IS A VOTE ON A MOTION FOR RECONSIDERATION WHICH LACKS THE REQUIRED THREE VOTES OF THE MEMBERS OF A DIVISION OF THE SUPREME COURT A VALID ACTION OF THE COURT? THE CASES OF YALE LAND AND THE SUMILAO FARMERS

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Article III, section 4 of the 1987 Constitution states that:

> Sec. 4 (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or, in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.
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> (2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.
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> (3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*; Provided, that no doctrine or principle of law

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> laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.

The question addressed in this article is whether a resolution by a division of the Supreme Court on a motion for reconsideration (whether a first motion for reconsideration or, in certain instances, a second motion for reconsideration) that lacks the required concurrence of at least three of the members of the division (assuming them to be members who "actually took part in the deliberations on the issues in the case") is a valid action of the division; and if not, what action must the division take.

This was the pivotal issue raised before the Second Division of the Supreme Court, later Special First Division,[1] in *Yale Land Development Corp. v. Caragao, et. al.*[2] This case involved a petition for review from the decision of the Court of Appeals in an original petition in CA-G.R. SP No. 28625 to annul the decision of the Regional Trial Court of Tagaytay City, Branch 18, in a land case docketed as Civil Case No. TG-493.

The petitioners in the Court of Appeals alleged that the decision in TG-493 was null and void due to extrinsic fraud because of the collusion or conspiracy between the contending parties (plaintiff and defendants) essentially committed as follows: Petitioner X acquired, pursuant to a deed of absolute sale, the title of Y to a large tract of land for a specified price, payable on installment. The parties later agreed to a suspension of the installment payments to allow the seller (Y) to clear the notice of *lis pendens* subsequently (i.e., after the sale to X which, however, was not annotated on the title of the property) annotated upon the title

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[1] This came about as a result of the operation of Supreme Court *en banc* Resolution No. 98-12-05-SC dated 21 December 1998 entitled "Reorganizing the Divisions of the Court and Providing for Special Divisions to Resolve Motions for Reconsideration of Decisions or Signed Resolutions in Judicial Cases". This resolution was issued in view of the two vacancies in the Second and Third Divisions created by the retirement of then Associate Justice Florenz D. Regalado and the promotion of Associate Justice Hilario G. Davide, Jr., to Chief Justice. It is provided, among other things, in this resolution that: "As a consequence of this reorganization, the cases raffled to each Member of the Court shall henceforth pertain to the Division to which such Member has been assigned; Provided, however, that motions for reconsideration of decisions or signed resolutions penned by such Member while yet a Member of a previous Division shall be resolved by a *Special Division* composed of the Chairman and Members of the previous division with the Chairman of the former Division as Chairman of the Special Division." Furthermore, "[m]otions for reconsideration of minute resolutions of a Member's previous Division shall be resolved by his or her new Division." This resolution took effect on 15 January 1999.

[2] G.R. No. 135244, 15 April 1999.

of the property on account of a suit by Z for recovery of title to the property from Y (who still appeared as the registered owner). Meanwhile, the value of the property greatly appreciated by over twenty times the original price contracted to be paid by X from Y. The petitioners (X and A, who intervened after having acquired all of X's rights to the property) thereafter alleged that there was collusion or conspiracy between Y and Z for Y to lose the civil case to Z so that X (and ultimately, A) will lose either his title or the right to acquire the property for a price much lower than what it was worth in the market.

In support of their allegation of extrinsic fraud, the petitioners in the Court of Appeals submitted as part of their evidence proof that: (a) the trial court originally rendered a decision favorable to Y dismissing Z's suit; (b) after this decision became final, Z filed an untimely motion for reconsideration; (c) Y did not oppose the untimely motion for reconsideration; (d) pending the motion for reconsideration, Z filed a motion to amend his complaint to include a new cause of action, this time based on a deed of trust supposedly executed by Y's father agreeing to hold the property in trust for Z; (e) Y did not oppose the order allowing the amended complaint; (f) Y did not oppose the motion filed by Z for summary judgment based on the deed of trust; (g) Y did not file a motion for reconsideration of the decision in favor of Z which held that Z was the owner of the property on the basis of the deed of trust, despite Y's own evidence earlier submitted to the trial court proving that Z had been thrice convicted of crimes involving moral turpitude (e.g., falsification, *estafa* thru falsification of public documents) for which he had thrice served sentence in the National Penitentiary; (h) Y did not appeal the decision in favor of Z; (i) Y did not oppose the motion for execution of Z for cancellation of Y's title and issuance of a new one in favor of Z; (j) Y earnestly contested the suit of Z for about 10 years prior to the filing by Z of his motion to amend his complaint, from which time the case proceed swiftly (in comparison to the roughly ten years they were heatedly litigating the case prior to that time) to judgment in favor of Z in a span of a couple of months.

Petitioners also submitted evidence that Z's own admission against interest made to X's counsel that the deed of trust was merely manufactured by no less than Y's counsel to favor Z and that the hand-writing expert testimony that the signatures of Y's father in the deed of express trust were forgeries or spurious. Moreover, Z never rebutted the testimony of X's counsel as to the supposed manufacture of the deed of trust by Y's counsel.

Despite the foregoing evidence, the Court of Appeals ruled in favor of Z, prompting the petitioners X and A to file their separate petitions before the

Supreme Court. The petition filed by A was raffled to the Supreme Court's Second Division and docketed as G.R. No. 135244, while the petition filed by X was docketed as G.R. No. 135192. The petition was decided quickly. The petition was filed on 16 October 1998, a Friday, at 4:01 in the afternoon. Less than three working days[3] later, on 21 October 1998, the Second Division issued an extended unsigned resolution[4] dismissing the petition on the principal ground that the Court of Appeals was correct in finding that there was no extrinsic fraud. According to the Court, there was no extrinsic fraud because the deed of express trust upon which petitioners based their claim of extrinsic fraud was itself presented to the trial court in TG-493.[5]

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[3] In the author's experience, it normally takes about four to six months for a petition to be acted upon by the Court. Unless the Court dismisses a petition outright for failure of the petitioner to comply with the technical requirements embodied in the Rules of Court (formerly embodied in SC Resolution No. 1-88 and 28-91), the Court will require the respondent to file its comment to the petition. After such comment is filed, it normally takes the Court between six months to one year to determine whether to dismiss the case (in which case a minute resolution is issued dismissing the same) or to give the same due course. If a petition is given due course, the parties are then required to submit their simultaneous memoranda. From submission of the parties' memoranda, it normally takes the Court between six months to two years to decide the case by issuing a full-length decision or an extended resolution, both of which contain the facts and the law on which the decision is based.

[4] This extended resolution contained about 850 words excluding references to the parties and the case. It contained the factual background of the case, an extensive discussion of the two (2) legal issues raised therein, and an extensive discussion of the reasoning of the Court in dismissing the petition, complete with citations of the cases the Court found as appropriate precedents. Petitioners argued that this was in reality a full-length decision, not a mere minute resolution.

[5] Petitioners questioned the reasoning of the Court. They contended that the Court erred in not finding conspiracy or collusion. Petitioners were of the view that the actions of both the plaintiff and defendants as shown by both documentary and testimonial evidence clearly established such collusion for Y to lose to Z in order to defeat X's right to the property. If a defendant (Y) agrees to lose to a plaintiff (Z) with the aim of defeating the rights of a third person (X) in the subject property through a forged document (deed of trust), there is collusion even if the forged document is submitted to the Court. The Court in this case ruled that there was no extrinsic fraud because the forged document was submitted to the Court citing previous cases. This ruling is contrary to applicable previous decisions of the Court such as those in Garchitorena v. Sotelo, 74 Phil. 25 (1942), where the Court held that the collusive conduct of the parties to a case constitutes extrinsic or collateral fraud by reason of which the judgment therein may be annulled in a separate suit by an innocent third party who was prejudiced thereby. *See also, Militante v. Edrosolano*, G.R. No. L-27940, 10 June 1971, 39 SCRA 473 (1971) and *Islamic Da'Wah Council of the Phils. v. Court of Appeals*, G.R. No 80892, 29 September 1989, 178 SCRA 178 (1989).

