can't say



Comment:

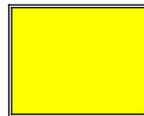
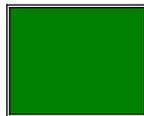
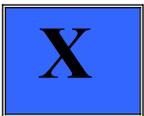
Consent is an essential element of a valid contract (Article 1318, Civil Code of the Philippines). The phrase “subject to contract” or similar language is a clear indication that the parties have not consented to be bound by the heads of terms.

Termination clauses

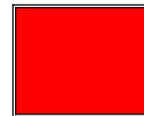
Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In the Philippines, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True



False



Can't say



Comment:

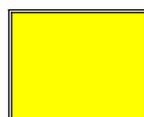
Article 1370 of the Civil Code of the Philippines states: “If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control.” In this regard, a termination based on a “trivial” event should not constitute an abuse of right, in the context of Article 19 of the Civil Code which provides that: “Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.”

Exclusion clauses

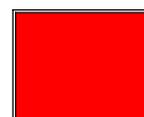
Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In the Philippines, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True



False



Can't say



Comment:

Freedom in contract-making is recognized in the Philippines. Thus, Article 1306 of the Civil Code provides that: “The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.”

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

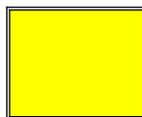
The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

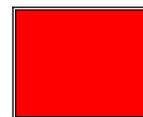
Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The Philippine courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Philippine public policy and mandatory statutes.

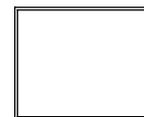
True



False



Can't say



Comment:

The foreign jurisdiction should have some connection or nexus to the contract. Further, the chosen foreign law must be pleaded and proved in court; otherwise, the Philippine court will presume that Philippine law on the matter is similar to the chosen foreign law and, therefore, will apply the applicable Philippine law.

Foreign jurisdiction clauses

Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The Philippine courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True



False



Can't say

**Comment:**

There is a possibility that a Philippine court might reject the exclusive-jurisdiction clause. The Supreme Court of the Philippines frowns upon such an exclusivity, because Philippine courts are thereby deprived of their possible jurisdiction over cases.

Arbitration recognition

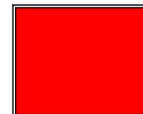
Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In the Philippines, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Philippine courts.

True



False



Can't say

**Comment:**

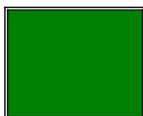
Arbitration is recognized by the Civil Code of the Philippines and the Alternative Dispute Resolution Act of 2004.

Class actions

Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In the Philippines, class actions where the class is bound if they do not opt out are generally not allowed.

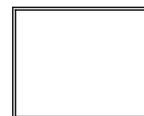
True



False



Can't say



Comment:

Class actions are allowed in the Philippines. Thus, Section 12, Rule 3, of the Rules of Court states that: “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. Any party in interest shall have the right to intervene to protect his individual interest.”

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

Ownership of land

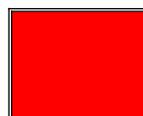
Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In the Philippines, nationals and local corporations are entitled to own land absolutely.

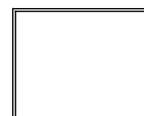
True



False



Can't say



Comment:

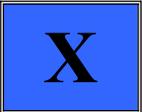
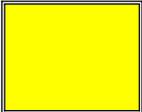
The Constitution of the Philippines allows Philippine nationals (including local corporations at least 60% of whose capital stock is owned by Philippine nationals) to own land in the Philippines.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in the Philippines is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

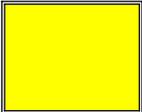
True			False	Can't say
				

Comment: The Philippines adopted the Torrens system.

Land development restrictions

Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In the Philippines, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True			False	Can't say
				

Comment:

Change of land use, including rezoning of areas from residential to commercial, is heavily regulated.

