EN BANC

G.R. No. 225433 — LARA'S GIFTS & DECORS, INC., *petitioner,* ***versus*** **MIDTOWN INDUSTRIAL SALES, INC.,** *respondent.*

Promulgated:

August 28, 2019

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CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

The proper application of the confusing laws and jurisprudence on 1) the imposable interest rate, *i.e.*, the **12% rate of interest** *per annum* previously prescribed by the then Central Bank of the Philippines (Central Bank), now *Bangko Sentral ng Pilipinas* (BSP) pursuant to Act No. 2655, as amended (Usury Law) *vis-a-vis* the **6% legal interest rate** *per annum* imposed as compensatory interest under Article 2209 of the Civil Code, and 2) the periods covered by the same, has long plagued the Bench and the Bar.

As discussed below, I see the issue to arise, in large part, from the scope and interpretation of the phrase "forbearance of any money, goods, or credits, and the rate allowed in judgments," which is found in the Usury Law but not in Article 2209,[1] when read in conjunction with the guidelines pronounced in *Eastern Shipping Lines, Inc. v. Court of Appeals*[2] (*Eastern Shipping Lines*) and *Nacar v. Gallery Frames*[3] (*Nacar*).

Although, at present, both the interest rate set by the BSP and that pegged by the Civil Code are at 6% *per annum*, I find that an extended discussion on the matter is warranted considering that: (1) there are still pending disputes occurring prior to July 1, 2013 where the 12% interest rate *per annum* was imposed on obligations not constituting loans and forbearances of money, goods, and credit; and (2) the BSP may opt, in the future, to again change the prescribed interest rate and to impose interest rate ceilings on loans and forbearances of money, goods, and credit.

Based on the facts stated in the *ponencia*, petitioner purchased from respondent various industrial and construction materials in the total amount of ₱1,263,104.22 from January 2007 up to December 2007.[4] These purchases, as stated in the sales invoices, were on a 60-day credit term with the condition

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[1] Article 2209 of the Civil Code uses the phrase "[i]f the obligation consists in the payment of a **sum of money**." (Emphasis supplied)

[2] 304 Phil. 236 (1994).

[3] 716 Phil. 267 (2013).

[4] *Ponencia*, p. 2.

that 24% interest *per annum* would be charged on all overdue accounts.[5] After the checks bounced, and despite repeated demands, petitioner failed to pay the amounts due.[6] After trial, the RTC[7] granted the complaint and ordered petitioner to pay (1) ₱1,263,104.22 plus interest at 24% *per annum* from the date of judicial demand until the judgment is fully paid, and (2) ₱50,000.00 by way of attorney's fees.[8] The CA affirmed the decision of the RTC.

The *ponencia* modified the interest rates and held:

> **WHEREFORE**, the Court of Appeals Decision dated 21 April 2016, affirming the 27 January 2014 Decision of the Regional Trial Court, Branch 128, Caloocan City, is **AFFIRMED** with **MODIFICATION**, as follows:
>
> > Petitioner Lara's Gifts & Decors, Inc. is ordered to pay respondent Midtown Industrial Sales, Inc. the following:
> >
> > 1. ONE MILLION TWO HUNDRED SIXTY[-]THREE THOUSAND ONE HUNDRED FOUR PESOS and 22/100 (₱1,263,104.22) representing the principal amount plus stipulated interest at 24% *per annum* to be computed from 22 January 2008, the date of extrajudicial demand, until full payment.
> >
> > 2. Legal interest on the 24% *per annum* interest due on the principal amount accruing as of judicial demand, at the rate of 12% *per annum* from the date of judicial demand on 5 February 2008 until 30 June 2013, and thereafter at the rate of 6% *per annum* from 1 July 2013 until full payment.
> >
> > 3. The sum of FIFTY THOUSAND PESOS (₱50,000.00) as attorney's fees, plus legal interest thereon at the rate of 6% *per annum* to be computed from the finality of this Decision until full payment.
> >
> > 4. Cost of the suit.[9]

I concur with the *ponencia* as regards the application of interest with respect to items 1 and 3 of the dispositive portion above-quoted. I likewise agree that:

1. If the rate of interest is stipulated, such rate shall apply (unless void for being unconscionable and iniquitous) until full payment of the obligation.[10] Thus, I agree that the stipulated interest of 24% *per annum* in the instant case should prevail

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5 Id.
6 Id.
7 Regional Trial Court, Branch 128, Caloocan City in Civil Case No. C-22007.
8 *Ponencia,* p. 3.
9 Id. at 20-21.
10 Id. at 9.

until full payment because that is the law between the parties;[11] and

2. The guidelines provided in *Eastern Shipping Lines* and *Nacar* require re-examination and revision.

However, I disagree with:

1. The imposition of the 12% rate in the second item of the dispositive portion (interest on interest under Article 2212 of the Civil Code)[12] because existing jurisprudence holds that the instant contract of sale on credit does not constitute a loan or forbearance of money, goods, or credit;

2. The adoption of the definition of "forbearance" in *Estores v. Sps. Supangan*[13] (*Estores*) and the extension of its coverage to sales on installment and sales of anything on credit;[14]

3. The statement that Article 2209 of the Civil Code applies only to loans or forbearance of money, goods, or credit where there is a debtor-creditor relationship,[15] considering that the clear language of the law states that the provision applies to any obligation constituting the payment of a sum of money;

4. The conclusion that Presidential Decree No. (P.D.) 116 impliedly repealed all laws prescribing the rate of legal interest in the absence of stipulated interest, [16] contrary to established jurisprudence;[17]

5. The application of Article 2212 of the Civil Code to situations where there is no stipulated interest, [18] contrary again to well-established jurisprudence;[19]

6. The continued perpetuation of the dichotomy pronounced in *Eastern Shipping Lines* and *Nacar* with respect to the non-applicability of stipulated interest and Article 2212 to obligations not constituting a loan or forbearance of money, goods, or credit;[20]

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11 Id. at 9-11.
12 Id. at 14-15.
13 686 Phil. 86 (2012), cited in *Ponencia*, p. 14.
14 *Ponencia*, p. 17.
15 Id. at 12.
16 Id. at 13.
17 *Reformina v. Tomol, Jr.*, 223 Phil. 472 (1985); *National Power Corporation v. Angas*, 284-A Phil. 39 (1992); *Castelo v. Court of Appeals*, 314 Phil. 1 (1995).
18 *Ponencia*, p. 18, paragraph 2.
19 *Hun Hyung Park v. Eung Won Choi*, G.R. No. 220826, March 27, 2019; *Isla v. Estorga*, G.R. No. 233974, July 2, 2018; *Zobel v. City of Manila*, 47 Phil. 169 (1925).
20 *Ponencia*, p. 10.

7. The continued acceptance of the pronouncement in *Eastern Shipping Lines* and *Nacar* that the non-payment of the monetary award decreed by the court upon finality of the judgment constitutes a forbearance of credit;[21]

8. The formulation of the *ponencia*'s revised guidelines for the imposition of interest and its accompanying formulae;[22] and

9. The seemingly haphazard and cavalier bulldozing of established jurisprudence without legal justification and the formulation of guidelines by judicial fiat.

I discuss the foregoing points in the course of my analysis on the proper interpretation and application of interest rates under the Civil Code in relation to the Usury Law below.

Overview: BSP-Prescribed Interest Rates under the Usury Law vis-à-vis 6% Per Annum Legal Interest Rate under Article 2209 of the Civil Code

Under the Spanish Civil Code of 1889,[23] the legal interest rate for defaulting on obligations consisting "in the payment of a sum of money" was pegged, in the absence of agreement, at 6% *per annum* unless otherwise fixed by the government, *viz.*:

> ARTICLE 1108. Should the obligation consist in the payment of a sum of money, if the debtor should become in default, the indemnity for losses and damages, in the absence of a stipulation to the contrary, shall consist in the payment of the interest agreed upon, or, should there be no agreement, in the payment of interest at the legal rate.
>
> Until another rate is fixed by the Government, the legal rate of interest shall be six per cent *per annum*.

In 1916 or during the American period, Act No. 2655[24] or the Usury Law was enacted. Said law pegged the rate of interest at 6% *per annum*. **As worded, however, the 6% interest rate *per annum* was made applicable specifically, in the absence of agreement, to loans or forbearances of money, goods, or credits, and the rate allowed in judgments**, *viz.*:

> SECTION 1. The rate of interest for the loan or forbearance of any money, goods, or credits and the rate allowed in judgments, in the absence

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21 Id. at 15.
22 Id. at 17-19.
23 Approved on December 18, 1889.
24 AN ACT FIXING RATES OF INTEREST UPON LOANS AND DECLARING THE EFFECT OF RECEIVING OR TAKING USURIOUS RATES, AND FOR OTHER PURPOSES, February 24, 1916.

> of express contract as to such rate of interest, shall be six per centum per annum.

In 1950, the Civil Code of the Philippines (Civil Code) was enacted, which adopted a provision similar to that found under the Spanish Civil Code. Under Article 2209, the legal interest rate was set at 6% *per annum*, *viz.*:

> ART. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent *per annum*. (1108)

In 1973, the Usury Law was amended by P.D. 116 to allow the then Central Bank to modify the rate of interest in accordance with the existing economic conditions of the country.[25] P.D. 116 stated:

> WHEREAS, the interest rate, together with other monetary and credit policy instruments, performs a vital role in mobilizing domestic savings and attracting capital resources into preferred areas of investment;
>
> WHEREAS, the monetary authorities have recognized the need to amend the present Usury Law to allow for more flexible interest rate ceilings that would be more responsive to the requirements of changing economic conditions;
>
> WHEREAS, the availability of adequate capital resources is, among other factors, a decisive element in the achievement of the declared objective of accelerating the growth of the national economy;
>
> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution as Commander-in-Chief of the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21, 1972, and General Order No. 1, dated September 22, 1972, as amended, and in order to effect the desired changes and reforms in the social, economic, and political structure of our society, **do hereby order and decree the amendment of Act No. 2655 as amended**, as follows:
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> SECTION 1. Section one of Act Numbered Two thousand six hundred fifty-five is hereby amended to read as follows:
>
> "SECTION 1. The **rate of interest** for the **loan or forbearance** of any money, goods, or credits and the **rate allowed in judgments**, in the absence of express contract as to such rate of interest, shall be six *per*

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[25] See Presidential Decree No. 116, Amending Act No. 2655, January 29, 1973.

Sec. 4-a. In the exercise of its authority to fix the maximum rate or rates of interest under this Act, the Monetary Board shall be guided by the following:

1. The existing economic conditions in the country and the general requirements of the national economy;
2. The supply of and demand for credit;
3. The rate of increase in the price levels; and
4. Such other relevant criteria as the Monetary Board may adopt.