Petitioner filed a timely motion for reconsideration of the Second Division's denial of their petition. This however was later denied by the Court, this time acting through its First Division, in its resolution dated 18 January 1999.

Petitioner thereafter filed a timely motion to set aside the resolution of 18 January 1999 for being contrary to Supreme Court *en banc* Resolution No. 98-12-05-SC.[6] The petitioner contended that pursuant to this administrative issuance which became effective on 15 January 1999, petitioner's motion for reconsideration should have been decided by a "Special Division composed of the Chairman and Members of the previous division with the Chairman of the former Division as the Chairman of the Special Division," not by the First Division of the Court. Petitioner argued that the original resolution of the Second Division dated 21 October 1998 dismissing its petition was a "decision," not a "minute resolution."[7]

Acting on the petitioner's motion to set aside the First Division's resolution of 18 January 1999 for being contrary to Supreme Court Resolution No. 98-12-05-SC, the Supreme Court's First Division, in a resolution dated 15 April 1999, ruled that:

> WHEREFORE, by a vote of four, with one abstention, the motion to refer the case to the Court *en banc* is DENIED, and there being an even vote (2-2), with one abstention, on the central issue of whether or not petitioner's second motion for reconsideration should be admitted and granted, said motions are deemed DENIED per the Court *En Banc*'s Resolution No. 99-1-09-SC dated January 26, 1999, resulting in the affirmation of the Resolution of this Division dated January 18, 1999.[8]

Again, petitioner, by motion dated 12 May 1999, sought reconsideration of the foregoing resolution dated 15 April 1999 on the ground that it is contrary

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[6] *Supra*, note 1.

[7] Petitioner argued that the terms "decision" and "minute resolution" have settled meanings. The former contains the facts and the law on which it is based while the latter does not, citing *Commercial Union Assurance Co. v. Lepanto Consolidated Mining Co.*, G.R. No. L-43342, 30 October 1978, 86 SCRA 79 (1978).

[8] Supreme Court *En Banc* Resolution A.M. No. 99-1-09-SC dated 26 January 1999 captioned "In the matter of clarifying the rule in resolving motions for reconsideration ..." provides that: "A motion for the reconsideration of a decision or resolution of the Court *en banc* or of a division may be granted upon a vote of a majority of the members of the *en banc* or of a division, as the case may be, who actually took part in the deliberation of the motion." It further provides that, "if the voting results in a tie, the motion for reconsideration is deemed denied."

to article VIII, section 4, paragraph (3) of the Constitution, quoted in its entirety in the first part of this article. It contended that its motion to set aside the resolution of 18 January 1999 and the issue of whether its second motion for reconsideration should be allowed and granted should be resolved by at least three members of the division, which is a "majority of the members who actually took part in the deliberations on the issues in the case and voted thereon (in this case, four members participated in the deliberations), and in no case, without the concurrence of at least three of such members. Because such minimum required vote was not attained, as in fact the voting was a mere "two-two" (no three votes of concurrence was obtained), petitioner argued that the Constitution in article VIII, section 4, paragraph (3) mandated that if the required majority is not obtained, the case shall be decided *en banc*.

By resolution dated 14 June 1999, the First Division denied petitioner's motion of "12 May 1999 praying, among other things, to partially reconsider and set aside the Resolution of 15 April 1999 by referring to the Court *en banc* the central issue of whether or not the petitioner's second motion for reconsideration should be admitted or denied" on the ground that "the first motion for reconsideration having been denied with finality in the resolution of January 18, 1999 and the *same voting having been attained* as in the resolution of April 15, 1999."

Upon receipt of the foregoing resolution, petitioner asked for leave to file a second motion for the reconsideration of the denial of its first motion for reconsideration, which in turn sought the reconsideration of its motion to refer the same to the Court *en banc*. It will be noted that the First Division, in its resolution dated 14 June 1999, denied petitioner's motion dated 12 May 1999. Said motion, in turn, embodied three distinct motions, namely, petitioner's (a) first motion for reconsideration of the resolution of the Court dated 15 April 1999 (which denied petitioner's motion to set aside the resolution dated 18 January 1999); (b) first motion to refer the case to the Court *en banc*; and (c) motion for leave to file second motion for reconsideration of the resolution dated 18 January 1999 (denying petitioner's motion for reconsideration of the resolution of 21 October 1998 denying the petition). Petitioner argued that because the voting on its motion of 12 May 1999 was the same as in the resolution of 15 April 1999, the resolution of 14 June 1999 suffered from the same constitutional infirmity pointed out by petitioner in its motion of 12 May 1999 – the absence of the mandatory three concurring votes of the members of the division.

The respondent then filed a motion for entry of judgment which the petitioner opposed.

On 15 September 1999, acting on the pending incidents, the Special First Division issued a resolution as follows:

> G.R. 135244 (YALE LAND DEVELOPMENT CORP. vs. CARAGAO, ET AL.). On October 16, 1998, petitioner Yale Land Development Corporation filed a petition for review on *certiorari* with the Court. The same was denied by the Second Division in a Resolution dated October 12, 1998. Petitioner filed a motion for reconsideration, which was denied, this time, by the First Division, on January 18, 1999.
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> Petitioner filed a motion for leave to file a second motion for reconsideration, arguing that in accordance with the Court's *En Banc* Resolution No. 98-12-05-SC dated December 21, 1998, the First Division was not the proper division to act on the first motion for reconsideration, the petition having been originally denied, not by the First Division, but by the Second Division.
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> The First Division rejected this contention, the resolution denying due course not being a signed resolution. As to the question, however, of whether to admit or deny petitioner's second motion for reconsideration, the vote was tied at two-two, with the fifth member, not having participated in the deliberations of the case, abstaining.
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> Petitioner's motion for leave to file a second motion for reconsideration was thus deemed denied, in line with the Court's *En Banc* Resolution No. 91-1-09-SC dated January 20, 1999 providing that if voting results in a tie, the motion for reconsideration is deemed denied.
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> Paragraph 3, Section 4, Article VIII of the Constitution provides, however, that "[c]ases or matters heard by a division, shall be decided or resolved with the concurrence of a majority of the members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, *without the concurrence of at least three of such members. When the required number is not obtained, the case shall be decided en banc.*

> The function of the Court being of vital and far-reaching significance to the nation and to the body politic, it is imperative that the actions of the Court in the administration of justice be viewed as decisive and definitive. Moreover, public interest requires that the constitutional question involved be given a careful and conscientious review by the Court.
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> Given the deadlock vote on the issue of whether to grant petitioner's second motion for reconsideration, and without necessarily giving due course to petitioner's second motion for reconsideration, the Court deems it wise to require the parties to submit their arguments on the issue of whether or not a two-two vote on a motion for reconsideration in a division should be referred to the Court *en banc*.
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> ACCORDINGLY, the parties are given a non-extendible period of ten (10) days within which to file their respective position papers on the sole issue of whether or not a motion for reconsideration decided by a two-two vote by a division should be referred to the Court *en banc* for resolution.[9] (italics supplied)

After the parties submitted their respective position papers, the Special First Division issued a resolution dated 15 December 1999 as follows:

> G.R. No. 135244 (Yale Land Development Corporation vs. Pedro Caragao, et al.). – On May 12, 1999, petitioner Yale Land Development Corporation filed a motion to refer the instant case to the Court *en banc*, citing as ground therefore the 2-2 vote garnered on the issue of whether or not to grant petitioner's second motion for reconsideration. Petitioner alleged that, conformably to Paragraph 3, Section 4, Article VIII of the Constitution, cases or matters heard by a division should be decided with the concurrence of a majority of the Members who took part in the deliberations and actually voted therein, and that if the requisite number cannot be obtained, the case should be referred to the Court *en banc*.
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> On June 14, 1999, this Division denied the aforesaid motion to refer for lack of merit, compelling petitioner to file a motion for leave to file a second motion for reconsideration of said denial. In consideration of said motion, the Division required the parties to submit their respective position papers on the sole issue of whether or not a motion for reconsideration decided by a two-two vote by a division should be referred to the Court *en banc* for resolution.

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[9] Yale Land Development Corp. v. Caragao, G.R. 135244, 15 September 1999.