Other indicators

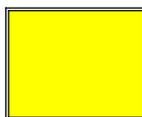
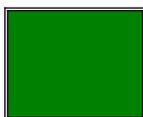
Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

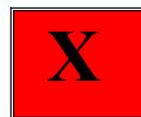
Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In the Philippines, there are few controls on hiring and firing employees or on the terms of employment.

True



False



Can't say



Comment:

Employment contracts are subject to special laws on labour unions, collective bargaining, working conditions, and labour standards. There are substantive and procedural requirements for firing or dismissing employees. Not only must the dismissal be for a just or an authorized cause, or be related to the employee's health or failure to pass the probationary period, but the requirements of due process must also be observed before an employee can be dismissed.

Environmental restrictions

Q18 In the Philippines, the rules governing the environment and liability for clean-up are very light and relaxed.

True



False



Can't say



Comment:

The Philippines has several laws and regulations concerning air and water quality management, management of natural resources, land use, and waste management. There are penalties for their breach, including fine and imprisonment. A "writ of *kalikasan*" (comparable to the writ of amparo and the writ of habeas corpus) is available in the Philippines. This is a legal remedy that protects one's constitutional right to healthy environment. "*Kalikasan*" is a Filipino word for nature.

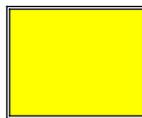
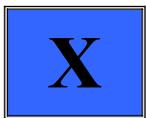
Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

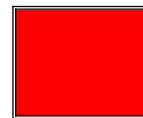
Foreign direct investment

Q19 In the Philippines, foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

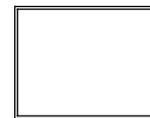
True



False



Can't say



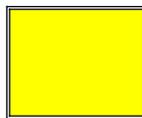
Comment:

Foreign direct investments are encouraged in the Philippines. Under the Foreign Investments Act of 1991, there is a Negative List that specifies the industries where foreigners cannot invest totally or partially. Outside of this list, foreigners can freely own and control local companies.

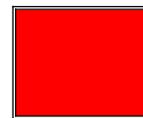
Exchange controls

Q20 In the Philippines, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

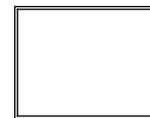
True



False



Can't say



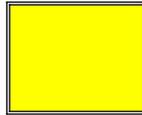
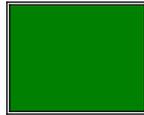
Comment:

The foreign-currency borrowing and the equity investment of foreign shareholders must be registered with the *Bangko Sentral ng Pilipinas*, to enable the borrower or the shareholder to source foreign currency from the Philippine banking system for remittance abroad. Without registration, the foreign currency will have to be sourced outside of the banking system (e.g., money changers and forex dealers not affiliated with banks).

Alien ownership of land

Q21 In the Philippines, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True



False



Can't say



Comment:

Foreign-controlled companies cannot own land in the Philippines. However, they can lease land just like nationals or residents of the Philippines.

Application of the law

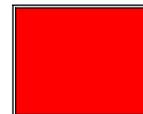
Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In the Philippines, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True



False



Can't say



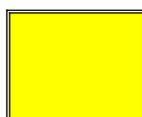
Comment:

Philippine courts are mandated to be impartial.

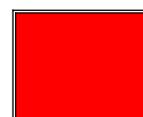
Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in the Philippines are not considered materially greater than in other comparable countries.

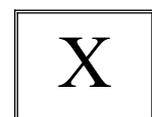
True



False



Can't say



Comment:

We have no sufficient empirical data to be able to answer one way or the other.

Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	Can't Say

True



False



Can't say



Commentary and suggestions for change

In the area of security devices, particularly the Philippine pledge which is a possessory lien, it is opportune to amend the Civil Code of the Philippines to allow claims for deficiency in case the net proceeds from the foreclosure sale of the pledged property do not satisfy fully the outstanding obligations. At present, Article 2115 of the Civil Code prevents such claims, as it provides that: “The sale of thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are equal to the amount of the principal obligation, interest and expenses in a proper case.”