> *centum per annum* or such rate as may be prescribed by the Monetary Board of the Central Bank of the Philippines for **that purpose** in accordance with the **authority hereby granted**."
>
> SEC. 2. The same Act is hereby amended by adding the following section immediately after section one thereof, which reads as follows:
>
> "SEC. 1-a. The Monetary Board is hereby authorized to prescribe the **maximum rate or rates of interest for the loan or renewal thereof** or the forbearance of any money, goods or credits, and to change such rate or rates whenever warranted by prevailing economic and social conditions: *Provided*, That such changes shall not be made oftener than once every twelve months.
>
> "In the exercise of the authority herein granted, the Monetary Board may prescribe **higher maximum rates for consumer loans or renewals thereof** as well as such **loans made by pawnshops, finance companies and other similar credit institutions** although the rates prescribed for these institutions need not necessarily be uniform." (Emphasis and underscoring supplied)

Section 1-a of the Usury Law was further amended by P.D. 858 and P.D. 1684 and it presently reads:

> Sec. 1-a. The Monetary Board is hereby authorized to prescribe the maximum rate or rates of interest for the loan or renewal thereof or the forbearance of any money, goods or credits, and to change such rate or rates whenever warranted by prevailing economic and social conditions: *Provided*, That changes in such rate or rates may be effected gradually on scheduled dates announced in advance.
>
> In the exercise of the authority herein granted the Monetary Board may prescribe higher maximum rates for loans of low priority, such as consumer loans or renewals thereof as well as such loans made by pawnshops, finance companies and other similar credit institutions although the rates prescribed for these institutions need not necessarily be uniform. The Monetary Board is also authorized to prescribe **different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries**. (Emphasis and underscoring supplied)

It bears emphasis that the Usury Law did "not empower the Central Bank to fix the specific rate of interest to be charged for loans."[26] It merely authorized the Monetary Board of the Central Bank (now, BSP) to determine two separate matters: (1) the rate of interest for loans or forbearances of any money, goods, or credits and the rates allowed in judgments, *in the absence of stipulation*; and (2) the *maximum* allowable rates of interest that might be agreed upon by parties for loans or forbearances of any money, goods, or credits such as consumer loans, loans made by pawnshops, finance companies and other similar credit institutions, loans of financial intermediaries, and different types of borrowings, including deposits and

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[26] Dissenting Opinion of Justice Plana in *Reformina v. Tomol, Jr.*, supra note 17, at 481.

deposit substitutes. Hence, contracting parties are free to fix the interest rate subject to the ceilings that the BSP may prescribe under Section 1-a[27] and provided that the stipulated rate is not excessive, inordinate or unconscionable as determined by the Court.

Acting on the authority conferred by Act No. 2655, as amended by P.D. 116, the then Central Bank raised the interest rate under Section 1 of the Usury Law (*i.e.*, the applicable rate when interest was intended but no rate was stipulated, referred to as the BSP-prescribed rate of interest) from 6% to 12% *per annum* in 1974 through CB Circular 416.[28] As a result of this change, several disputes arose regarding the scope and application of the 12% rate *per annum*.

In the oft-cited case of *Reformina v. Tomol, Jr.* [29] (*Reformina*), the Court *en banc* held that the increased 12% *per annum* rate of interest was not applicable to an action for damages for injury to persons and loss of property as it did not constitute a judgment involving a loan or forbearance of money, goods or credit, *viz.*:

> x x x Act No. 2655 deals with interest on (1) loans; (2) forbearances of any money, goods, or credits; and (3) rate allowed in judgments.
>
> x x x x
>
> The judgments spoken of and referred to are judgments in litigations involving loans or forbearance of any money, goods or credits. Any other kind of monetary judgment which has nothing to do with, nor involving loans or forbearance of any money, goods or credits does not fall within the coverage of the said law for it is not within the ambit of the authority granted to the Central Bank. The Monetary Board may not tread on forbidden grounds. It cannot rewrite other laws. That function is vested solely with the legislative authority. It is axiomatic in legal hermeneutics that statutes should be construed as a whole and not as a series of disconnected articles and phrases. In the absence of a clear contrary intention, words and phrases in statutes should not be interpreted in isolation from one another. A word or phrase in a statute is always used in association with other words or phrases and its meaning may thus be modified or restricted by the latter.

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[27] Notably, the interest rate ceilings were removed effective January 1, 1983 with the passage of Central Bank Circular No. (CB Circular) 905. In *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, 701 Phil. 483, 488 (2013), the Court explained:

> In its Resolution No. 2224 dated December 3, 1982, the CB-MB issued CB Circular No. 905, Series of 1982, effective on January 1, 1983. Section 1 of the Circular, under its General Provisions, removed the ceilings on interest rates on loans or forbearance of ***any*** money, goods or credits, to wit:
>
> > Sec. 1. The rate of interest, including commissions, premiums, fees and other charges, on a loan or forbearance of *any* money, goods, or credits, regardless of maturity and whether secured or unsecured, that may be charged or collected by any person, whether natural or juridical, shall **not** be subject to **any ceiling** prescribed under or pursuant to the Usury Law, as amended. (Underscoring and emphasis in the original)

[28] See *Tio Khe Chio v. Court of Appeals*, 279 Phil. 127, 130-131 (1991).

[29] Supra note 17.

Another formidable argument against the tenability of petitioners' stand are the *whereases* of P.D. No. 116 which brought about the grant of authority to the Central Bank and which reads thus —

> "WHEREAS, the interest rate, together with other monetary and credit policy instruments, performs a vital role in mobilizing domestic savings and attracting capital resources into preferred areas of investments;
>
> WHEREAS, the monetary authorities have recognized the need to amend the present Usury Law to allow for more flexible interest rate ceilings that would be more responsive to the requirements of changing economic conditions;
>
> WHEREAS, the availability of adequate capital resources is, among other factors, a decisive element in the achievement of the declared objective of accelerating the growth of the national economy."

Coming to the case at bar, the decision herein sought to be executed is one rendered in an Action for Damages for injury to persons and loss of property and does not involve any loan, much less forbearances of any money, goods or credits. As correctly argued by the private respondents, the law applicable to the said case is Article 2209 of the New Civil Code which reads —

> "Art. 2209. — If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of interest agreed upon, and in the absence of stipulation, the legal interest which is six percent per annum."

The above provision remains untouched despite the grant of authority to the Central Bank by Act No. 2655, as amended. To make Central Bank Circular No. 416 applicable to any case other than those specifically provided for by the Usury Law will make the same of **doubtful constitutionality** since the Monetary Board will be exercising legislative functions which was beyond the intendment of P.D. No. 116.[30] (Emphasis and underscoring supplied)

In *National Power Corp. v. Angas*[31] (*National Power Corporation*), the Court reiterated *Reformina* and further explained the scope of the BSP-prescribed interest rates, as follows:

> Central Bank Circular No. 416 reads:

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30 Id. at 478-480. The dissenting opinion of Justice Plana in *Reformina* states: "This section [Section 1] envisages two situations: (a) a loan or forbearance of money, goods or credit, where the parties agreed on the payment of interest but failed to fix the rate thereof; and (b) a litigation that has ended in a final judgment for the payment of money. In either case, the role of Section 1 is to fix the specific rate of interest or legal interest (6%) to be charged. It also impliedly delegates to the Central Bank the power to modify the said interest rate. Thus, the interest rate shall be 6% per annum or 'such rate as may be prescribed by the Monetary Board of the Central Bank x x x.'" Id. at 482.

31 Supra note 17.

> "By virtue of the authority granted to it under Section 1 of Act No. 2655, as amended, otherwise known as the 'Usury Law,' the Monetary Board, in its Resolution No. 1622 dated July 29, 1974, has prescribed that the rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall be twelve percent (12%) per annum."

It is clear from the foregoing provision that the Central Bank circular **applies only** to loan or forbearance of money, goods or credits. This has already been settled in several cases decided by this Court. Private respondents, however, take exception to the inclusion of the term "judgments" in the said circular, claiming that such term refers to any judgment directing the payment of legal interest, which term includes the questioned judgment of the lower court in the case at bar.

Private respondents' contention is bereft of merit. The term "judgments" as used in Section 1 of the Usury Law, as well as in Central Bank Circular No. 416, should be interpreted to mean only judgments involving loan or forbearance of money, goods or credits, following the principle of *ejusdem generis*. Under this doctrine, where general terms follow the designation of particular things or classes of persons or subjects, the general term will be construed to comprehend those things or persons of the same class or of the same nature as those specifically enumerated (Crawford, *Statutory Construction*, p. 191; *Go Tiaco vs. Union Ins. Society of Camilan*, 40 Phil. 40; *Mutuc vs. COMELEC*, 36 SCRA 228).

The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms (2 Sutherland, *Statutory Construction*, 3rd ed., pp. 395-400).

Applying the said rule on statutory construction to Central Bank Circular No. 416, the general term "judgments" can refer only to judgments in cases involving loans or forbearance of any money, goods or credits. As significantly laid down by this Court in the case of *Reformina vs. Tomol*, 139 SCRA 260:

> x x x x

Obviously, therefore, Art. 2209 of the Civil Code, and not Central Bank Circular No. 416, is the law applicable to the case at bar. Said law reads:

> "ART. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs a delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum."

> The Central Bank circular applies only to loan or forbearance of money, goods or credits and to judgments involving such loan or forbearance of money, goods or credits. This is evident not only from said circular but also from Presidential Decree No. 116, which amended Act No. 2655, otherwise known as the Usury Law. On the other hand, Art. 2209 of the Civil Code applies to transactions requiring the payment of indemnities as damages, in connection with any delay in the performance of the obligation arising therefrom other than those covering loan or forbearance of money, goods or credits.
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> In the case at bar, the transaction involved is clearly not a loan or forbearance of money, goods or credits but expropriation of certain parcels of land for a public purpose, the payment of which is without stipulation regarding interest, and the interest adjudged by the trial court is in the nature of indemnity for damages. The legal interest required to be paid on the amount of just compensation for the properties expropriated is manifestly in the form of indemnity for damages for the delay in the payment thereof. Therefore, since the kind of interest involved in the joint judgment of the lower court sought to be enforced in this case is interest by way of damages, and not by way of earnings from loans, etc. Art. 2209 of the Civil Code shall apply.
>
> As for private respondents' argument that Central Bank Circular No. 416 impliedly repealed or modified Art. 2209 of the Civil Code, suffice it to state that repeals or even amendments by implication are not favored if two laws can be fairly reconciled. The Courts are slow to hold that one statute has repealed another by implication, and they will not make such an adjudication if they can refrain from doing so, or if they can arrive at another result by any construction which is just and reasonable. Besides, the courts will not enlarge the meaning of one act in order to decide that it repeals another by implication, nor will they adopt an interpretation leading to an adjudication of repeal by implication unless it is inevitable and a clear and explicit reason therefor can be adduced. (82 C.J.S. 479-486). **In this case, Central Bank Circular No. 416 and Art. 2209 of the Civil Code contemplate different situations and apply to different transactions**. In transactions involving loan or forbearance of money, goods or credits, as well as judgments relating to such loan or forbearance of money, goods or credits, the Central Bank circular applies. It is only in such transactions or judgments where the Presidential Decree allowed the Monetary Board to dip its fingers into. On the other hand, in cases requiring the payment of indemnities as damages, in connection with any delay in the performance of an obligation other than those involving loan or forbearance of money, goods or credits, Art. 2209 of the Civil Code applies. For the Court, this is the most fair, reasonable, and logical interpretation of the two laws. **We do not see any conflict between Central Bank Circular No. 416 and Art. 2209 of the Civil Code or any reason to hold that the former has repealed the latter by implication.**[32]
> (Emphasis and underscoring supplied)

Pursuant to *Reformina* and *National Power Corporation*, it became necessary for the Court to determine whether an obligation to pay a sum of money constitutes a loan/forbearance of money, goods or credit in order to apply the appropriate interest rate (*i.e.*, the BSP-prescribed interest for

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[32] Id. at 45-48.

loans/forbearances when interest is intended but no rate was stipulated and for judgments involving loans/forbearances *vis-à-vis* the 6% *per annum* legal interest rate under Article 2209 for all other situations).