> After a review of the position papers submitted by the parties, the Division referred the matter to the Court *en banc* but the latter, in its session of December 7, 1999, declined to accept the case, with only Justices Melo, Panganiban, and Vitug voting to grant the same.
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> ACCORDINGLY, petitioner's motion to file a second motion for reconsideration and to refer the same to the Court *en banc* dated July 6, 1999 is hereby DENIED.[10]

Thus, the Court *en banc* refused to accept the referral made by the Special First Division. In light of this refusal, the Special First Division itself resolved to deny petitioner's motion to file a second motion for reconsideration and to refer the same to the Court *en banc*.

Are these actions of the Court *en banc* and the Special First Division in accordance with the Constitution? The author contends that the actions of both the Court *en banc* and the Special First Division were unconstitutional, and by virtue thereof, invalid and can never become final.

The issue of whether or not a motion for reconsideration decided by a "two-two" vote by a division, or more appropriately, decided by less than the required three votes of the members of a division,[11] should be referred to the Court *en banc* for resolution has already been squarely passed upon by the Court *en banc* in *Ruiz v. Court of Appeals*.[12] In *Ruiz*, the Supreme Court, in its Resolution dated 26 March 1993 describing the procedural antecedents of the case then before it, starting with its decision dated 17 August 1992 reversing the decision of the Court of Appeals, stated:

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[10] Yale Land Development Corp. v. Caragao, G.R. 135244, 15 December 1999.

[11] Under the Constitution, the Supreme Court, composed of 15 justices including the Chief Justice, may sit in divisions of three, five or seven members (article VIII, section 4, paragraph [1]). It sits in three divisions of five justices each. Since the Court sits in three divisions of five members each, and since article VIII, section 4, paragraph (3) requires that cases heard by a division shall be decided with the concurrence of a majority of the members who actually took part in the deliberations on the issues and votes thereon, but in no case without the concurrence of at least three members, the minimum number of concurring votes for any valid action of any division of the Court is three votes, which is a majority vote in any five-member division. Hence, in a five-member division, compliance with the minimum three votes is necessarily a compliance with the other (majority vote) requirement (but not if the Court sat in divisions of seven and eight, or as a court of fifteen justices).

[12] Ruiz v. Court of Appeals, G.R. No. 101566,26 March 1993 220 SCRA 490.

> The Orbetas filed a motion for reconsideration of our decision. The Court denied it by resolution dated October 21, 1992. However, the Orbetas filed a timely Motion to Recall that resolution. They invited the court's attention to the fact that the resolution denying their motion for reconsideration did not carry the necessary votes of three (3) justices for only Justices Cruz and Aquino voted on it as Justice Bellosillo took no part and Justice Medialdea was on sick leave of absence, when the motion for reconsideration was deliberated upon [citing Sec. 4 (3) of Art. VIII of the 1987 Constitution]. Consequently, the Division decided to refer the case to the Court *En banc* which recalled the resolution for lack of the necessary votes and constituted a Special First Division to deliberate on the Orbetas' motion for reconsideration.[13]
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> The Orbetas' motion to recall in *Ruiz* was premised upon article VIII, section 4, paragraph (3) of the 1987 Constitution.

In *Ruiz*, the Court *en banc* recalled a resolution of one of its divisions dated 21 October 1992 denying the Orbetas' motion for reconsideration of the decision dated 17 August 1992 of that division because the resolution did not carry the necessary votes of three justices[14] contrary to article VIII, section 4, paragraph (3) of the Constitution. According to the Court, the necessary votes of three justices was not obtained for only two justices, Messrs. Justices Cruz and Aquino, voted on it as Justice Bellosillo took no part and Justice Medialdea was on sick leave of absence, when the motion for reconsideration was deliberated upon.[15]

After recalling the denial of the resolution dated 21 October 1992 for lack of the necessary votes of three justices or members of the division, the Court *en banc* constituted a Special First Division to deliberate on the Orbetas' motion for reconsideration.[16]

The foregoing ruling or doctrine of the Court *en banc* enunciated in *Ruiz* is in accord with article VIII, section 4, paragraph (3) of the Constitution.

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[13] Ruiz v. Court of Appeals, G.R. No. 101566, 26 March 1993 220 SCRA 490, 498.

[14] Ruiz v. Court of Appeals, G.R. No. 101566, 26 March 1993 220 SCRA 490, 498.

[15] Ruiz v. Court of Appeals, G.R. No. 101566, 26 March 1993 220 SCRA 490, 498.

[16] Ruiz v. Court of Appeals, G.R. No. 101566, 26 March 1993 220 SCRA 490, 501. The Special First Division constituted by the Court *en banc* eventually rendered a decision granting the Orbetas' motion for reconsideration of its decision dated 17 August 1992, affirming the decision of the Court of Appeals in CA-G.R. SP No. 17013, annulling and setting aside the orders of the trial court, and remanding the case back to the trial court for trial on the merits.

For the Court to validly decide or resolve any "case or matter heard by a division," article VIII, section 4, paragraph (3) of the Constitution imposes as a mandatory minimum voting requirement *the concurrence of at least three of its members who actually took part in the deliberations on the issues in the case and voted thereon*. This mandatory minimum voting requirement for "cases or matters heard by a division" is to be determined on the basis of the members of the division "who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such members."[17]

It is a mandatory minimum voting requirement because of the qualification that the voting must "in no case" be without the concurrence of three of such members.[18] The phrase "in no case" can only mean that a case or matter decided or resolved without the concurrence of three of such members is defective or invalid because a valid vote for cases or matters heard by a division needs the concurrence of a majority of the members who actually took part in the deliberations on the issues and voted thereon and in no case, without the concurrence of at least three of such members.

In fact, article VIII, section 4, paragraph (3) of the Constitution requires that a valid decision or resolution by a division in any "cases" or "matters" before it must comply with two indispensable requisites, namely: (a) That it must be with the concurrence of a "majority" of the members of the division; and (b) that such majority vote must be of "at least three" members, or to be more precise, "in any case, without the concurrence of at least three" members.[19]

Considering that at present the Court consists of three divisions of five members each, the foregoing twin voting requirement means that a valid vote in any case or matter, including a motion for reconsideration as in *Ruiz*, must carry the vote of at least three members of the division, and any vote without the concurrence of the minimum three votes, such as a "two-zero," "two-one," "two-two," or any other combination without the necessary three votes, is not a valid vote for any of the three divisions in the contemplation of article VIII, section 4, paragraph (3) of the Constitution.

Stated in a slightly different manner, under the Supreme Court's present set-up of three divisions of five members each, so long as the minimum voting requirement is met (i.e., that "at least three" members concurred on the issue),

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[17] CONST. art. VIII, sec. 4, par. (3).
[18] CONST. art. VIII, sec. 4, par. (3).
[19] CONST. art. VIII, sec. 4, par. (3).

the other requirement (that it is the "majority" of the members of the division) will also be necessarily complied with.[20]

More importantly, however, the members who are to be counted for the purpose of determining compliance with the "majority" and the "at least three" requirements (and again, under the present set-up of three divisions, compliance with the "at least three" members necessarily means compliance with the "majority" requirement) must be those who actually took part in the deliberations on the issues in the case and voted thereon.

This, in effect, is another requirement, or, to be more precise, a qualification to the two indispensable requisites referred to above for a valid vote by a division on any case or matter before it.

Thus, a member of a division who did not actually take part in the deliberations on the issues and voted thereon shall not be counted for purposes of determining whether the twin voting requirement (i.e., [a] "majority" and [b] "at least three" or "in no case, without the concurrence of at least three") has been fulfilled to constitute a valid vote of a division on any case or matter before it.

The decision of one of the divisions of the Court in *Ruiz* did not fulfill either of these requirements because it was only a "two-zero" vote (two voting to deny the motion for reconsideration, one "took no part," and the other was "on sick leave of absence"). Thus, it was not a vote of a majority of the members of the division and it did not carry the concurrence of at least three of the members who actually took part in the deliberations on the Orbetas' motion for reconsideration and voted on such motion for reconsideration.