It is also advisable to amend the Chattel Mortgage Law (Act No. 1508, enacted in 1906) to cover “after-incurred obligations” (*i.e.*, obligations incurred after the constitution of the chattel mortgage). Currently, only a real estate mortgage can cover future obligations inasmuch as, pursuant to Section 5 of the Chattel Mortgage Law, the chattel mortgagor and mortgagee are made to swear under oath that the chattel mortgage “is made for the purpose of securing the obligation specified in the conditions thereof, and for no other purpose.” This quoted phrase was interpreted by the Supreme Court of the Philippines in *Acme Shoe, Rubber and Plastic Corp. v. Court of Appeals*, 260 SCRA 714 (1996), as referring only to present obligations, not future obligations.

Another desirable amendment to the Chattel Mortgage Law is to permit a chattel mortgage (like a real estate mortgage) to extend to “after-acquired property” (*i.e.*, property acquired by the mortgagor after the creation of the mortgage). At present, this is not possible in a chattel mortgage, because Section 7 of the Chattel Mortgage Law states that: “A chattel mortgage shall be deemed to cover only the property described therein and not like or substituted property thereafter acquired by the mortgagor and placed in the same depository as the property originally mortgaged, anything in the mortgage to the contrary notwithstanding.” Accordingly, it is still necessary, at present, to execute a new chattel mortgage or a supplement to the existing one, for the purpose of adding property to the mortgage pool.

Rafael A. Morales

Profiles of the contributing students

The survey was carried out by the following students of the College of Law of the University of the Philippines (U.P.):

Lorely Christine R. Agliam



Lorely graduated from the College of Law of the University of the Philippines in 2016. Her areas of interest include labor and commercial law.

She was an intern in the University's Office of Legal Aid and in the Office of the Government Corporate Counsel of the Republic of the Philippines.

Lorely can be reached through lorely.agliam@gmail.com.

Justin Caesar Anthony D. Batocabe



Justin completed his Juris Doctor degree from the University of the Philippines. He can be contacted at justinbatocabe@gmail.com.

Maria Janica V. Brigola



Janica is a women's rights advocate. She currently works at the Philippine Commission on Women which is the national machinery for gender equality and women empowerment in the Philippines. She is involved in policy development and has recently worked on a Philippine Report to the United Nations Convention on the

Elimination of All Forms of Discrimination Against Women (UN CEDAW). In this connection, she attended the UN CEDAW Constructive Dialogue, serving as technical backstop to the Philippine Delegation in Geneva.

Janica worked as a paralegal for roughly four years in a private law firm while completing her law degree, and did internships in the Office of the Solicitor General and the Office of the Government Corporate Counsel. She was also a member of the Women in Law.

Her email address is mjv_brigola@yahoo.com.

Modesta Apesa H. Chungalao



Ms. Chungalao obtained an undergraduate degree in Sociology from the University of the Philippines, before entering the College of Law, where she graduated with a degree of Juris Doctor in 2016. She was a Research Associate with the U.P. Law Center's Institute of International Legal Studies.

Ms. Chungalao was the team captain of the 2013 U.P. International Humanitarian Law Moot Court team which reached the finals of the Philippine National Rounds. She was adjudged Best Speaker during the Final Round of that competition, held at the Supreme Court of the Philippines. In 2015, she became the champion in the 2015 International Rounds of the Price Media Law Moot Court Competition in Oxford.

Ms. Chungalao can be reached at apesa.chungalao@yahoo.com.ph

Jose Aniceto David S. Dealino



Jose Aniceto David graduated with a degree in Political Science from the University of the Philippines, before completing his Juris Doctor degree in 2016. His fields of interest include legal theory, credit transactions, corporation law and securities regulation, land titles and deeds, as well as banking and finance law.

He served as a Legal Apprentice at the Supreme Court of the Philippines, a Law Intern with the College of Law's Office of Legal Aid, and a Legal Extern with the Office of the Solicitor General of the Philippines.

Jose Aniceto may be contacted at jadd.dealino@gmail.com or jsdealino@up.edu.ph.