Thus, in *Tio Khe Chio v. Court of Appeals*[33] and *Pilipinas Bank v. Court of Appeals,*[34] (*Pilipinas Bank*) the Court held that the BSP-prescribed rate did *not* apply to actions for unpaid insurance claims[35] and to contracts of sale, respectively, as they did not involve loans or forbearances of money, goods, or credit.[36] On the other hand, the 12% *per annum* interest rate under CB Circular 416 was held to be applicable to judgments involving the payment of unliquidated cash advances to an employee by his employer[37] and to the return of money paid by a buyer of a leasehold right but which contract was voided due to the fault of the seller.[38]

In *Eastern Shipping Lines*, the Court attempted to reconcile the various provisions under the Civil Code *vis-à-vis* Act No. 2655, as amended, by providing guidelines for the imposition of interest rates. Under said guidelines, a distinction was made between loans and forbearances of money, goods, or credit, and judgments involving the same (paragraph II.1, which called for the application of the BSP-prescribed rate), and all other monetary awards (paragraph II.2, which called for the application of Article 2209 of the Civil Code). *Eastern Shipping Lines* likewise imposed a singular rate on the total unpaid monetary award as of the finality of the judgment, regardless of whether the sum due involved a loan or forbearance, as the interim period was deemed to be a forbearance of credit (paragraph II.3), *viz.*:

> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
>
> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be

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33 279 Phil. 127 (1991).

34 296-A Phil. 260, 269-270 (1993).

35 *Tio Khe Chio v. Court of Appeals*, supra note 33, at 131. See also *Country Bankers Insurance Corp. v. Lianga Bay & Community Multi-Purpose Cooperative, Inc.*, 425 Phil. 511, 523 (2002).

36 In *Philippine National Bank v. Court of Appeals*, 331 Phil. 1079, 1083 (1996), the Court held that CB Circular No. 416 did not apply to a contract of sale, where the seller not receive full payment for her merchandise.

37 See *Viloria v. Court of Appeals*, 208 Phil. 193 (1983).

38 See *Buisier v. Court of Appeals*, No. L-45663, September 30, 1987, 154 SCRA 438.

> computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date of the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount of finally adjudged.
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> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[39] (Underscoring supplied)

With the issuance of BSP-MB Resolution No. 796 dated May 16, 2013, the rate of interest for loans or forbearances of any money, goods or credits and the rate allowed in judgments relating to the foregoing, in the absence of an express contract as to such rate of interest, was reduced by the BSP pursuant to Section 1 of the Usury Law from 12% to 6% *per annum* effective July 1, 2013.[40] Hence, the Court, in *Nacar* updated the rules provided in *Eastern Shipping Lines* as follows:

> **To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:**
>
> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
>
> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance

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39 *Eastern Shipping Lines*, supra note 2, at 252-254.

40 BSP Circular No. 799, Series of 2013, RATE OF INTEREST IN THE ABSENCE OF STIPULATION, June 21, 2013.

> of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum.* No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.
>
> And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[41]

In other words, for sums of money due after July 1, 2013 and until the BSP prescribes a rate of interest that will apply (in the absence of stipulation) for loans or forbearances higher or lower than 6% *per annum* pursuant to its authority under the Usury Law, there is no need at present to distinguish between an obligation consisting of a loan or forbearance of any money, goods, or credits under the Usury Law and any other monetary obligation, in that the interest rate of 6% *per annum* should be uniformly applied. Although loans or forbearances and obligations not constituting loans or forbearances are currently subject to the same 6% *per annum* interest rate pursuant to BSP-MB Resolution No. 796 and Article 2209 of the Civil Code, "the need to determine whether the obligation involved

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[41] *Nacar*, supra note 3, at 281-283.

herein is a loan and forbearance of money **nonetheless exists**" as the new rate was not applied retroactively.[42]

In the face of the foregoing guidelines, confusion still continued, in large part due to the vagueness of the phrase "forbearances of money, goods, or credits." It bears emphasis that although the phrase appears in several provisions of the Usury Law, it was not defined therein. Neither was it defined under the Civil Code.

Conflicting interpretations of the phrase "forbearance of money, goods, or credits"

In *Eastern Shipping Lines*, the Court, citing Black's Law Dictionary which, in turn, cited the case of *Hafer v. Spaeth*,[43] held that a "forbearance, within the context of [the] Usury Law, [is] a contractual obligation of lender or creditor to refrain, during [a] given period of time, from requiring [the] borrower or debtor to repay [a] loan or debt then due and payable."[44]

In *Food Terminal, Inc. v. Court of Appeals*[45] (*Food Terminal*), the Court, interpreting previous cases on the application of the 12% *per annum* interest rate, stated that the BSP 12% *per annum* prescribed rate "refer[red] to legal interest in a loan or forbearance of money, or to cases where money is transferred from one person to another and the obligation to return the same or a portion thereof is adjudged."[46]

On the other hand, the Court in *Estores* without reference as to its legal basis, held that the phrase "'forbearance of money, goods or credits' [was] meant to have a separate meaning from a loan, otherwise there would have been no need to add that phrase as a loan is already sufficiently defined in the Civil Code. Forbearance of money, goods or credits should therefore refer to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending happening of certain events or fulfillment of certain conditions."[47]

Confusion as to the precise scope and definition of the term "forbearance" has resulted, deliberately or by oversight, in various conflicting decisions as discussed below.

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42 *Federal Builders, Inc. v. Foundation Specialists, Inc.*, 742 Phil. 433, 446-447 (2014); emphasis and underscoring supplied.

43 22 Wn. 2d 378, 384 (1945).

44 *Eastern Shipping Lines, Inc. v. Court of Appeals*, supra note 2, at 251.

45 330 Phil. 903 (1996).

46 Id. at 907; see *Pilipinas Bank*, supra note 34, at 270 cited in *Remington Industrial Sales Corp. v. Maricalum Mining Corp.*, 761 Phil. 284, 299 (2015).

47 *Estores v. Sps. Supangan*, supra note 13, at 96-97.

a. Contracts of Sale, Service and/or Employment

In *Pilipinas Bank* the Court held that an action for collection of the purchase price pursuant to a contract of sale is not subject to the rates prescribed by the BSP as it does not involve a loan, forbearance of money, or judgment involving a loan or forbearance of money,[48] *viz.:*

> Note that Circular No. 416,[49] fixing the rate of interest at 12% per annum, deals with (1) loans; (2) forbearance of any money, goods or credit; and (3) judgments.
>
> In *Reformina v. Tomol, Jr.*, 139 SCRA 260 [1985], the Court held that the judgments spoken of and referred to in Circular No. 416 are "judgments in litigation involving loans or forbearance of any money, goods or credits. Any other kind of monetary judgment which has nothing to do with nor involving loans or forbearance of any money, goods or credits does not fall within the coverage of the said law for it is not, within the ambit of the authority granted to the Central Bank."
>
> *Reformina* was affirmed in *Philippine Virginia Tobacco Administration v. Tensuan*, 188 SCRA 628 [1990], which emphasized that the "judgments" contemplated in Circular No. 417 "are judgments involving said loans or forbearance only and not in judgments in litigation that have nothing to do with loans x x x."
>
> We held that Circular No. 416 does not apply to judgments involving damages (*Reformina v. Tomol, Jr., supra*; *Philippine Virginia Tobacco Administration v. Tensuan, supra*) and compensation in expropriation proceedings (*National Power Corporation v. Angas*, 208 SCRA 542 [1992]). We also held that Circular No. 416 applies to judgments involving the payment of unliquidated cash advances to an employee by his employer (*Villarica v. Court of Appeals*, 123 SCRA 259 [1983]) and the return of money paid by a buyer of a leasehold right but which contract was voided due to the fault of the seller (*Buisier v. Court of Appeals*, 154 SCRA 438 [1987]).
>
> What then is the nature of the judgment ordering petitioner to pay private respondent the amount of ₱2,300,000.00?
>
> The said amount was a portion of the ₱7,776,335.69 which petitioner was obligated to pay Greatland as consideration for the sale of several parcels of land by Greatland to petitioner. The amount of ₱2,300,000.00 was assigned by Greatland in favor of private respondent. The said obligation therefore arose from a contract of purchase and sale and not from a contract of loan or mutuum. Hence, what is applicable is the rate of 6% per annum as provided in Article

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48 See *Pilipinas Bank*, supra note 34, at 269-270; see also *Philippine National Bank v. Court of Appeals*, supra note 36, at 1083.

49 Circular No. 416 states: "By virtue of the authority granted to it under Section 1 of Act 2655, as amended, otherwise known as the 'Usury Law' the Monetary Board in its Resolution No. 1622 dated July 29, 1974, has prescribed that the rate of interest for the loan, or forbearance of any money, goods, or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall be twelve (12%) per cent per annum. This Circular shall take effect immediately." See *Pilipinas Bank*, id. at 268-269.

> 2209 of the Civil Code of the Philippines and not the rate of 12% per annum as provided in Circular No. 416.[50] (Underscoring supplied)

In *Crismina Garments, Inc. v. Court of Appeals*[51] (*Crismina Garments*), the Court applied the 6% *per annum* interest rate under Article 2209 of the Civil Code because the amount due arose from a contract for a piece of work, not from a loan or forbearance of money. Similarly, in *Federal Builders, Inc. v. Foundation Specialists, Inc.*,[52] the Court likewise held that the 12% *per annum* interest rate was inapplicable to an action for the payment of construction services.

In contrast, the Court in *Kabisig Real Wealth Dev., Inc. v. Young Builders Corporation*[53] applied the 12% *per annum* interest rate to an action for the payment of the value of services rendered and the supply of materials used in the renovation of a building.[54] In *Cabanting v. BPI Family Savings Bank, Inc.*,[55] the Court likewise applied the 12% *per annum* interest rate to a transaction involving an installment purchase of a motor vehicle. Similarly, the Court applied the 12% *per annum* interest rate (1) to a complaint for sum of money for amounts due from a service contract for the completion of metal works in *Filinvest Alabang, Inc. v. Century Iron Works, Inc.*,[56] and (2) to the unpaid purchase price of bulk bags in *NFF Industrial Corp. v. G & L Associated Brokerage*.[57]

It bears emphasis that the 12% *per annum* interest rate has also been applied to monetary claims awarded in labor disputes, such as the payment of 13th month pay and retirement benefits,[58] separation pay in lieu of reinstatement,[59] and backwages.[60]

Therefore, it appears from the foregoing cases that claims arising from contracts of sale, contracts of service, and contracts of employment have been treated as forbearances of money although they do not fall within any of the jurisprudential definitions of what constitutes a forbearance of money.

b. Just Compensation

Although the Court previously held that the BSP-prescribed 12% *per annum* interest rate was inapplicable to sums due as just compensation in expropriation proceedings,[61] more recent jurisprudence has deliberately

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50 *Pilipinas Bank*, id. at 269-270.
51 363 Phil. 701, 709 (1999).
52 Supra note 42, at 444, 448-449.
53 804 Phil. 389 (2017).
54 Id. at 397-399.
55 781 Phil. 164, 173 (2016).
56 775 Phil. 472 (2015).
57 750 Phil. 69 (2015).
58 *Beltran v. AMA Computer College-Biñan*, G.R. No. 223795, April 3, 2019, p. 12.
59 *Bigg's, Inc. v. Boncacas*, G.R. Nos. 200487 & 200636, March 6, 2019, pp. 21-22.
60 *Pardillo v. Bandojo*, G.R. No. 224854, March 27, 2019, p. 14.
61 See *National Power Corporation v. Angas*, supra note 17.

applied the 12% *per annum* interest rate. In *Evergreen Manufacturing Corp. v. Republic,*[62] the Court explained:

> As explained by this Court in *Apo Fruits Corporation v. Land Bank of the Philippines*, the rationale for imposing interest on just compensation is to compensate the property owners for the income that they would have made if they had been properly compensated — meaning if they had been paid the full amount of just compensation — at the time of taking when they were deprived of their property. The Court held:
>
> > We recognized in *Republic v. Court of Appeals* the need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken. We ruled in this case that:
> >
> > > The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, i[f] fixed at the time of the actual taking by the government. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.
> >
> > Aside from this ruling, Republic notably overturned the Court's previous ruling in *National Power Corporation v. Angas* which held that just compensation due for expropriated properties is not a loan or forbearance of money but indemnity for damages for the delay in payment; since the interest involved is in the nature of damages rather than earnings from loans, then Art. 2209 of the Civil Code, which fixes legal interest at 6%, shall apply.
> >
> > In *Republic*, the Court recognized that the <u>just compensation due to the landowners for their expropriated property amounted to an **effective forbearance**</u> on the part of the State. Applying the *Eastern Shipping Lines* ruling,

[62] G.R. Nos. 218628 & 218631, September 6, 2017, 839 SCRA 200.