The twin voting requirement was not hurdled in *Yale Land*[21] with regard to the central issue of whether or not petitioner's second motion for reconsideration should be admitted and granted. It is stated in the resolution of

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[20] Theoretically, if the Court, by virtue of article VIII, section 4, paragraph (1) of the Constitution, constitutes itself into two divisions, and assuming it is a full court so that one division has seven members and the other eight members, compliance with the "at least three" vote requirement will not necessarily mean compliance with the "majority" requirement. Thus, if the Court constitutes itself into two such divisions, the twin voting requirement will only be fulfilled if the vote on a case or matter, including a motion for reconsideration of such division's decision or resolution, will require not only the concurrence of "at least three" but of a "majority" of the division as well. Under the present set-up, however, concurrence of "at least three" will necessarily mean concurrence of a "majority" of the members of the division of five.

[21] G.R. No. 135244, 15 April 1999.

the Court dated 15 April 1999[22] that only four justices participated in the deliberations and voted upon the central issue, namely, Mr. Chief Justice Hilario G. Davide Jr. and Messrs. Justices Jose A.R. Melo, Santiago M. Kapunan, and Bernardo P. Pardo. Madame Justice Consuelo Ynares-Santiago, who was designated a member of the First Division following her assumption to duty as Associate Justice only on 6 April 1999, did not take part in the deliberations of the case from the time the petition was denied due course (by the Second Division) on 21 October 1998 to the denial with finality (by the First Division) of the first motion for reconsideration, and up to the discussions of the motions treated immediately after they were filed. On the foregoing central issue of whether or not petitioner's second motion for reconsideration should be admitted and granted, there was an even vote ("two-two"), with one abstention.

Verily, while four members deliberated and voted on the central issue of whether or not petitioner's second motion for reconsideration should be admitted and granted, the first requirement for a valid vote of a division, that is, that it must be with the concurrence of a majority of the said four members (these are the ones "who actually took part in the deliberations on the issues in the case and voted thereon," and the "issue" in the context of this proceeding is the aforesaid "central issue" defined by the Court in its resolution dated 15 April 1999 in this case), was not attained.

Likewise, the mandatory minimum voting requirement of at least three (or, to be more precise, "in no case, without the concurrence of at least three") of such four members (i.e., the Chief Justice and Messrs. Justices Melo, Kapunan, and Pardo) was not attained.

Hence, there was no compliance with the twin voting requirement embodied in article VIII, section 4, paragraph (3) of the Constitution for a valid decision or resolution of the Court on the central issue of whether or not petitioner's second motion for reconsideration should be granted – the issue deliberated upon in the case.

Stated in a slightly different manner, the writer submits that the central issue addressed by the Court in its resolution of 15 April 1999 was not decided or resolved in accordance with the twin voting requirement prescribed in the Constitution. Since the resolution on the merits of the *Yale Land* case itself is dependent on the resolution by the Court of such central issue as defined by it in its resolution of 15 April 1999, it follows that there was no valid decision or

[22] Yale Land Development Corp. v. Caragao, G.R. No. 135244, 15 April 1999.

resolution of this "case" or "matter." After all, a "case" or "matter" is decided or resolved by a court by deciding or resolving the specific issues raised therein. Deciding or resolving a case means deciding or resolving the issues raised therein, which in the context of the *Yale Land* case was the central issue defined by the Court in its Resolution of 15 April 1999.

Thus, it is in fact irrelevant or immaterial whether the *Yale Land* case, or, to a more limited extent, even the petitioner's pending second motion for reconsideration, is viewed as a "case" or a "matter," for what is important is that this "case" or "matter" has not been validly decided or resolved because the central issue upon which this "case" or "matter" depends was not decided or resolved in accordance with article VIII, section 4, paragraph (3) of the Constitution.

What then must be done considering that the twin voting requirement mandated by the Constitution was not reached on the central issue expressly addressed by the Court in its resolution of 15 April 1999,[23] upon which central issue the resolution of the *Yale Land* case depends? The Constitution itself provides the answer: "When the required number is not obtained, the case shall be decided *en banc*."[24]

What is this "required number" contemplated or referred to in this provision? One only needs to refer to the sentence immediately preceding it in the said provision of the Constitution. The preceding sentence (i.e., which is the first sentence of article VIII, section 4, paragraph [3]) clearly states that this "required number" is none other than the required number under the twin voting requirement – "majority" and "at least three" of the members "who actually took part in the deliberations on the issues and voted thereon."

In other words, because the twin voting requirement (i.e., [a]"majority" and [b]"at least three" or "in no case, without the concurrence of at least three" of the members of the division who actually took part in the deliberations and voted on the "central issue") was not attained, the resolution of the central issue, upon which the decisions in the *Yale Land* case or the motions then pending depended, should have been referred to and decided by the Court *en banc*.

The second sentence of article VIII, section 4, paragraph (3) of the Constitution, which provides that "[w]hen the required number is not obtained,

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[23] Yale Land Development Corp. v. Caragao. G.R. No. 135244, 15 April 1999.

[24] CONST. art. VIII, sec. 4, par. (3).

the case shall be decided *en banc*," should not be divorced from the preceding sentence thereof. Both must be read in unison or in harmony with each other. In fact, the premise is defined in the first sentence of article VIII, section 4, paragraph (3), and the second sentence is in effect a mere logical follow-through of the first sentence. Thus, the first sentence embodies the twin voting requirement for a valid decision or resolution by any division on all "cases and matters" before it. At the risk of repetition, a valid vote by a division on any case or matter before it, which necessarily includes any issue upon which the decision of such case or matter depends, must be both by (a) a majority and (b) in no case, without the concurrence of at least three of the members who actually took part in the deliberation on the issues in the case and voted thereon. The second sentence, a mere logical follow-through of the rule embodied in the first sentence, cannot be read so as to destroy the meaning of the rule or premise contained in the first sentence.

It has been ruled that, in construing laws or the Constitution for that matter, "care should be taken that every part thereof be given effect and a construction that could render a provision inoperative should be avoided, and inconsistent provisions should be reconciled whenever possible as parts of a harmonious whole."[25] Moreover, "a statute's clauses must not be taken separately, but in its relation to the statute's totality."[26] Thus, because the decision or resolution on the central issue in the *Yale Land* case did not comply with either the twin voting requirement or the rule embodied in the first sentence of article VIII, section 4, paragraph (3) of the Constitution, such "case" or "matter," whichever way it may be viewed, was not decided by the Division in accordance with the Constitution. It was necessary, therefore, that this central issue upon which the decision or resolution on petitioner's pending second motion for reconsideration depended be referred by the Division to the Court *en banc*. The Special First Division in fact referred the same to the Court *en banc*, however the Court *en banc* refused to accept the referral.

Referral of the matter to the Court *en banc* in case of an inconclusive "two-two" vote such as that in the *Yale Land* case is mandated by the plain and unequivocal words used in article VIII, section 4, paragraph (3). "Ascertaining the meaning of the provisions of the Constitution begins with the language of the document itself. The words used in the Constitution are to be given their

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[25] Sajonas v. Court of Appeals, G.R. No. 102377, 5 July 1996, 258 SCRA 79, 95.
[26] Sajonas v. Court of Appeals, G.R. No. 102377, 5 July 1996, 258 SCRA 79, 96.

ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails."[27]

The foregoing view is borne out and fully supported by the records of the Constitutional Commission. The deliberations of the Constitutional Commission (of the 1987 Constitution) show clearly that when the twin voting requirement (or, more particularly, the second element or facet thereof that the vote must be "in no case, without the concurrence of at least three" members) is not satisfied or hurdled, such as on the central issue addressed by the Court in its resolution dated 15 April 1999[28] in the *Yale Land* case, as required by article VIII, section 4, paragraph (3) of the Constitution (in relation to what is now article VIII, section 4, paragraph [1]), the referral of the case (or the issue that was not decided by the required number) to the Court *en banc* is "immediate" and "automatic."

