

FOREWORD

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This first issue of Volume 92 of the Philippine Law Journal is a compendium of articles wide-ranging in scope and spread.

In his article *Within the Margin of Error: Derogations, Limitations, and the Advancement of Human Rights*, Gemmo B. Fernandez revisits state intrusions into individual rights in the name of restoring public order or confronting crises, and the effects of the resulting derogations or limitations to these rights. The author observes that these special state measures have the capacity to advance human rights in theory but can be problematic in practice without effective safeguards in place and enforced. Indeed, these safeguards are needed to prevent human rights from being casualties of crises.

Christine Joy F. Angat's piece, *Paying the Toll of the Toil: Employer Liability for Non-Compliance with Philippine Labor Standards on Occupational Safety Resulting in Industrial Accidents*, focuses on workers' rights, particularly their right to safe and healthy working condition. This comes within the realm of occupational health and safety standards mandated by law but, not a few times, full compliance therewith is ignored by employers. To exact compliance, the author suggests the imposition of criminal penalty on infractions of labor safety standards by employers. The article discusses the evolution of legislation on the subject, the current state of occupational safety in the country, as well as pending legislative proposals to ameliorate the situation.

The contribution of Russell Stanley Geronimo concerns a different corporate matter, as can be gleaned from its title *Hybrid Securities and the Debt-Equity Classification Problem*. Here, the author examines securities with debt as well as equity features, the differing regulatory treatment between debt and equity instruments, and the "regulatory arbitrage" that results therefrom. To the point, the banking community is not a stranger to hybrid securities. For instance, under the Basel II-based guidelines of the *Bangko Sentral ng Pilipinas*, banks were permitted to issue perpetual preferred stock and perpetual unsecured subordinated debt that qualified as bank capital. With Basel III-based guidelines in place, Tier 2 capital instruments have loss-absorbency feature that requires their being either written off or converted into common equity upon the insolvency of the bank concerned. Indeed, hybrid securities, which unbundle economic from control rights, might address the concern of foreigners wanting to invest in the Philippines but deterred by nationality restrictions in the Constitution and statutes. These hybrid securities can provide foreign investors with their desired economic

interest in a partly nationalized company without increasing their shareholding therein beyond the allowable limit.

Maria Veronica M. Manalo's *Entering the Constitutional Gates with a Trojan Horse: Circumventing the Paradox of Political Dynasties* tackles the proliferation of political dynasties in the Philippines due largely to the inability of the legislature to implement the clear mandate in the Constitution for the State to "prohibit political dynasties as may be defined by law." Yet, it is hardly a surprise that the Philippine Congress is unable to pass that enabling law, given that a good number of legislators themselves come from political dynasties. In hindsight, the framers of the Constitution should have formulated a self-executory prohibition that did not need an enabling act from the Philippine Congress. The author, in fact, suggests the amendment of the Constitution along this line, and the adoption of measures to curtail corruption and patronage that compromise the proper exercise by the people of their civil and political rights.

The article of Deane Denesy F. Jao, *Resolving Friction on Ice: Legal Approaches in Deciding Disputes Over Frozen Embryos*, underscores the wide range of topics covered by this first issue of Volume 92. The author here notes the absence not only of domestic legislation on assisted reproductive technology but also local jurisprudence on the subject. Given this lacuna, the author discusses three principal approaches adopted by courts in the United States in respect of embryo custody cases and provides insights on possible issues that might confront a Philippine court applying any of said approaches.

All in all, the articles are well written. Despite their varied topics, there is a common thread in them, as they highlight the fact that laws and regulations are usually outpaced by, among others, financial, scientific and social developments.