> the Court fixed the applicable interest rate at 12% *per annum*, computed from the time the property was taken until the full amount of just compensation was paid, in order to eliminate the issue of the constant fluctuation and inflation of the value of the currency over time. x x x
>
> The delay in the payment of just compensation is a forbearance of money. As such, this is necessarily entitled to earn interest. The difference in the amount between the final amount as adjudged by the court and the initial payment made by the government — which is part and parcel of the just compensation due to the property owner — should earn legal interest as a forbearance of money. In *Republic v. Mupas*, we stated clearly:
>
> > Contrary to the Government's opinion, the interest award is not anchored either on the law of contracts or damages; it is based on the owner's constitutional right to just compensation. The difference in the amount between the final payment and the initial payment — in the *interim* or before the judgment on just compensation becomes final and executory — is not unliquidated damages which do not earn interest until the amount of damages is established with reasonable certainty. The difference between final and initial payments forms part of the just compensation that the property owner is entitled from the date of taking of the property.
> >
> > Thus, when the taking of the property precedes the filing of the complaint for expropriation, the Court orders the condemnor to pay the full amount of just compensation from the date of taking whose interest shall likewise commence on the same date. The Court does not rule that the interest on just compensation shall commence [on] the date when the amount of just compensation becomes certain, *e.g.*, from the promulgation of the Court's decision or the finality of the eminent domain case. x x x
>
> With respect to the amount of interest on the difference between the initial payment and final amount of just compensation as adjudged by the court, we have upheld in *Eastern Shipping Lines, Inc. v. Court of Appeals*, and in subsequent cases thereafter, the imposition of 12% interest rate from the time of taking when the property owner was deprived of the property, until 1 July 2013, when the legal interest on loans and forbearance of money was reduced from 12% to 6% *per annum* by BSP Circular No. 799. Accordingly, from 1 July 2013 onwards, the legal interest on the difference between the final amount and initial payment is 6% per annum.[63] (Emphasis and underscoring supplied; emphasis in the original omitted)

The delay in the payment of just compensation was considered a forbearance of money subject to the BSP-prescribed interest rate of 12% *per annum* (and apparently within the purview of the Usury Law) although it did not fall within any of the definitions of forbearance provided in *Eastern Shipping Lines, Food Terminal*, or *Estores*.

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[63] Id. at 227-230.

Parenthetically, while the owner's right to just compensation in eminent domain proceedings finds basis under the Constitution, the cause of action of the owner is still within the purview of Article 2209 of the Civil Code because it involves a delay in the payment of an obligation arising from law[64] consisting of a sum of money without a stipulation of interest, there being no law that expressly prescribes the applicable interest rate.

c. Returns, Refunds, Reimbursements

In *Pilipinas Bank* and *Remington Industrial Sales Corp. v. Maricalum Mining Corp.*,[65] the Court held that the 12% *per annum* interest rate was applicable (1) to the return of amounts taken pursuant to an execution pending appeal, but which was reduced during appeal; and (2) to garnished amounts arising from nullified orders, respectively. Similarly, in *Estores,* the Court held that a judgment requiring the return of payments made pursuant to an unfulfilled Conditional Deed of Sale was a forbearance of money subject to the 12% *per annum* interest rate.[66]

In contrast, a judgment requiring a party to return an amount that was not legally due[67] and an action for the return of amounts paid pursuant to an unfulfilled contract to sell were not considered forbearances and were subjected to the 6% *per annum* rate of interest.[68] It must be noted that the latter cases are similar to the quasi-contract of *solutio indebiti* under Article 2154 of the Civil Code, which provides that if something is received where there is no right to demand it, and it was delivered through mistake, the obligation to return it arises, in relation to Article 2163, which provides that it is presumed that there was mistake in the payment if something which had never been due or had already been paid was delivered. Since the obligations involved in such cases arise from quasi-contract[69] consisting of delay in the payment of a sum of money without a stipulation of interest, there being no law that expressly prescribes the applicable interest rate, they are within the contemplation of Article 2209.

As regards reimbursements, the Court, in *International Container Terminal Services, Inc. v. FGU Insurance Corporation,*[70] held that an insurance company's claim for reimbursement from a carrier for sums paid to the insured was not a loan or forbearance. Similarly, reimbursement under a cross-claim made by one solidary obligor against another was not considered a loan or forbearance.[71] However, in *Dart Philippines, Inc. v. Spouses Calogcog,*[72] the Court held the petitioner therein liable to reimburse respondents for amounts

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64 Pursuant to Article 1157 of the Civil Code, obligations arise from law, among other sources.
65 Supra note 46.
66 *Estores v. Sps. Supangan*, supra note 13, at 96-97.
67 *Spouses Lequin v. Spouses Vizconde*, 618 Phil. 409, 427 (2009).
68 See *ECE Realty and Development, Inc. v. Hernandez*, 740 Phil. 789, 794-797 (2014).
69 Pursuant to Article 1157 of the Civil Code, obligations arise from quasi-contracts, among other sources.
70 604 Phil. 380, 381 (2009).
71 *JL Investment and Development, Inc. v. Tendon Philippines, Inc.*, 541 Phil. 82, 92 (2007).
72 613 Phil. 224 (2009).

the latter paid as salaries of persons engaged by the former and imposed the 12% *per annum* interest rate for loans and forbearances of money, goods, or credits.[73]

The foregoing cases unequivocally show that the term "forbearance" has been indiscriminately applied to any obligation involving the payment of a sum of money. This, I submit, is inaccurate. Given the historicity of the Usury Law, I submit that the scope and application of the phrase "forbearance of money, goods, or credits" must be given a limited construction, in light of the object and purpose of the Usury Law.

The term "forbearance" must be construed in light of the Usury Law

The *ponencia* adopts the definition of forbearance in *Estores,* and holds that a forbearance has a separate meaning from a loan and should be construed to refer to "arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending happening of certain events or fulfillment of certain conditions."[74] As a result, the *ponencia* concludes that the same covers even a sale of goods on installment and a sale of anything on credit.[75]

I completely disagree. The definition in *Estores* cites no legal bases. Contrary to the discussion in the *ponencia,*[76] the definition in *Estores* does not at all appear in *Crismina Garments*. In fact, *Crismina Garments* expressly adopted the definition in *Eastern Shipping Lines* that "a 'forbearance' in the context of the usury law is a 'contractual obligation of lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay a loan or debt then due and payable'"[77] and thus, correctly concluded that "an action for the enforcement of an obligation for payment of money arising from a contract for a piece of work x x x was obviously not a forbearance of money, goods or credit."[78]

Instead, I subscribe to the well-reasoned conclusion in *Reformina* that:

> x x x Any other kind of monetary judgment which has nothing to do with, nor involving loans or forbearance of any money, goods or credits does not fall within the coverage of the [Usury Law] for it is not within the ambit of the authority granted to the Central Bank. The Monetary Board may not tread on forbidden grounds. It cannot rewrite other laws. That function is vested solely with the legislative authority. It is axiomatic in legal hermeneutics that statutes should be construed as a whole and not as a series of disconnected articles and phrases. In the absence of a clear

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73 Id. at 237-238.
74 *Ponencia*, p. 14, citing *Crismina Garments, Inc. v. Court of Appeals*, supra note 51.
75 Id. at 17.
76 Id. at 14.
77 *Crismina Garments, Inc. v. Court of Appeals*, supra note 51, at 709.
78 Id. at 706, 709.

> contrary intention, words and phrases in statutes should not be interpreted in isolation from one another. A word or phrase in a statute is always used in association with other words or phrases and its meaning may thus be modified or restricted by the latter.[79]

Applying the foregoing rationale, I submit that the phrase "forbearance of money, goods, or credits" must be construed in the narrow context of the Usury Law and in relation to the other provisions found therein. Hence, I find that the BSP has no authority (1) to prescribe interest rates in the absence of stipulation under Section 1 of the Usury Law or (2) to set interest rate ceilings under its Section 1-a, on *any* transaction that does *not* fall within the context of usury.

As the Usury Law is of American origin, resort to American jurisprudence on the construction of the term "forbearance" is *apropos*.

It has been held that "[i]nterest is the premium allowed by law for the use of money, while usury is the taking of more for its use than the law allows."[80] In American jurisprudence, it is generally understood that "statutes are passed prohibiting usury, in order to protect needy and necessitous persons from the oppression of usurers, who are eager to take advantage of the distresses of others, and who violate the law only to complete their ruin."[81] This is explained in *Monk v. Goldstein*,[82] *viz.*:

> The test of usury is that there should be a contract for the forbearance of an existing indebtedness or a loan of money or, as otherwise expressed, a profit greater than the lawful rate of interest, intentionally exacted as a bonus for the loan of money, imposed upon the necessities of the borrower in a transaction where the treaty is for a loan and the money is to be returned at all events, which is a violation of the usury laws, it matters not what form or disguise it may assume. x x x "In order to constitute a usurious transaction, four requisites must appear: (1) There must be a loan, express or implied; (2) an understanding between the parties that the money lent shall be returned; (3) that for such loan a greater rate of interest than is allowed by law shall be paid or agreed to be paid, as the case may be; and (4) there must exist a corrupt intent to take more than the legal rate for the use of the money loaned. The text-writers declare that these rules are applicable everywhere and under the usury laws of every State, and that unless these four things concur in every transaction it is safe to say that no case of usury can be declared.[83]

In *Hogg v. Ruffner*,[84] the United States of America (US) Supreme Court explained that "[t]o constitute usury, there must either be a loan and a

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79 *Reformina v. Tomol, Jr.*, supra note 17, at 479.

80 *Monk v. Goldstein*, 172 N.C. 516, 518 (1916). See also *MacRackan v. Bank of Columbus*, 164 N.C. 24, 26 (1913).

81 *Wheaton v. Hibbard*, 20 Johns. 290, 293 (1822).

82 Supra note 80.

83 Id. at 517-519.

84 66 U.S. 115 (1862).

taking of usurious interest, or the taking of more than legal interest for the forbearance of a debt or sum of money due."[85]

Several US cases define forbearance as "the giving of further time for the payment of a debt or an agreement not to enforce a claim at its due date."[86] Similarly, it has been held that "[t]he term "forbearance" as used in the law of usury, signifies a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to pay a loan or debt then due and payable."[87] It occurs when "the collection of a mature obligation is postponed in return for some compensation,"[88] *i.e.*, interest.