Again, it has been observed by the Court that because the proceedings before the Constitutional Commission "was preliminary to the adoption by the people of the Constitution, the understanding of the Commission as to what was meant by the terms of the constitutional provision which was the subject of the deliberation, goes a long way toward explaining the understanding of the people when they ratified it."[29]

On this point, the relevant portions of the records of the Constitutional Commission that drafted what would later become the 1987 Constitution show that:

> THE PRESIDENT. Commissioner Rodrigo is recognized.
>
> MR. RODRIGO. Under these provisions, there are three kinds of divisions: one would be a division composed of three justices, in which case there will be five divisions; another division is composed of five justices each, in which case there will be three divisions; and the other is composed of seven members each, in which case, there will be two divisions.

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[27] Luz Farms v. Secretary of Agrarian Reform, G.R. No. 86889, 4 December 1990, 192 SCRA 51, 56.

[28] Yale Land Development Corp. v. Caragao, G.R. No. 135244, 15 April 1999.

[29] Luz Farms v. Secretary of Agrarian Reform, G.R. No. 86889, 4 December 1990, 192 SCRA 51, 56.

> Let us take the smallest division of three and the vote is 2-1. So, it is less than three votes. Should it immediately go to the Court *en banc* of 15 justices or should it first go to a bigger division?
>
> MR. CONCEPCION. Yes.
>
> MR. RODRIGO. They *immediately* go to the court *en banc*?
>
> MR. SUAREZ. *Yes*, Madam President.
>
> MR. RODRIGO. *Is that automatic*? Let us say that in the division of three, the vote is 2-1, automatically it goes to the court *en banc*?
>
> MR. SUAREZ. *Yes, because the required number of three is not obtained.* So, this last phrase would operate *automatically* – "WHEN THE REQUIRED NUMBER IS NOT OBTAINED, THE CASE SHALL BE DECIDED *EN BANC*."
>
> MR. RODRIGO. So, it should not go first to the division of five where possibly three votes might be obtained?
>
> MR. SUAREZ. No more, Madam President, because as outlined in paragraph 1, in the discretion of the Supreme Court, it could divide itself into divisions of three or five or seven. So, if they divide themselves into divisions of three, it would eliminate a theoretical assumption that there would be a division of five or seven.[30] (italics supplied)

It was precisely in obedience to article VIII, section 4, paragraph (3) of the Constitution that the Court *en banc* in *Ruiz*, finding that the twin voting requirement was not met when one of its divisions in its resolution dated 21 October 1992 denied the Orbetas' motion for reconsideration, "recalled the resolution for lack of the necessary votes and constituted a Special First Division to deliberate on the Orbetas' motion for reconsideration."[31] The Court in *Ruiz* specifically noted that the "two-zero" vote, with two of the four justices who took part in the deliberation voting to deny the motion for reconsideration while the third took no part and the fourth was on sick leave of absence, "did not carry the

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[30] V RECORD 635.

[31] Ruiz v. Court of Appeals, G.R. No. 101566, 26 March 1993 220 SCRA 490, 498.

necessary votes of three justices" as required by article VIII, section 4, paragraph (3) of the Constitution.[32]

It will be noted that in *Ruiz*, none of the justices voted to grant the Orbetas' motion for reconsideration, while there were two who voted to deny the same (which was less than the "majority" and "in no case, without the concurrence of at least three" of the members, required under the twin voting requirement). Because the minimum required three votes was not obtained, the case was referred to the Court *en banc*. The Court *en banc*, in turn, constituted a Special Division of five members to decide the Orbetas' motion for reconsideration.

The doctrine in *Ruiz* applies with even greater force in the *Yale Land* case because there, unlike in *Ruiz*, two justices even voted to "(a) GRANT the motion for leave to file a second motion for reconsideration, (b) ADMIT and GRANT the second motion for reconsideration, and (c) CONSOLIDATE this case with G.R. 135192."

Pursuant to article VIII, section 4, paragraph (3) of the Constitution and the doctrine in *Ruiz*, which doctrine is in accord with the said constitutional mandate, a motion for reconsideration (or a second motion for reconsideration) decided by a "two-two" vote of a division should be referred to the Court *en banc*, and the Court *en banc* has to accept the referral. In the face of such indeterminate vote, the division has no choice but to refer the case to the Court *en banc*, and the Court *en banc* has no choice but to accept the referral.

In the context of the *Yale Land* case, it is submitted that the pending second motion for reconsideration of the petitioner Yale Land, or to be more precise, the "central issue of whether or not petitioner's second motion for reconsideration should be admitted or granted" that was decided by a "two-two" vote of the Special First Division (i.e., without the concurrence of (a) a "majority" of the four members "who actually took part in the deliberations" on such "central issue" and (b) "at least three of such Members") was correctly referred by the Special First Division to the Court *en banc*. The Court *en banc* should have

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[32] Ruiz v. Court of Appeals, G.R. No. 101566, 26 March 1993 220 SCRA 490, 498. It might be mentioned that the Court in *Ruiz* should have decided the case or the motion for reconsideration *en banc* instead of simply constituting a special division of five of its members to decide the Orbetas' motion for reconsideration because the special division constituted in *Ruiz* is not in strict compliance with the mandate of article VIII, section 4, paragraph (3) of the Constitution.

accepted the referral. It had no discretion to refuse the referral in light of the inconclusive "two-two" voting in the division. The Court *en banc's* refusal to accept the referral in the *Yale Land* case rendered inutile or useless the mandate of article VIII, section 4, paragraph (3) of the Constitution which is mandatory or obligatory in nature.

In fact, it is clear that what triggers the mandatory referral to the Court *en banc* under article VIII, section 4, paragraph (3) of the Constitution is not that the voting by a division on any issue (e.g., the "central issue" in this case) is an even vote of "two-two." Rather, it is whether or not the required "majority" of the four members who participated in the deliberations on the "central issue," and "in no case, without the concurrence of at least three" of the members "who actually took part in the deliberations" on the "central issue" or any pending pivotal issue in the case or issue on which the ultimate resolution of the case depends, was obtained. If such twin voting requirement was not obtained, then such case should be referred to the Court *en banc*, and the Court *en banc* must accept and decide such matter so that the minimum voting requirement is not violated.

Thus, that the voting was a "two-two" tie, a "one-one" tie, an uneven voting of "two-one" (two denying the motion for reconsideration as against one granting the same), or, as was in the *Ruiz* case, a "two-zero" (two denying the motion for reconsideration and no one for the granting thereof), is irrelevant. What should be looked into is whether or not the required minimum three concurring votes, or the required "majority", which necessarily follows under the present set-up when the required minimum three concurring votes is obtained, has been obtained.

In the *Yale Land* case, since the mandatory minimum required votes of three justices was not obtained in denying the petitioner's second motion for reconsideration or in resolving the "central issue" therein, the same must be "immediately" and "automatically," to use the language or intention of the framers of the Constitution with regard to article VIII, section 4, paragraph (3) thereof as discussed above, referred to the Court *en banc*.

It is likewise the author's view that the foregoing doctrine or principle of law (i.e., that without the required three votes of the members of a division, the motion for reconsideration or the issue raised therein should be referred to the Court *en banc* which then must decide the case) laid down by the Court *en banc* in *Ruiz* is binding upon, and should have been adhered to, by the Supreme Court in the *Yale Land* case by accepting the referral of the Special First Division and by

deciding the case *en banc*. This is mandated by the latter portion of article VIII, section 4, paragraph (3) of the Constitution which provides that:

> Provided, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.[33]

Again, worth noting is the pertinent portion of the records of the 1987 Constitutional Commission that in no uncertain terms shows the clear intention of the framers of the Constitution to hold that a decision of a division of the Court that contravenes the foregoing mandate (i.e., that no doctrine or principle of law laid down by the court in a decision rendered in division or *en banc* can be modified or reversed except by the court sitting *en banc*) is invalid. Thus, on this issue, the records of the Constitutional Commission states that:

> MR. NATIVIDAD. I have another question to clarify before I vote on the article.
>
> Page 2, Section 3 (4) states:
>
> ... Provided, that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting *en banc*.
>
> Suppose this happens, what is the effect of the decision, as in many cases, such as *Philippine Banking Corp. vs. Louie Sy* and *Elcano vs. Gil*. May I ask the Committee if this constitutes a legal precedent?
>
> MR. ROMULO. Is the Gentlemen asking for the effect of a decision rendered by a division which would change the doctrine or principle of law previously laid down by the Supreme Court?
>
> MR. NATIVIDAD. Yes, in violation to [sic] this doctrine laid down here.
>
> MR. ROMULO. Insofar as the Committee is concerned, if a decision changes a doctrine or principle of law laid down by the Supreme Court *en banc* or in division, it can be modified or reversed only by the court sitting *en banc* and, therefore, such a decision would be invalid.