Milagros Katarina A. Fernandez



Katarina was admitted to the Philippine Bar in 2015. Her main fields of interest are intellectual property, corporate, banking and taxation law, as well as criminal law and criminal procedure.

Katarina has undertaken internships in the Office of the Ombudsman of the Philippines and in the Office of the Solicitor General.

She is now a Senior Associate in Sycip, Gorres & Velayo, the Philippine member firm of the Ernst & Young Global, where she provides business tax services.

Her email address is mkatarina.fernandez@gmail.com.

Kathleen Kirby P. Hipolito



Kirby is part of U.P. College of Law Class of 2015. Her fields of interest are commercial law, energy law, taxation and banking.

Kirby is a Certified Public Accountant with five years work experience in the Finance Department of Manila Electric Company. She is now a Junior Associate in a medium-sized law firm in Makati City for six months now.

Kirby can be reached at kirbyhipolito@gmail.com.

Oswald P. Imbat



Apart from his Juris Doctor degree, Oswald has an undergraduate degree in Political Science from the University of the Philippines. His interests include civil law, corporate law, and intellectual property law.

He may be reached at oswald.imbat@gmail.com.

Al-azree J. Mohammadsali



Al earned his Juris Doctor degree in 2015. His interests include litigation and dispute resolution, commercial law, and finance.

While in law school, Al worked as a full-time legal researcher at the Sandiganbayan, the specialized anti-graft court of the Philippines. He also served as an intern for the College's legal aid office and for the Office of the Government Corporate Counsel.

Al can be reached at alazree@gmail.com.

Roddel R. Paraños



Roddel (rodde.paranos@gmail.com) graduated with a degree in Business Administration from the University of the Philippines in 2010, and completed his Juris Doctor degree in 2015. He is now a full-fledged lawyer. His fields of interest include civil law, criminal law, labor law, corporation law, as well as banking and finance law.

He served as a Law Intern and Research Assistant at the College of Law's Office of Legal Aid. He is currently working as an Assistant Attorney at Ortega, Bacorro, Odulio, Calma & Carbonell Law Offices.

Amirah L. Peñalber



Amirah graduated with B.A in Political Science (*cum laude*) from the University of the Philippines, before completing her Juris Doctor at the U.P. College of Law.

She may be reached at irahpenalber22@gmail.com.

Angelo Francisco Piedra



Angelo received his Juris Doctor in 2016. His interests include corporate and financial law, as well as international commercial arbitration.

Angelo was an active member of the committee that revised the present constitution of the Law Student Government, and was an ardent proponent of the creation of the current Student Tribunal.

He apprenticed in private law firms specializing in litigation, corporate, and tax law. He also completed internships with the Office of the Solicitor General, as well as the Office of the Government Corporate Counsel.

Angelo is well-versed in French. His email address is abpiedra@yahoo.com.

Mara Angeli Villegas



Mara graduated with a degree in B.A. Political Science in 2008 and Juris Doctor in 2015 from the University of the Philippines. She started working with the Trust Banking Group of the Philippine National Bank, and later joined the Treasury Worldwide Services of JP Morgan. Starting 2012, she joined the Institute of Human Rights and was among the researchers for *Access to Justice of Persons with Disabilities, Volumes 1 and 2* funded by the American Bar Association. She is currently part of Salvador, Llanillo and Bernardo Law Office handling tax litigation, corporate management services, due diligence and intellectual property registrations.

She can be reached at mara_villegas@yahoo.com or mtvillegas@live.com.

Project Directors

Danilo L. Concepcion (Dean)

Professor of Law



Professor Danilo L. Concepcion is the current Dean of the University of the Philippines College of Law. He has consistently been at the top of his class. He finished Agricultural Engineering at the De La Salle-Araneta University in 1979, *summa cum laude*, and subsequently topped the Board Exam. He studied law at the University of the Philippines graduating *cum laude* in 1983 and was a topnotcher in the Bar Examinations given that year. He received his Master of Laws degree from the University of London in 1986 as a scholar of the British government.