Like the US, Philippine Usury Law penalizes the taking of excessive interest[89] for the loan or forbearance of money, goods, or credits in order to protect the needy from those who seek to exploit them. I believe usury statutes govern such kinds of situations because an opportunity to extort excessive interest in exchange for a reprieve from the immediate performance of a mature obligation is often present. I accordingly subscribe to the definition of forbearance provided in *Eastern Shipping Lines* and *Crismina Garments*, which adopted the definition[90] in American jurisprudence that a "'forbearance' in the context of the usury law is a 'contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay a loan or debt then due and payable'"[91] as it is the definition that is most in line with the nature and purpose of the Usury Law. **Hence, I find that "forbearance" is no different from a loan and that the use of the conjunctive "or" precisely specifies this — meaning the word "loan" is not confined to a forbearance of only money, but also of goods or services. But even if "forbearance" is "separate from a loan" as the *ponencia* suggests, I believe that "forbearance" is or must be understood as akin to a loan and must involve (1) an agreement or contractual obligation (2) to refrain from enforcing payment or to extend the period for the payment of (3) an obligation that has become due and demandable, (4) in return for some compensation, *i.e.*, interest**.

Based on the foregoing disquisition, I therefore submit that **not all obligations constituting the payment of a sum of money may be considered forbearances within the context of the Usury Law and within the authority of the BSP**. The mere fact that there is delay or refusal to pay

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85 Id. at 118.

86 *Southwest Concrete Products v. Gosh Construction Corp.*, 51 Cal. 3d 701, 705 (1990). See also *Thomas v. Knickerbocker Operating Co.*, 202 Misc. 286, 287 (1951).

87 *Hafer v. Spaeth*, supra note 43, at 384.

88 *Cohn v. Marjorie's Gifts, Inc.*, 1973 U.S. App. LEXIS 7502.

89 *The United States v. Constantino Tan Quingco Chua*, 39 Phil. 552 (1919).

90 *Eastern Shipping Lines*, supra note 2, at 251, citing Black's Law Dictionary (1990 ed., 644) further citing the case of *Hafer v. Spaeth*, supra note 43, defines the word "forbearance" within the context of usury law as a contractual obligation of lender or creditor to refrain, during given period of time, from requiring borrower or debtor to repay loan or debt then due and payable.

91 *Crismina Garments, Inc. v. Court of Appeals*, supra note 51, at 709, citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, id.

the sums due under a contract of sale, service, employment, lease, or insurance will not constitute a forbearance of money, goods, or credit. In such cases, the obligee or creditor does not actually agree or even acquiesce and is not contractually obliged to refrain from enforcing payment in exchange for interest, but merely fails to exact payment. Hence, the BSP-prescribed rate cannot apply. Instead, the 6% *per annum* interest rate under the Civil Code should apply.

In like manner, the fact that the payment of interest in case of delay is stipulated in a contract will not automatically transform an obligation into a forbearance. Thus, the presence of a provision on the payment of interest in case of delay in the payment of the purchase price in a contract to sell or of sale, or in the payment of rents under a lease contract, does not transform the sale or lease into a forbearance. In the same vein, a construction contract cannot be deemed a forbearance even if there is a stipulation on the payment of interest in case the party who engaged the services of the contractor does not pay the progress billings on time. The payment of interest in case of delay is in the nature of a penalty clause,[92] which parties may validly stipulate on in agreements involving both loans/forbearances and non-loans/non-forbearances.

That said, should the parties in the aforementioned situations **subsequently agree** to extend the period for the performance of a due and demandable obligation in exchange for compensation, *i.e.*, interest, a forbearance would then arise.[93] In this situation, the evils sought to be prevented by usury statutes, *i.e.*, when obligors, desperate to obtain an extension for the performance of a due and demandable obligation, are placed in the power of obligees who may take advantage of this desperation in order to exact more interest that the law allows, would be present.

Credit sales and sales on installment require additional analysis as their structure is admittedly similar to that of a forbearance, *i.e.*, the seller agrees to an extended payment period often in exchange for a higher price.

Fortunately, American and Philippine jurisprudence have resolved the issue with relative consistency and have held that sales on credit and sales on installments do not generally constitute loans or forbearances of money and do not fall within the ambit of the Usury Law under the "time-price doctrine."

In construing the California Usury Law, which covered any loan or forbearance of any money, goods, or things in action, or on accounts after demand, the California Supreme Court explained:

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92 See CIVIL CODE, Art. 1226.

93 Applying the definition in *Southwest Concrete Products v. Gosh Construction Corp.*, supra note 86. See also *Thomas v. Knickerbocker Operating Co.*, supra note 86; *Hafer v. Spaeth*, supra note 43; *Cohn v. Marjorie's Gifts, Inc.*, supra note 88; *Eastern Shipping Lines*, supra note 2; *Crismina Garments, Inc. v. Court of Appeals*, supra note 51.

> x x x A loan of money is the delivery of a sum of money to another under a contract to return at some future time an equivalent amount. A forbearance of money is the giving of further time for the payment of a debt or an agreement not to enforce a claim at its due date. However, "[b]oth a loan of money and a forbearance are to be distinguished from a sale which is the 'transfer of property in a thing for a price in money.'" x x x In determining whether a transaction constitutes a loan or forbearance, we look to the substance rather than the form of the transaction. "In all such cases the issue is whether or not the bargain of the parties, assessed in light of all the circumstances and with a view to substance rather than form, has as its true object the hire of money at an excessive rate of interest."
>
> There are many exceptions to the usury law. x x x One is the "time-price" doctrine. This doctrine applies when property is sold on credit as an advance over the cash price. In these circumstances, the seller finances the purchase of property by extending payments over time and charging a higher price for carrying the financing. This type of transaction, often called a bona fide credit sale, is not subject to the usury law because it does not involve a loan or forbearance. As explained in *Verbeck*: "'On principle and authority, the owner of property, whether real or personal, has a perfect right to name the price on which he is willing to sell, and to refuse to accede to any other. He may offer to sell at a designated price for cash or at a much higher price on credit, and a credit sale will not constitute usury however great the difference between the two prices, unless the buying and selling was a mere pretense. x x x'"[94]

Likewise, in *Thomas v. Knickerbocker Operating Co.,*[95] the New York Supreme Court explained:

> The only issue to be determined is whether the credit service charge in excess of 6% on the unpaid cash balance renders the transaction usurious.
>
> Usury is defined by the statute as the taking or receiving "any greater sum or greater value, for the *loan* or *forbearance* of any money, *goods* or things in action" than 6% per annum. x x x While the word "goods" is mentioned in the statute as the subject matter of a loan (which is apparently the reason for the plaintiffs' position in this matter) it has been held to apply only to the loan or forbearance of money.
>
> To constitute a loan there must be a borrower and a lender and as intimated by the Court of Appeals in *Stockwell v. Holmes* (33 N. Y. 53), where there is no loan, there can be no usury; the term "forbearance" means the giving of additional time after the obligation becomes due and payable.
>
> In the case at bar, the granting of time was a consideration for the sale without which the sale would not have been consummated. It is obvious that deferred payments in installment sales is not "forbearance" as defined in the statute. The price of merchandise can and does vary in cases where the seller exacts a larger sum when payments are made on credit. There

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94 *Southwest Concrete Products v. Gosh Construction Corp.*, supra note 86, 704-706; see also *Ghirardo v. Antonioli*, 8 Cal. 4th 791 (1994).

95 Supra note 86.

are many business concerns which habitually charge less for standard merchandise simply because they deal on a cash basis only.

As a matter of fact there is no law which compels a sale *at any fixed price*. There are still many business establishments where prices are fixed on the principle of bargaining between seller and buyer and, of course, there will be even more bargaining where the price is not payable in immediate cash.

The plaintiffs urge upon the court that the charges made for the sale, in the case at the bar, are an "exorbitant exaction". There is nothing in the record of this case which would call for the exercise of any public policy to declare this transaction void or usurious. It is not the sale of any article which was subject to any price regulation nor was there any legal prohibition preventing the seller from contracting at the price fixed by it.

In the case of *Meaker* v. *Fiero* (145 N. Y. 165) the court says on page 170, It is a fundamental principle governing the law of usury that it must be founded on a *loan* or forbearance of money. If neither of these elements exists, there can be no usury, however unconscionable the contract may be." x x x

This certainly was not a transaction where a needy borrower came to a money lender and was compelled to borrow on lender's terms no matter how onerous. The usury statutes were framed for the benefit of such borrower and not for the purchase of goods on credit.

x x x x

The plaintiffs seek to make a distinction by showing that the sale on a time basis afforded the dealer a means to secure the unpaid cash price. While the credible evidence does not support a finding that there was a prior arrangement, from what was said in *Brooks* v. *Avery* (4 N. Y. 225) the buyer may agree that the seller's ability and arrangement to sell the contract and realize cash can be a condition precedent to the consummation of the sale, without rendering the transaction usurious.

x x x x

Judge Jewett continued: "The transaction between Williams and Samain, so far from being tainted with usury, is shown to be nothing more than the ordinary case of an owner of property, desirous to sell, making a difference in price between a sale for cash in hand and a sale on time; with the further caution, not to sell absolutely, till he ascertains that the security proposed to be taken for the price on time, will sell for a sum in cash equal to the sum he is willing to sell for being paid cash in hand; a caution that the owner has a legal right to exercise without being liable to have usury successfully imputed in the contract."

Since 1850, when the Court of Appeals in *Brooks* v. *Avery (supra)* laid down this principle, the courts of this State have adhered to the doctrine that the difference between the cash price and the time-selling price is not subject to the usury statutes. x x x[96] (Emphasis and underscoring supplied; italics in the original)

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[96] *Thomas v. Knickerbocker Operating Co.*, supra note 86, at 287-289. Citations omitted.

Philippine jurisprudence has adopted the same rule. In *Delgado v. Alonso Duque Valgona*[97] (*Delgado*), the Court cited *Hogg v. Ruffner*[98] and held:

> "x x x it is manifest that if A propose[s] to sell to B a tract of land for $10,000 in cash, or for $20,000 payable in ten annual instalments, and if B prefers to pay the larger sum to gain time, the contract cannot be called usurious. A vendor may prefer $100 in hand to double the sum in expectancy, and a purchaser may prefer the greater price with the longer credit; and one who will not distinguish between things that differ, may say, with apparent truth, that B pays a hundred per cent for forbearance, and may assert that such a contract is usurious; but whatever truth there may be in the premises, the conclusion is manifestly erroneous. Such a contract has none of the characteristics of usury; it is not for the loan of money, or forbearance of debt." (Ruffner *vs.* Hogg, 1 Black [U. S.], 115; 17 L. ed., 38.)[99]

Similarly, in *Manila Trading & Supply Co. v. Tamaraw Plantation Co.,*[100] the Court explained:

> The instant case is of a chattel mortgage given to secure payment for the agricultural implements sold by the plaintiff to the defendant. The transaction was carried out between the parties in good faith, and there is no proof that the contract of sale of agricultural effects, secured by a mortgage on the same goods, was executed as a loan of money. This being so, the parties may freely agree upon the price of the goods sold, and it cannot be said that the credit, greater than the cash, price, constitutes interest within the meaning of the Usury Law. The increase of the price, when the sale is on credit, serves not only to cover the expenses generally entailed by such transactions on credit, but also to encourage cash sales, so useful to commerce. It is up to the purchaser to decide which price he prefers in making the purchase. If he prefers to purchase for cash, he obtains a 5 per cent reduction of the price; if, on the contrary, he prefers to buy on credit, he cannot complain of the increase of the price demanded by the vendor.
>
> In 27 R. C. L., p. 214, it is said: "On principle and authority, the owner of property, whether real or personal, has a perfect right to name the price on which he is willing to sell, and to refuse to accede to any other. He may offer to sell at a designated price for cash or at a much higher price on credit, and a credit sale will not constitute usury however great the difference between the two prices, *unless the buying and selling was a mere pretense*." And in 39 Cyc., p. 927, it is also established that: "A vendor may well fix upon his property one price for cash and another for credit, and the mere fact that the credit price exceeds the cost price by a greater percentage than is permitted by the usury laws is a matter of concern to the parties but not to the courts, barring evidence of bad faith. If the parties have acted in good faith such a transaction is not a loan, and not usurious."[101]

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97 44 Phil. 739 (1923).
98 Supra note 84.
99 Id. at 743-744.
100 47 Phil. 513 (1925).
101 Id. at 522-523.