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[33] CONST. art. VIII, sec. 4, par. (3).

> MR. NATIVIDAD. If the understanding is that the decision will be invalid, I would not offer any amendment.
>
> Thank you.[34]

The foregoing view is not unmindful of the issuance by the Court *en banc* of a resolution dated 26 January 1999 clarifying the rule in resolving motions for reconsideration wherein the Court laid down the rule that:

> A motion for the reconsideration of a decision or resolution of the Court *en banc* or of a Division may be granted upon a vote of a majority of the members of the *en banc* or of a Division, as the case may be, who actually took part in the deliberations of the motion.
>
> If the voting results in a tie, the motion for reconsideration is deemed denied.[35]

In light of the mandate of article VIII, section 4, paragraph (3) of the Constitution, however, read in relation to the doctrine laid down by the Court *en banc* in *Ruiz*, it is the author's opinion that the second paragraph of the foregoing resolution (that if the voting results in a tie, the motion for reconsideration is deemed denied) does not comport with, and is contrary to, the foregoing constitutional mandate. A Supreme Court circular cannot revise a clear and unequivocal provision of the Constitution that in this case is embodied in article VIII, section 4, paragraph (3).

Also, the first paragraph should be clarified to provide that in any event, the concurrence of at least three members who actually took part in the deliberations on the issues and voted thereon is required (or that in any event, the vote of three members is required), otherwise, the case shall be decided *en banc*.

The author is of the view that the second paragraph of the foregoing circular is contrary to article VIII, section 4, paragraph (3) of the Constitution if applied to motions for reconsideration of decisions or resolutions of a division.

While article VIII, section 4, paragraph (3) of the Constitution requires the concurring vote of at least three justices (and under the present set-up the

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[34] I RECORD 521.

[35] A.M. No. 99-1-09-SC, 26 January 1999.

concurrence of three justices in a division is necessarily the concurrence of a majority of the justices comprising the division), the second paragraph of the aforesaid Resolution 99-1-09-SC provides that a vote of less than three justices (a "two-two" or even a "one-one" vote) in a motion for reconsideration of a decision or resolution of a decision would suffice to deny a motion for reconsideration of such decision or resolution. The author submits therefore that the Supreme Court *en banc* Resolution No. 99-1-09-SC is not in accord with article VIII, section 4, paragraph (3) of the Constitution.

The *Yale Land* case is not the only case where the issue discussed in this article was raised. In its resolution of 19 August 1999 in G.R. No. 131457, the case of the Sumilao Farmers[36] (Sumilao, hereinafter), the Court ruled that if the required three votes are not obtained in a motion for reconsideration of the decision of a division, the decision must stand and the motion for reconsideration is lost. In explaining this rule, the Court, interpreting article VIII, section 4, paragraph (3) of the Constitution, stated that:

> A careful reading of the above constitutional provision, however, reveals the intention of the framers to draw a distinction between cases, on the one hand, and matters, on the other hand, such that *cases* are "decided" while *matters, which include motions*, are "resolved". Otherwise put, the word "decided" must refer to "cases"; while the word "resolved" must refer to "matters", applying the rule of *reddendo singula singulis*.
>
> With the aforesaid rule of construction in mind, it is clear that only cases are referred to the Court *en banc* for decision whenever the required number of votes is not obtained. Conversely, the rule does not apply where, as in this case, the required three votes is not obtained in the resolution of a motion for reconsideration. Hence, the second sentence of the aforequoted provisions speaks only of "case" and not "matter." The reason is simple. The above-quoted Article VIII, Section 4 (3) pertains to the disposition of cases by a division. If there is a tie in the voting, there is no decision. The only way to dispose of the case then is to refer it to the Court *en banc*. On the other hand, if a case has already been decided by the division and the losing party files a motion for reconsideration, the failure of the division to resolve the motion because of a tie in the voting does not leave the case undecided. There is still the decision which must stand in view of the failure of the members of the division to muster the necessary vote for its reconsideration. *Quite plainly, if the voting results in a tie, the motion for*

[36] Fortich v. Corona, G.R. No. 131457, 19 August 1999.

> *reconsideration is lost.* The assailed decision is not reconsidered and must therefore be deemed affirmed. Such was the ruling of this Court in the Resolution of November 17, 1998.[37] (italics supplied)

The foregoing interpretation of the Court is unduly technical. Moreover, its reliance on the rule of *reddendo singula singulis*[38] as an aid in the interpretation of article VIII section 4, paragraph (3) of the Constitution is incorrect because it does not give life or substance to the entire provision, particularly the first sentence thereof which embodies the twin voting requirement rule.

The appropriate rule of interpretation that the Court should have relied upon in *Sumilao* is that which it enunciated in *Sajonas v. CA*[39] where it ruled that in the interpretation of a statute "care should be taken that every part thereof be given effect and a construction that could render a provision inoperative should be avoided, and inconsistent provisions should be reconciled whenever possible as parts of a harmonious whole."[40] Moreover, "a statute's clauses must not be taken separately, but in its relation to the statute's totality."[41] It is this holistic rule of interpretation, rather than the *reddendo singula singulis* rule, that the Court should have applied in the *Sumilao* case in interpreting article VIII, section 4, paragraph (3) of the Constitution.

Under this holistic approach, there is no substantial distinction between "cases" and "matters" insofar as such "cases" and "matters" have to be decided or resolved "with the concurrence of a majority of the members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case without the concurrence of at least three of such members" (i.e., three of the members who "actually took part in the deliberations on the issues and voted thereon").

The distinction sought to be drawn by the Court in *Sumilao* between "cases" and "matters" is unduly technical and erroneous. To say that, under article VIII, section 4, paragraph (3) of the Constitution, it is only in "cases," not in "matters" (which according to the Court's same Resolution in the *Sumilao* Case includes "motions" such as a motion for reconsideration of decision of a division), that the members of the division deliberate and vote on, is to ignore that the

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[37] Fortich v. Corona, G.R. No. 131457, 19 August 1999.

[38] Referring each phrase or expression to its proper object.

[39] Sajonas v. CA, G.R. No. 102377, 5 July 1996, 258 SCRA 79.

[40] Sajonas v. CA, G.R. No. 102377, 5 July 1996, 258 SCRA 79, 95.

[41] Sajonas v. CA, G.R. No. 102377, 5 July 1996, 258 SCRA 79, 96.

Constitution requires in section 4(3) of Article VIII that both "cases" and "matters" shall be decided or resolved with the concurrence of at least three of such members. Moreover, the members of the division to be counted for the purpose of determining whether the twin voting requirement has been fulfilled as prescribed in the first sentence (the premise) thereof are those who have actually participated in the deliberations on the issues in the case and voted thereon.

Motions for reconsideration, like any other "matter" and just like any other "cases," are made up of issues. They are decided by resolving the issues raised therein. In the context of Yale Land's second motion for reconsideration in the *Yale Land* case, the "issue" to be determined in Yale Land's motion for reconsideration was defined by the Court's Special First Division to be the "central issue of whether or not petitioner's second motion for reconsideration should be admitted or granted." Hence, the existence of "issues" are necessarily common to both "cases" and "matters" (and motions for reconsideration are "matters" within the contemplation of article VIII, section 4, paragraph (3) of the Constitution), and such "cases or matters" are decided by the Court by deliberating upon and deciding on the "issues" raised therein.