He was appointed Associate Commissioner of the Securities and Exchange Commission in 1996 and served until his resignation in 2000 to become President of the De La Salle-Araneta University.

He returned to U.P. in 2002 to become Associate Dean of the College of Law, Head of the U.P. Law Center and Director of the Institute of Judicial Administration until May of 2006. He also served as the U.P. Vice-President of Legal Affairs.

Presently, he is a law professor, bar reviewer, corporate law practitioner, and radio and TV personality.

Concepcion L. Jardeleza

Associate Professor of Law



Professor Jardeleza obtained her Bachelor of Arts in Political Science (1971) and Bachelor of Laws (1975) degrees from the University of the Philippines and subsequently passed the Bar Examinations in 1976. Previously, she was an American Field Service Scholar and Entrance Scholar of General William Mitchell High School in Colorado, USA.

Professor Jardeleza is the current Associate Dean of the U.P. College of Law. At present, she teaches classes in Legal Profession and Sales. Prior to becoming Associate Dean, she was Officer-in-Charge of the information and Publication division of the U.P. Law Center. She is also a former College Secretary and Director of the evening program, and has worked with the U.P. Law Center in various capacities since 1994. Her areas of interest include legal reforms and legal ethics.

She has also contributed to several law publications. She has been an editor of the Philippine Law Report, the ASEAN Law Journal, and other publications of the UP Law Center. She has written on subjects including the Code of Professional Responsibility, the Anti-Violence Against Women and Children Act, the Philippine judicial system, and dispute resolution in the Philippines.

Rafael A. Morales

Professorial Lecturer



Aside from being a Professorial Lecturer at the U.P. College of Law and the Faculty Adviser of the Philippine Law Journal, Prof. Rafael A. Morales is the Managing Partner of Morales Justiniano Peña & Lumagui. Prior thereto, he was the Managing Partner of SyCip Salazar Hernandez & Gatmaitan and there headed its banking, finance and securities practice group.

Prof. Morales finished his Bachelor of Arts in Political Science (*cum laude*, 1970) at the University of the Philippines where he also took his Bachelor of Laws (*cum laude* and class valedictorian, 1974). He was admitted to the Philippine Bar in 1975 and ranked 4th in the 1974 bar examinations. In 1986, he was admitted to the New York Bar.

After his LL.M. (1978) at the University of Michigan (where he was a DeWitt Fellow), Prof. Morales trained as a foreign attorney at Rosenman Colin Freund Lewis & Cohen in New York (1978-1979). He later became a foreign attorney at Anderson Mori & Rabinowitz in Tokyo (1984-1986). He was president of the Inter-Pacific Bar Association (2009-2010).

Prof. Morales authored two books: *The Philippine General Banking Law (Annotated)* and *The Philippine Securities Regulation Code (Annotated)*, as well as numerous legal articles.

He can be reached at ramorales@primuslex.com.

Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenoverly.com or Melissa Hunt, melissa.hunt@allenoverly.com.

Philip R Wood QC (Hon) BA (Cape Town), MA (Oxon) LLD (Lund, Hon)

Head, Allen & Overy Global Law Intelligence Unit

Special Global Counsel at Allen & Overy LLP

Visiting Professor in International Financial Law, University of Oxford

Yorke Distinguished Visiting Fellow, University of Cambridge

Visiting Professor, Queen Mary University, London

Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

Allen & Overy LLP

One Bishops Square

London E1 6AD

T: 00 44 (0)20 3088 0000

D: 00 44 (0)20 3088 2552

M: 00 44 (0)7785 500831

philip.wood@allenoverly.com

intelligence.unit@allenoverly.com

D: 00 44 (0)20 3088 2750

melissa.hunt@allenoverly.com

Allen & Overy LLP

One Bishops Square, London E1 6AD United Kingdom | Tel +44 (0)20 3088 0000 | Fax +44 (0)20 3088 0088 | www.allenoverly.com

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