Again, in *Emata v. Intermediate Appellate Court,*[102] the Court held that the amount added to the cash purchase price of a car when payable on installment is "commonly known as the "time price differential" and not interest within the meaning of the Usury Law,"[103] *viz.*:

> x x x The law is applicable only in case of a loan or forbearance of money, goods or credit which is not the case here. The transaction involved here being admittedly a conditional sale based on an installment plan and not a loan, it has been held that the alleged increase in the price of the article sold cannot be considered a mere pretext to cover a usurious loan. "The increase in price, when the sale is on credit serves not only to cover the expenses generally entailed by such transactions on credit, but also to encourage cash sales, so useful to commerce. It is up to the purchaser to decide which price he prefers in making the purchase x x x if on the contrary, he prefers to buy on credit, he cannot complain of the increase of the price demanded by the vendor."[104]

In sum, *bona fide* credit sales and sales on installment, even when there is (1) a price differential between cash payments and credit payments or (2) a stipulation as to the payment of interest, do ***not*** constitute loans and forbearances of money in the context of the Usury Law and are thus beyond the scope of the authority granted to the BSP. To hold otherwise would subject credit sales and sales on installment (and other "arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending happening of certain events or fulfillment of certain conditions"[105] for that matter) to interest rate ceilings[106] and to criminal penalties for violations thereof, should the BSP opt to reinstate maximum allowable interest rates in the future. In any event, there are other legal provisions or statutes regulating the same.[107]

However, where the purchase price (or a portion thereof) arising from a sale or any other monetary obligation for that matter has become due and demandable, and the vendor or obligor subsequently agrees to extend the payment period in return for interest or some increased value, then a forbearance of money would then — and only then — exist and the compensation due for the extension given or for the use of money would be subject to usury laws (and the BSP-prescribed rate of interest). In such case, the additional amount agreed upon would properly constitute interest, as the same would be given in consideration for the additional time to "use" said money. This distinction was recognized in *Delgado*, which stated:

> x x x Where the sale is made on a cash basis and for a cash price and the vendor forbears to require the cash payment agreed upon in

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[102] 256 Phil. 224 (1989).
[103] Id. at 234.
[104] Id.
[105] *Estores v. Spouses Supangan*, supra note 13, at 97; *Ponencia*, p. 14.
[106] P.D. 116, Section 1-a, as amended.
[107] See for instance, Articles 1484-1486 of the Civil Code (Recto Law), R.A. 6552 (Maceda Law), R.A. 7394 (Consumer Act of the Philippines) particularly regarding consumer credit transactions, and R.A. 7581 as amended (Price Act).

> consideration of the vendee's promising to pay at a future day a sum greater than such agreed cash value with lawful interest, in such case there is a forbearance to collect an existing debt, and the excessive charge therefor is usurious.[108]

Having defined the scope and application of the term "forbearance," I now turn to the inaccuracies affecting *Eastern Shipping Lines*, *Nacar* and the *ponencia*.

Analyzing Eastern Shipping Lines, Nacar and the Ponencia

Eastern Shipping Lines and *Nacar*: (1) inaccurately equate obligations consisting in the payment of a sum of money to loans or forbearances of money (see paragraph 1[109]); (2) imply that the rule on stipulated interest and applicability of Article 2212 of the Civil Code apply only when the obligation involves a loan or forbearance of money (see paragraph 1 in relation to paragraph 2[110]); and (3) erroneously state that a final and executory monetary judgment bears the BSP-prescribed rate of interest until full satisfaction because "the interim period" is equivalent to a forbearance of credit and regardless of the fact that parties may have stipulated on a different rate.[111]

The ***first issue*** was already discussed in the previous section. As mentioned, the term "forbearance" must be construed in light of the Usury Law and its scope must be limited only to contractual obligations where the parties agree to refrain from enforcing payment of a due and demandable obligation in consideration for the payment of interest. Hence, contracts of sale or service, contracts of employment, just compensation and other monetary obligations are not loans or forbearances of money, goods, or credit even if the sums involved may be due and unpaid. As discussed, an agreement to extend the payment period of a due and demandable obligation

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[108] *Delgado*, supra note 97, at 744.

[109] When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. *Eastern Shipping Lines*, supra note 2, at 252-253.

[110] When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date of the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount of finally adjudged. Id. at 253-254.

[111] When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. Id. at 254.

in consideration for the payment of interest is immensely different from a failure to exact payment of the same. The former is a forbearance and is subject to the BSP-prescribed rate of interest while the latter is not. Nevertheless, delays in payment of an obligation constituting a sum of money will still incur interest at 6% *per annum* in accordance with Article 2209 of the Civil Code.

The ***second issue*** squarely applies to the instant case, which involves a sale on credit with a penalty interest of 24% on all overdue accounts. While the obligation involves a sum of money, it is **not** a loan or forbearance of money. Hence, it is unclear under *Eastern Shipping Lines* whether paragraph 1 (loans/forbearances) or paragraph 2 (non-loans/non-forbearances) should apply. If paragraph 2 is applied, the guidelines suggest that "interest may be imposed at the discretion of the court at the rate of 6% *per annum*" even if the agreement expressly stipulated on an interest rate of 24% *per annum*. Also, there is no room to apply Article 2212 of the Civil Code even if stipulated interest may have already accrued as paragraph 1 in relation to paragraph 2 of the guidelines suggests that Article 2212 applies only to loans or forbearances of money. This, as earlier intimated, is inaccurate. It bears emphasis that parties are free to stipulate on the payment of interest under the principle of autonomy of contracts.[112] Hence, while a sale on installments, a sale on credit, or even the payment of rentals do not constitute loans or forbearances within the context of the Usury Law and the authority of the BSP, parties are not precluded from agreeing on the payment of interest at a certain rate. Further, should parties stipulate on the payment of interest, Article 2212[113] should apply by operation of law to any amount of interest that has accrued at the time of judicial demand, even when the obligation does not constitute a loan or forbearance.

On the ***third issue***, while *Eastern Shipping Lines* accurately defined the term "forbearance" as a "contractual obligation of lender or creditor to refrain, during [a] given period of time, from requiring the borrower or debtor to repay [a] loan or debt then due and payable,"[114] it nonetheless held that final and executory judgments involving the payment of any sum of money are forbearances of credit (see paragraph II.3 of the *Eastern Shipping Lines* and *Nacar* guidelines).[115] This portion I believe is erroneous as it is clearly beyond the definition given. Further, I concur with the *ponencia* that contrary to paragraph II.3 of *Eastern Shipping Lines* and *Nacar*, the stipulated interest rate should continue to accrue even after the finality of the decision as there is no legal basis for the reduction of stipulated interest at

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112 CIVIL CODE, Art. 1306.

113 Id., Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

114 *Eastern Shipping Lines*, supra note 2, at 251.

115 When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to forbearance of credit. Id. at 254.

any time until full payment [116] unless the same is unconscionable or otherwise void. The parties' stipulated interest rate should apply from the date stipulated, if there be any, or from judicial or extrajudicial demand until full payment of the amount or sum of money due.

In view of the foregoing, a revision of the *Eastern Shipping Lines* and *Nacar* guidelines is certainly in order. My problem, however, with the *ponencia* is that in the process of revising said guidelines, the *ponencia* decimated long-standing legal principles and rules without sufficient explanation. The *ponencia*'s revised guidelines holds:

> With regard to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, goods, credits or judgments, the interest due shall be that which is stipulated by the parties in writing, provided it is not excessive and unconscionable, which, in the absence of a stipulated reckoning date, shall be computed from default, *i.e.*, from extrajudicial or judicial demand in accordance with Article 1169 of the Civil Code, UNTIL FULL PAYMENT, without compounding any interest unless compounded interest is expressly stipulated by the parties, by law or regulation. Interest due on the principal amount accruing as of judicial demand shall SEPARATELY earn legal interest at the prevailing rate prescribed by the *Bangko Sentral ng Pilipinas*, from the time of judicial demand UNTIL FULL PAYMENT.
>
> 2. In the absence of stipulated interest, in a loan or forbearance of money, goods, credits or judgments, the rate of interest on the principal amount shall be the prevailing legal interest prescribed by the *Bangko Sentral ng Pilipinas,* which shall be computed from default, *i.e.*, from extrajudicial or judicial demand in accordance with Article 1169 of the Civil Code, UNTIL FULL PAYMENT, without compounding any interest unless compounded interest is expressly stipulated by law or regulation. Interest due on the principal amount accruing as of judicial demand shall SEPARATELY earn legal interest at the prevailing rate prescribed by the *Bangko Sentral ng Pilipinas,* from the time of judicial demand UNTIL FULL PAYMENT.
>
> 3. When the obligation, not constituting a loan or forbearance of money, goods, credits or judgments, is breached, an interest on the amount of damages awarded may be imposed *in the discretion of the court* at the prevailing legal interest prescribed by the *Bangko Sentral ng Pilipinas,* pursuant to Articles 2210 and [2211] of the Civil Code. No interest, however, shall be adjudged on unliquidated claims or damages until the demand can be established with reasonable certainty. Accordingly, where the amount of the claim or damages is established with reasonable certainty. The prevailing legal interest shall begin to run from the time the claim is made extrajudicially or judicially (Art. 1169, Civil Code) UNTIL FULL PAYMENT, but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run

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[116] *Ponencia*, p. 11.

> only from the date of the judgment of the trial court (at which time the quantification of damages may be deemed to have been reasonably ascertained) UNTIL FULL PAYMENT. The actual base for the computation of the interest shall, in any case, be on the principal amount finally adjudged, without compounding any interest unless compounded interest is expressly stipulated by law or regulation.[117]

As mentioned, I find the following statements to be manifestly lacking in legal bases and analyses: (1) Article 2209 of the Civil Code applies only to loans or forbearance of money, goods, or credit where there is a debtor-creditor relationship;[118] (2) P.D. 116 impliedly repealed all laws prescribing the rate of legal interest in the absence of stipulated interest,[119] and (3) Article 2212 of the Civil Code applies even to situations where there is no stipulated interest.[120] In addition, the formulation of the guidelines and the accompanying formulae are erroneous and likewise lack legal basis.