The Court was clearly of this view when it enunciated the doctrine in *Ruiz* that when a motion for reconsideration of a decision of the division does not carry the required three votes, the motion for reconsideration must be referred to, and decided by, the Court *en banc*.[42]

The delegates of the Constitutional Commission that drafted the Constitution were also of the same view as Yale Land and the Court *en banc* in *Ruiz* that under article VIII, section 4, paragraph (3) of the Constitution, the concurrence of at least three justices is required in both "cases" and "matters" (and the Court in *Sumilao* had expressly ruled that a "matter" includes a "motion," such as a motion for reconsideration of the decision of a division) as shown by the following excerpt from the records of the Constitutional Commission:

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[42] Ruiz v. Court of Appeals, G.R. No. 101566,26 March 1993 220 SCRA 490, 498. *Ruiz* was decided under the 1987 Constitution. The motion for reconsideration in *Ruiz* was not decided however by the Court *en banc* but, as noted above, by a special division of five members constituted by the Court to decide the motion for reconsideration. It is submitted that even this manner of deciding the motion for reconsideration, in the light of the inconclusive "two-zero" vote by the division on the motion for reconsideration, is not sanctioned by article VIII, section 4, paragraph (3). What the Court *en banc* should have done was to decide the case *en banc* and not refer the motion for reconsideration to a special division of five members.

> MR. SUAREZ. May we request the body to consider Sec. 3 (3), as amended by the committee, which will read:
>
> Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issue in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shallbe decided en banc; Provided, no doctrine or principle of law laid down by the Court in a decision rendered en banc or in division may be modified or reversed except by the Court sitting en banc.
>
> THE PRESIDENT. Is there a need for any explanation of this?
>
> MR. SUAREZ. The only substantial change or amendment, Madam President, is the substitution of the phrase "participated when the case was submitted for decision" with the phrase "*took part in the deliberations on the issues in the case and voted thereon.*"
>
> And of course, another amendment is concurrence needed in voting on cases and matters on the division level. That is why the phrase "*and in no case, without the concurrence of at least three of such members*" was added.[43] (italics supplied)

It is clear from the foregoing excerpt of the records of the Constitutional Commission, and this is the only one that deals with the matter, that the delegates did not make any distinction between "cases" and "matters" insofar as the mandatory minimum required vote of three justices of the division is concerned. In their understanding of the draft of what is now article VIII, section 4, paragraph (3) of the Constitution, the requirement that a valid voting shall "in no case" be "without the concurrence of at least three of such members" applies to both "cases" or "matters." The resolution of the Court in *Sumilao*, which provides that, when there is a tie in the voting on a motion for reconsideration of the decision or resolution of the division, the motion for reconsideration is lost, is clearly contrary to how the delegates understood article VIII, section 4, paragraph (3) to mean. In fact, there is no ambivalence in the manner in which this provision was drafted.

Again, it would not be amiss to repeat what the Court stated in the *Luz Farms* case that because the proceedings before the Constitutional Commission

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[43] V RECORD, *supra* note 30.

"was preliminary to the adoption by the people of the Constitution the understanding of the convention as to what was meant by the terms of the constitutional provision which was the subject of the deliberation, goes a long way toward explaining the understanding of the people when they ratified it."[44]

The author agrees with Mr. Justice Melo's separate opinion in the *Sumilao* Case.[45] Said separate opinion is grounded on the relevant portions of the Records of the Constitutional Commission.[46] In his separate opinion, Mr. Justice Melo cited article VIII, section 4, paragraph (3) of the Constitution and stated thus:

> By mandate of the Constitution, cases heard by a division *when the required majority of at least 3 votes in the division is not obtained* are to be heard and decided by the Court *En Banc*.[47]

Citing the records of the Constitutional Commission, Mr. Justice Melo further stated that:

> [T]he deliberations of the 1986 Constitutional Commission disclose that if a case is not decided in a division by a majority vote, it goes to the Court *en banc* and not to a larger division. Moreover, the elevation of a case to the *Banc* shall be *automatic*.[48]

The separate opinion further pointed out that:

> [E]xplicit, therefore is the requirement that *at least 3 members must concur in any case or matter heard by a division*. Failing thus, or, when the required number of 3 votes is not obtained, the case or matter will have to be decided by the Court *en banc*.[49]

What is even more significant in Mr. Justice Melo's separate opinion is his view that:

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[44] Luz Farms v. Secretary of Agrarian Reform, G.R. No. 86889, 4 December 1990, 192 SCRA 51, 56.

[45] Fortich v. Corona, G.R. No. 131457, 19 August 1999, 312 SCRA 751.

[46] V RECORD, *supra* note 30.

[47] Fortich v. Corona, G.R. No. 131457, 19 August 1999, 312 SCRA 751 (Melo, J., separate opinion).

[48] Fortich v. Corona, G.R. No. 131457, 19 August 1999, 312 SCRA 751 (Melo, J., separate opinion).

[49] Fortich v. Corona, G.R. No. 131457, 19 August 1999, 312 SCRA 751 (Melo, J., separate opinion).

> I submit that the requirement of 3 votes equally applies to motions for reconsideration because the provision contemplates "cases" or "matters" (which for me has no material distinction insofar as divisions are concerned) heard by a division, and a motion for reconsideration cannot be divorced from the decision in a case that it seeks to be reconsidered. Consequently, if the required minimum majority of 3 votes is not met, the matter of the motion for reconsideration has to be heard by the Court *En Banc*, as mandated by the Constitution (par. 3, Sec. 4, Art. VIII). To say that the motion is lost in the division on a 2-2 vote, is to construe something which cannot be sustained by a reading of the Constitution. To argue that a motion for reconsideration is not a "case" but only a "matter" which does not concern a case, so that, even though the vote thereon in the division is 2-2, the matter or issue is not required to be elevated to the Court *En Banc*, is to engage in a lot of unfounded hairsplitting.[50]

which is in accord with the decision of the Court *en banc* in *Ruiz* and the records of the Constitutional Commission.

In light of the foregoing, it is the author's view that a motion for reconsideration (or a second motion for reconsideration, as the case may be) decided by a "two-two" vote by a division, or to be more precise, decided without the concurrence of at least three votes of the members of the division who participated in the deliberation on the issue and voted thereon, should be referred to the Court *en banc* for resolution. Moreover, the Court *en banc* must accept the referral. It has no discretion to refuse to accept the referral.[51] The Court *en banc*

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[50] Fortich v. Corona, G.R. No. 131457, 19 August 1999, 312 SCRA 751 (Melo, J., separate opinion).

[51] It was clearly error for the Court *en banc* to refuse to accept the referral of the Special First Division in *Yale Land* in light of the inconclusive "two-two" voting therein (i.e., a vote that did not meet the mandatory three [3] concurring votes of the members of that division) and in light of the unanimous vote (because there is not indicating in the resolution that the vote was not unanimous) of the Special First Division to refer the matter to the Court *en banc* embodied in its strongly worded resolution of 15 September 1999. However, in the celebrated land case of *Firestone Ceramics Inc. v. Court of Appeals*, G.R. Nos. 127022 and 127245, 2 September 1999, the Court *en banc* resolved to have a case decided by one of its divisions elevated to the Court *en banc* for the resolution of the pending motions for reconsideration of the petitioners therein despite the fact that the division involved voted "four-one" to deny petitioners' motion to transfer these cases to the Court *en banc* (resolution of 28 June 2000). The majority of the Court *en banc* relied on paragraph 9 of the Court's resolution of 18 November 1993 (amending Supreme Court Circular No. 2-89 dated 7 February 1989 which enumerates those which are considered en banc cases) which stated that: "All other cases as the Court *en banc* by a majority vote of its actual membership may deem of sufficient importance to merit its attention." In her

must decide the case because the minimum voting requirement for a valid action by a division, as mandated by article VIII, section 4, paragraph (3) of the Constitution has not been satisfied, as was what happened in the *Yale Land* case and the *Sumilao* case.

It is bad enough that in the *Yale Land* case, the Court *en banc* refused the referral of the Special First Division, which referral was couched in the strongest tenor.[52] What is worse is that, in view of the refusal by the Court *en banc* to accept the referral, the Special First Division itself proceeded to deny the pending motion as if the Court *en banc* had acted upon and denied the pending motion for reconsideration, or, as if the constitutional infirmity (the lack of the required votes) had been overcome simply because the pending motion was referred to the Court *en banc* (even if the Court *en banc* refused to accept the referral). It is the author's view that the action of the Special First Division in denying the pending motion for reconsideration in light of the refusal by the Court *en banc* to accept the referral is not in accordance with the Constitution. What the Special First Division should have done was to insist that the Court *en banc* accept the referral, and, if the Court *en banc* would still not accept the referral, then the Special First Division should then have certified that the then pending motion for

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dissent to the majority's view, Madame Justice Minerva Gonzaga-Reyes opined that the acceptance by the Court *en banc* of the then pending motions for reconsideration of the petitioners was not called for because: (a) the motion for reconsideration of the decision in the main case unanimously adopted by the division was still pending; (b) the Court *en banc* is not an appellate court to which a decision or resolution (of a division) may be appealed, and that it is implicit in article VIII, section 4, paragraph (3) that "decisions or resolutions of a division of the court, when concurred in by a majority of its members who actually took part in the deliberations on the issues in a case and voted thereon is a decision or resolution of the Supreme Court itself. " Speaking of the second ground, Justice Gonzaga-Reyes observed that the "obvious contemplation" of section 4 of Art. VIII when it states that "when the required number is not obtained, the case shall be decided *en banc*" is that "when the required votes of at least three members is obtained, the Court *en banc*'s participation is not called for." Moreover, she also expressed the view that the Court *en banc*'s interpretation of and reliance on paragraph 9 of the resolution of 18 November 1993 is erroneous and that this cannot be interpreted to give the Court *en banc* a blanket authority to accept cases despite objection by a "four-one" vote of the division concerned; rather, a reasonable interpretation is that paragraph 9 refers to cases accepted by the Court *en banc* pursuant to existing rules, foremost of which is that the referral requires the concurrence of at least three of the members of the division.

[52] *See* the last three paragraphs of the resolution of the Special First Division dated 15 September 1999. What the Special First Division stated is worth reiterating:

The functions of the Court being of vital and far-reaching significance to the nation and to the body politic, it is imperative that the actions of the Court in the administration of justice be viewed as decisive and definitive. Moreover, public interest requires that the constitutional question involved be given a careful and conscientious review by the Court.

reconsideration of Yale Land was not validly acted upon by the Court *en banc* and therefore remains subsisting until the Court *en banc* accepts and decides the same.

It is also the author's view that because the minimum voting requirement was not attained in both the *Yale Land* and *Sumilao* cases, the decisions of the divisions therein have not, and can never, attain finality. The action of a division of the Court on a motion for reconsideration that does not comply with the minimum voting requirement (of three justices who took part in the deliberation on the issues and voted thereon) is not a valid action of the Court. As such, it can never attain finality. A decision of the Court that is void for failure to comply with the mandatory voting requirement prescribed by the Constitution may, by analogy, be likened to a "lawless thing, which can be treated as an outlaw and slain at sight, or ignored whenever it exhibits its head."[53]

Have the foregoing constitutionally infirm actions of the Court in *Yale Land* and *Sumilao* been rectified or addressed by the Court *en banc* in its Circular A.M. 99-8-09-SC dated 15 February 2000? This administrative circular provides that:

> 1. Motions for reconsideration of a decision or of a signed resolution shall be acted upon by the *ponente* and the other members of the Division, whether special or regular, who participated in the rendition of the decision or signed resolution sought to be reconsidered, irrespective of whether or not such members are already in other divisions at the time the motion for reconsideration is filed or acted upon; for this purpose, they shall be deemed constituted as a special division of the division to which *ponente* belonged at the time of promulgation of the decision of the signed resolution.
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> 2. If the *ponente* is no longer a member of the Court or is disqualified or has inhibited himself from acting on the motion, he shall be replaced by another Justice who shall be chosen by raffle from among the remaining members of the Division who participated in the rendition of the decision or resolution and who concurred therein. If only one member of the Court who participated and concurred in the rendition of the decision of resolution remains, he shall be designated as the *ponente*.

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[53] Aducayen v. Flores, G.R. No. L-30370, 25 May 1973, 51 SCRA 78, 82. *See also*, Emnas v. Emnas, G.R. No. L-26095, 28 January 1980, 95 SCRA 470, 475.

3. Any vacancy or vacancies in the special Division shall be filled by raffle from among the other members of the Court to constitute a special division of five (5) members.

4. If the *ponente* and all the members of the Division that rendered the decision or resolution are no longer members of the Court, the case shall be raffled to any member of the Court and the motion shall be acted upon by him with the participation of the other members of the Division to which he belongs. Should the membership of the Division be less than the number required for a special division, the vacancy or vacancies shall be filled by raffle from among the other members of the Court.

5. Motions for reconsideration shall be resolved by the Division with the concurrence of at least three of its members.

These rules shall not apply to motions for reconsideration of decisions or resolutions already denied with finality.

This Resolution shall take effect on the 1st day of April 2000 and shall be published in two (2) newspapers of general circulation in the Philippines not later than 29 February 2000.[54]

It is submitted that the foregoing administrative circular of the Court aimed at addressing the issues or cases involving article VIII, section 4, paragraph (3) of the Constitution is deficient in that it is only made applicable to "decisions" and "signed resolutions." There is no doubt that minute resolutions[55] or, for that matter, unsigned resolutions, in all cases and controversies before the Court, are no less actions of the Court in the exercise of its judicial power. There is therefore no reason for the Court to excluded unsigned resolution from the coverage of the foregoing circular.

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[54] A.M. 99-8-09-SC, 15 February 2000.

[55] See *Commercial Union Assurance Co. v. Lepanto Consolidated Mining Co.*, G.R. No. L-43342, 30 October 1978, 86 SCRA 79, 89, where the Court ruled that the dismissal of a petition by minute resolution is a dismissal on the merits of the case and that the rule of *res judicata* applies to such dismissals by minute resolution as in dismissals in full-length decisions. In this case, the Court noted that the practice of dismissing petitions by minute resolution "has been patterned after the United States Supreme Court wherein petitions for review are often merely ordered 'dismissed.' It has helped the Court in alleviating its heavy docket." Hence, by practice, minute resolutions are unsigned. It is not difficult to divine that the bulk of dismissals made by the Court are made through minute (unsigned) resolutions.

There is also no reason for the Court to exclude from the twin voting requirement (majority and at least three) "motions for reconsideration of decisions or resolutions already denied with finality" if the subject of such motion for reconsideration is a decision or resolution rendered or promulgated when the 1987 Constitution was already in effect. There is no reason for the Court to prescribe one rule for motions for reconsideration of decisions or resolutions already denied with finality (that these do not require the concurrence of at least three members of the division) if these decisions or resolutions were decided under the same mandatory provision of the Constitution, on the one hand, and a different rule for motions for reconsideration that have not yet been denied with finality when the foregoing circular took effect on 1 April 2000 (that the mandatory voting requirement in the Constitution be adhered to), on the other hand. The foregoing provision of the Constitution is self-explanatory and self-executory. It does not require any pronouncement or circular from the Court at to when it becomes effective for it became effective when the 1987 Constitution came into effect on 2 February 1987.[56]

Stated in a slightly different manner, it is incorrect for the Court to assume in *En Banc* Circular A.M. 99-8-09-SC that article VIII, section 4, paragraph (3) of the Constitution was not in force or that its effectivity was suspended from 2 February 1987, when the Constitution came into force, to 1 April 2000, when the said circular took effect; and that it became effective only when the said circular took effect on 1 April 2000.

It is further submitted that *En Banc* Resolution No. A.M. 99-8-09-SC does not remedy or rectify the constitutional infirmity of the Court's invalid decisions in *Yale Land* and *Sumilao*. It is submitted that the Court *en banc* has the constitutional duty to reopen these cases *motu proprio* and reconsider and vote upon the pending motions for reconsideration in these cases that were not validly decided because of the invalid "two-two" vote (i.e., a vote that lacked the required minimum three concurring votes). It is only then when these cases may be constitutionally and validly terminated.

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[56] *See* De Leon v. Esguerra, G.R. No. L-78059, 31 August 1987, 153 SCRA 602, 606, where the Court observed that "[t]he 1987 Constitution was ratified in a plebiscite on February 2, 1987. By that date, therefore, the Provisional Constitution must be deemed to have been superseded."