As to the ***first erroneous statement***, Article 2209 of the Civil Code is unequivocal that the indemnity for damages for delay in the payment of **any sum** of money shall be the payment of interest, *viz.:*

> ART. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent *per annum*. (Underscoring supplied)

Evidently, Article 2209 does ***not*** distinguish between monetary obligations that arise from loans or forbearances of money, goods, or credit and monetary obligations that do not. **The Article unequivocally covers ALL obligations that consist in the payment of a sum of money and it does not distinguish as to the particular source of the obligation**. Thus, all the five sources of obligations under Article 1157 of the Civil Code — (1) law; (2) contracts; (3) quasi-contracts; (4) acts or omissions punished by law; and (5) quasi-delicts — are covered. What is paramount is that the obligation consists in the payment of a sum of money and that the debtor incurs delay in the payment thereof.

It is a threshold principle in statutory construction that where the law does not distinguish, courts may not distinguish.[121] It is not within the authority of courts, even the Supreme Court, to qualify words that the legislature did not, in its wisdom, choose to qualify. To hold otherwise would amount to judicial legislation and would violate the Constitutional principle of separation of powers.

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[117] Id. at 17-19. Citations omitted.
[118] Id. at 12.
[119] Id. at 13.
[120] Id. at 18, paragraph 2.
[121] *Amores v. House of Representatives Electoral Tribunal*, 636 Phil. 600, 609 (2010).

The phrase "loan or forbearance x x x where there is a debtor-creditor relationship" is extremely misleading. Firstly, it is basic that there are two parties in all types of civil obligations: an active subject known as the creditor or obligee, who can demand the fulfillment of the obligation and a passive subject known as the debtor or obligor, against whom the obligation is juridically demandable.[122] The qualification "where there is a debtor-creditor relationship" is thus nondescript and does not really afford an exact meaning to the term, "forbearance." Secondly, the existence of debtor-creditor or obligor-obligee relationship does not necessarily mean that a sum of money is involved in the case. It must be remembered that interest is the measure of damages for delay only when a sum of money is involved.[123] Thirdly, the existence of a debtor-creditor relationship does not identify the source of the obligation, making that qualifying phrase useless.

The applicability of Article 2209 to all obligations consisting in the payment of a sum of money has been consistently recognized by the Supreme Court.[124] The Court, in *Castelo v. Court of Appeals*,[125] explained:

> x x x Article 2209 governs transactions involving the payment of indemnity in the concept of damages arising from delay in the discharge of obligations consisting of the payment of a sum of money. **The "obligation consisting in the payment of a sum of money" referred to in Article 2209 is *not* confined to a loan or forbearance of money**. The Court has, for instance, consistently applied Article 2209 in the determination of the interest properly payable where there was default in the payment of the price or consideration under a contract of sale as in the case at bar. Article 2209 has also been applied by this Court in cases involving an action for damages for injury to persons and loss of property; to actions for damages arising from unpaid insurance claims; and an action involving the appropriate rate of interest on just compensation that is payable for expropriated lands.[126] (Underscoring supplied)

As to the ***second erroneous statement***, I reiterate my position that the BSP-prescribed interest rate applies only to loans, forbearances, and judgments involving loans and forbearances.[127] While the *ponencia*'s approach simplifies the computation of interest, and is therefore convenient, it is, unfortunately, not in accord with the law and established jurisprudence. If the legislature had intended to repeal the 6% *per annum* legal rate of interest under Article 2209 of the Civil Code, it could have expressly so provided.[128] In fact, this very issue was already resolved in *National Power Corporation*, where the Court held:

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122 Desiderio P. Jurado, COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS, 1987 Ninth Edition, p. 2.

123 CIVIL CODE, Art. 2209.

124 *Reformina v. Tomol, Jr.*, supra note 17; *National Power Corp. v. Angas*, supra note 17.

125 Supra note 17.

126 Id. at 21.

127 *Reformina v. Tomol, Jr.*, supra note 17, at 478-479.

128 See *Quintero v. COA*, 785 Phil. 953, 962 (1996).

> As for private respondents' argument that Central Bank Circular No. 416 impliedly repealed or modified Art. 2209 of the Civil Code, suffice it to state that repeals or even amendments by implication are not favored if two laws can be fairly reconciled. The Courts are slow to hold that one statute has repealed another by implication, and they will not make such an adjudication if they can refrain from doing so, or if they can arrive at another result by any construction which is just and reasonable. Besides, the courts will not enlarge the meaning of one act in order to decide that it repeals another by implication, nor will they adopt an interpretation leading to an adjudication of repeal by implication unless it is inevitable and a clear and explicit reason therefor can be adduced. (82 C.J.S. 479-486). In this case, Central Bank Circular No. 416 and Art. 2209 of the Civil Code contemplate different situations and apply to different transactions. In transactions involving loan or forbearance of money, goods or credits, as well as judgments relating to such loan or forbearance of money, goods or credits, the Central Bank circular applies. It is only in such transactions or judgments where the Presidential Decree allowed the Monetary Board to dip its fingers into. On the other hand, in cases requiring the payment of indemnities as damages, in connection with any delay in the performance of an obligation other than those involving loan or forbearance of money, goods or credits, Art. 2209 of the Civil Code applies. For the Court, this is the most fair, reasonable, and logical interpretation of the two laws. We do not see any conflict between Central Bank Circular No. 416 and Art. 2209 of the Civil Code or any reason to hold that the former has repealed the latter by implication.[129]

Prior to Act No. 2655 or the Usury Law, the legal interest rate provided under Article 1108 of the Spanish Civil Code (the precursor of Article 2209 of the Civil Code), in the absence of a stipulated interest rate, applied to all obligations consisting of the payment of sums of money in case of delay. After the enactment of P.D. 116, the interest rate applicable to loans or forbearances of money, goods, or credits became subject to the BSP-prescribed rate. Evidently, Article 2209 and P.D. 116 **can be construed together and can stand side by side because they are not entirely incompatible with each other.**

Further, P.D. 116 was enacted to amend provisions in the Usury Law.[130] Hence, it may not reasonably be construed as an amendment, by implication at that, of the legal interest rate under the Civil Code, except in so far as said rate relates to usury, *i.e.*, loans and forbearances and judgments involving the same. Any other interpretation would subject Section 1 of P.D. 116 to constitutional challenge under Section 26(1), Article VI of the Constitution which holds that "every bill passed by the Congress shall embrace only one subject which shall be expressed in the title."

As to the ***third erroneous statement***, suffice it to state that prevailing jurisprudence holds that "Article 2212 [of the Civil Code] contemplates the presence of stipulated interest x x x which has accrued when demand

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[129] *National Power Corp. v. Angas*, supra note 17, at 47-48.

[130] P.D. 116 is entitled "AMENDING FURTHER CERTAIN SECTIONS OF ACT NUMBERED TWO THOUSAND SIX HUNDRED FIFTY-FIVE, AS AMENDED, OTHERWISE KNOWN AS 'THE USURY LAW'".

was judicially made. In cases where no monetary interest had been stipulated by the parties, no accrued monetary interest could further earn compensatory interest upon judicial demand."[131] This rule goes as far back as the 1925 case of *Zobel v. City of Manila*,[132] where the Court held that Article 1109 of the Spanish Civil Code, the precursor of Article 2212, was "applicable only to obligations containing a stipulation for interest."[133] Notably, the *ponencia* entirely abandoned the aforementioned rule in paragraph 2[134] of its revised guidelines without attempting to provide any explanation or justification for its position.

How can there be accrued or past due interest if the contract does not stipulate a rate of interest? The interest on interest provision is justified on the ground that there is likewise delay in its payment.

To underscore, the "accrued interest" or "interest due" under Article 2212 of the Civil Code refers to the unpaid stipulated *interest* due on an obligation consisting of a sum of money, which has accrued from the stipulated due date/extrajudicial demand up to judicial demand. It is this amount which bears interest either at the BSP-prescribed rate with respect to loans or forbearances or at the legal rate under Article 2209 for monetary obligations not constituting loans or forbearances.

Finally, I find that the formulation of the *ponencia*'s revised guidelines and the accompanying formulae leaves much to be desired:

1. The *ponencia*'s formula in paragraph 1, footnote 56(a)[135] is based on an erroneous period. The 365 days equivalent of a year does not take into account the agreement of the parties, which may have provided for a different base period, and Section 31 of the Revised Administrative Code of 1987, which defines a "year" as "twelve calendar months."[136] The *ponencia*'s formula under footnote 54(b)[137] is likewise erroneous because it does not correctly reflect that the interest under Article 2212 of the Civil Code applies only to the amount of interest that has accrued from the stipulated due date/extrajudicial demand to judicial demand.

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131 *Isla v. Estorga*, supra note 19, at 7, citing *David v. Court of Appeals*, 375 Phil. 177, 185 (1999). Emphasis omitted.

132 Supra note 19.

133 Id. at 187. See also *Hun Hyung Park v. Eung Won Choi*, supra note 19, at 17.

134 *Ponencia*, p. 18, paragraph 2. "In the absence of stipulated interest, in a loan or forbearance of money, goods, credits or judgments, the rate of interest on the principal amount shall be the prevailing legal interest prescribed by the *Bangko Sentral ng Pilipinas*, which shall be computed from default, *i.e.*, from extrajudicial or judicial demand in accordance with Article 1169 of the Civil Code, UNTIL FULL PAYMENT, without compounding any interest unless compounded interest is expressly stipulated by law or regulation. Interest due on the principal amount accruing as of judicial demand shall SEPARATELY earn legal interest at the prevailing rate prescribed by the *Bangko Sentral ng Pilipinas*, from the time of judicial demand UNTIL FULL PAYMENT.

135 Id. at 18, footnote 56.

136 *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*, 558 Phil. 182, 189 (2007).

137 *Ponencia*, p. 18.

2. Paragraph 2 of the *ponencia*'s guidelines also suffers from inaccuracies. *First*, the basis for applying compounded interest as expressly stipulated by law or regulation in the absence of stipulated interest was not provided.[138] In fact, compounding of interest is only allowed if there is agreement in that regard.[139] *Second,* the imposition of interest on interest, as mentioned is not warranted because there is no stipulation of interest. *Third,* the formula in paragraph 2, footnote 58(a)[140] suffers from the same inaccuracies as footnote 56(a) as the 365-day denominator is contrary to Section 31 of the Revised Administrative Code of 1987, which defines a "year" as "twelve calendar months." The same may be said of footnote 61(a).[141]

3. Paragraph 3 of the *ponencia,* on the other hand, holds that interest on the unliquidated claims is to be reckoned from the date of the judgment of the trial court because it is at that point that the damages may be reasonably established. [142] Nevertheless, the *ponencia* imposes interest on the principal amount as finally adjudged.[143] It would seem that the *ponencia* itself recognizes that the amount awarded in the "judgment of the trial court" is not the liquidated claim implied in Article 2213 of the Civil Code. Rather, the liquidated claim implied refers to the amount "finally adjudged". Thus, interest should only commence to run from the time the unliquidated and unknown claim becomes final and executory, *i.e.*, the amount finally adjudged, as it is at this point that unliquidated claims are established with reasonable certainty, thus liquidated. *Further*, as in the previous paragraph, the basis for applying compounded interest as expressly stipulated by law or regulation was not provided.

Again, I express my strong disapproval for the careless disregard of the principle of *stare decisis* and the establishment of guidelines by judicial fiat instead of by judicial interpretation. In the process of recasting the guidelines, I discuss the foregoing issues and the relevant legal principles on the proper imposition of interest rates.

A. Monetary Interest vis-à-vis Compensatory Interest

As a starting point, the Court has held that "[t]here are two types of interest — monetary interest and compensatory interest. Interest as a

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138 See id.

139 CIVIL CODE, Art. 1959. Without prejudice to the provisions of Article 2212, interest due and unpaid shall not earn interest. However, the contracting parties may by stipulation capitalize the interest due and unpaid, which as added principal, shall earn new interest.

140 *Ponencia*, pp. 18-19, footnote 58.

141 Id. at 19.

142 Id.

143 Id.

compensation fixed by the parties for the use or forbearance of money is referred to as monetary interest, while interest that may be imposed by law or by courts as penalty or damages is referred to as compensatory interest. Right to interest therefore arises only by virtue of a contract *or* by virtue of damages for delay or failure to pay the principal loan on which interest is demanded."[144]

a. Monetary Interest

Monetary or conventional interest is the stipulated "cost of borrowing money" [145] or the "presumptive reasonable compensation for borrowed money."[146] It arises from contract for the use or forbearance of money.[147] By definition, this is the type of interest governed by usury laws. It is the type of interest often demanded in loans and forbearances of money. Section 1 of the Usury Law states:

> Sec. 1. The rate of interest for the loan or forbearance of any money, goods, or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall be six per centum per annum or such rate as may be prescribed by the Monetary Board of the Central Bank of the Philippines for that purpose in accordance with the authority hereby granted.

Under the foregoing provision, it is evident that the BSP does not impose any specific interest rate on the contracting parties [148] as "[t]he 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."[149] Rather, the BSP prescribes the rate of interest that will apply "in the absence of express contract as to such rate of interest."[150] Hence, if interest is payable in a certain manner and at a certain rate, such stipulation is binding as the law between the parties and should generally prevail until full payment.

i. Interest was intended but no rate stipulated

In *Siga-an v. Villanueva*,[151] the Court clarified that based on Article 1956[152] of the Civil Code, the "payment of monetary interest is allowed only if: (1) there was an express stipulation for the payment of interest; and (2)

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144 *Hun Hyung Park v. Eung Won Choi*, supra note 19, at 16; *Isla v. Estorga*, supra note 19, at 5; see also *Siga-an v. Villanueva*, 596 Phil. 760, 769 (2009).

145 *Spouses Abella v. Spouses Abella*, 763 Phil. 372, 382 & 386 (2015).

146 Id. at 389.

147 See *Hun Hyung Park v. Eung Won Choi*, supra note 19; Article 1956 of the Civil Code which holds that "[n]o interest shall be due unless it has been expressly stipulated in writing."

148 Dissenting Opinion of Justice Plana in *Reformina v. Tomol, Jr.*, supra note 17.

149 CIVIL CODE, Art. 1306.

150 P.D. 116, Sec. 1 and CIVIL CODE, Art. 2209.

151 Supra note 144.

152 CIVIL CODE, Art. 1956. "No interest shall be due unless it has been expressly stipulated in writing."

the agreement for the payment of interest was reduced in writing."[153] In conjunction with Section 1 of the Usury Law, the BSP-prescribed rate of interest therefore applies when (1) a written instrument contains an express stipulation for the payment of interest, but (2) the written instrument fails to specify a rate.[154] In *Spouses Abella v. Spouses Abella*[155] (*Spouses Abella*), the Court held that the BSP-prescribed rate of interest at the time the parties executed their agreement would apply and that such rate would not be susceptible to shifts in the rate, *viz.:*

> *Applying this, the loan obtained by respondents from petitioners is deemed subjected to conventional interest at the rate of 12% per annum,* the legal rate of interest at the time the parties executed their agreement. Moreover, *should conventional [or monetary] interest still be due as of July 1, 2013, the rate of 12% per annum shall persist as the rate* ***of conventional [or monetary] interest.***
>
> This is so because interest in this respect is used as a surrogate for the parties' intent, as expressed as of the time of the execution of their contract. In this sense, the legal rate of interest is an affirmation of the contracting parties' intent; that is, by their contract's silence on a specific rate, the then prevailing legal rate of interest shall be the cost of borrowing money. This rate, which by their contract the parties have settled on, is deemed to persist regardless of shifts in the legal rate of interest. Stated otherwise, the legal rate of interest, *when applied as conventional [or monetary] interest*, shall always be the legal rate at the time the agreement was executed and shall not be susceptible to shifts in rate. [156]
> (Underscoring supplied; emphasis and italics in the original)

In other words, when the parties expressly stipulate on the payment of interest but no rate of interest was specified, the BSP-prescribed rate of interest at the time the parties executed their agreement would apply as a substitute for the stipulated rate and would accrue until full payment.

The Court has likewise applied the BSP-prescribed rate of interest in at least two other situations: (1) when the parties stipulate on the payment of interest but the rate thereof is void for being excessive, iniquitous, unconscionable, and/or exorbitant,[157] and (2) when the parties stipulate on the payment of interest but the stipulation thereof is void for violating the principle of mutuality of contracts.[158] I discuss these briefly below:

ii. Unconscionable Interest

As monetary or conventional interest arises from contract, the parties are free to stipulate on their preferred rate in accordance with the principle of autonomy of contracts.[159] In *Spouses Abella*, the Court explained however:

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153 *Siga-an v. Villanueva*, supra note 144, at 769.
154 *Spouses Abella v. Spouses Abella*, supra note 145, at 385.
155 Supra note 145.
156 Id. at 385-386.
157 *Isla v. Estorga*, supra note 19, at 5.
158 *Security Bank Corporation v. Spouses Mercado*, G.R. Nos. 192934 & 197010, June 27, 2018.
159 CIVIL CODE, Art. 1306.

> The imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.
>
> The imposition of an unconscionable interest rate is void ab initio for being "contrary to morals, and the law."[160]

In other words, even if the BSP removed interest rate ceilings in 1982 pursuant to its authority under Section 1-a of the Usury Law, the Court has time and again still held that "nothing in said Circular grants lenders *carte blanche* authority to impose interest rates which would result in the enslavement of their borrowers or to the hemorrhaging of their assets. [Hence, w]hile a stipulated rate of interest may not technically and necessarily be usurious under Circular No. 905, usury now being legally non-existent in our jurisdiction, nonetheless, said rate may be equitably reduced should the same be found to be iniquitous, unconscionable, and exorbitant, and hence, contrary to morals (*contra bonos mores*), if not against the law. What is iniquitous, unconscionable, and exorbitant shall depend upon the factual circumstances of each case."[161]

In such instances, *Isla v. Estorga*[162] explains "that only the unconscionable interest rate is nullified and deemed not written in the contract; whereas the parties' agreement on the payment of interest on the principal loan obligation subsists. It is as if the parties failed to specify the interest rate to be imposed on the principal amount, in which case *the [BSP-prescribed] rate of interest prevailing at the time the agreement was entered into* is applied by the Court."[163] Applying *Spouses Abella* by analogy, the BSP-prescribed rate of interest at the time the parties executed their agreement would apply when the stipulated monetary rate of interest is unconscionable. Further, said rate would not be susceptible to future shifts should the BSP thereafter prescribe a different rate as the same is used as a surrogate for the parties' intent.

iii. Mutuality of Contracts

On the other hand, the Court, in *Security Bank Corp. v. Spouses Mercado,*[164] explained that stipulations allowing the unilateral modification of interest rates is likewise void for violating the principle of mutuality of contracts, *viz.*:

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[160] *Spouses Abella v. Spouses Abella*, supra note 145, at 388.
[161] *Dio v. Spouses Japor*, 501 Phil. 469, 476 (2005).
[162] Supra note 19.
[163] Id. at 5; underscoring supplied; emphasis in the original omitted.
[164] Supra note 158.

The principle of mutuality of contracts is found in Article 1308 of the New Civil Code, which states that contracts must bind both contracting parties, and its validity or compliance cannot be left to the will of one of them. The binding effect of any agreement between parties to a contract is premised on two settled principles: (1) that any obligation arising from contract has the force of law between the parties; and (2) that there must be mutuality between the parties based on their essential equality. As such, any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Likewise, any stipulation regarding the validity or compliance of the contract that is potestative or is left solely to the will of one of the parties is invalid. This holds true not only as to the original terms of the contract but also to its modifications. Consequently, any change in a contract must be made with the consent of the contracting parties, and must be mutually agreed upon. Otherwise, it has no binding effect.

Stipulations as to the payment of interest are subject to the principle of mutuality of contracts. As a principal condition and an important component in contracts of loan, interest rates are only allowed if agreed upon by express stipulation of the parties, and only when reduced into writing. Any change to it must be mutually agreed upon, or it produces no binding effect:

> Basic is the rule that there can be no contract in its true sense without the mutual assent of the parties. If this consent is absent on the part of one who contracts, the act has no more efficacy than if it had been done under duress or by a person of unsound mind. Similarly, contract changes must be made with the consent of the contracting parties. The minds of all the parties must meet as to the proposed modification, especially when it affects an important aspect of the agreement. In the case of loan contracts, the interest rate is undeniably always a vital component, for it can make or break a capital venture. Thus, any change must be mutually agreed upon, otherwise, it produces no binding effect. x x x

Thus, in several cases, we declared void stipulations that allowed for the unilateral modification of interest rates. In *Philippine National Bank v. Court of Appeals*, we disallowed the creditor-bank from increasing the stipulated interest rate at will for being violative of the principle of mutuality of contracts. We said:

x x x x

The same treatment is given to stipulations that give one party the unbridled discretion, without the conformity of the other, to increase the rate of interest notwithstanding the inclusion of a similar discretion to decrease it. In *Philippine Savings Bank v. Castillo* we declared void a stipulation that allows for both an increase or decrease of the interest rate, without subjecting the modification to the mutual agreement of the parties:

x x x x

We reiterated this in *Juico v. China Banking Corporation*, where we held that the lack of written notice and written consent of the borrowers made the interest proviso a one-sided imposition that does not have the force of law between the parties:

x x x x

> In the case of *Silos v. Philippine National Bank*, we invalidated x x x provisions x x x [where] the method of fixing interest rates is based solely on the will of the bank. The method is "one-sided, indeterminate, and [based on] subjective criteria such as profitability, cost of money, bank costs, etc. x x x." It is "arbitrary for there is no fixed standard or margin above or below these considerations." More, it is worded in such a way that the borrower shall agree to whatever interest rate the bank fixes. Hence, the element of consent from or agreement by the borrower is completely lacking.[165]

Applying the rule on unconscionable interest rates by analogy, when interest rate stipulations violate the mutuality of contracts, "[i]t is as if the parties failed to specify the interest rate to be imposed on the principal amount, in which case the [BSP-prescribed] rate of interest prevailing at the time the agreement was entered into [should be] applied by the Court."[166] Hence, the BSP-prescribed rate of interest at the time the parties executed their agreement would apply and such rate would not be susceptible to future shifts as the BSP-prescribed rate is used as a surrogate for the parties' intent.

In sum, the BSP-prescribed rate applies to loans and forbearances of money, where the parties expressly stipulate for the payment of monetary interest, but: (1) the parties failed to provide a rate, (2) the rate provided was void for being unconscionable, or (3) the rate provided was void for violating the mutuality of contracts.

I believe that the disquisition in *Spouses Abella, i.e.,* that as a surrogate of the parties' intent, the BSP-prescribed rate at the time of the execution of the contract should persist regardless of any future shifts, is sound. To this, I add that interest at the BSP-prescribed rate shall accrue in accordance with the parties' agreement, or in the absence thereof, upon demand whether judicial or extrajudicial. I reiterate that, as a "surrogate" or "substitute" for the parties' intent, the BSP-prescribed rate of interest should apply **until full payment of the loan or forbearance** because the rates provided in Section 1 of the Usury Law in relation to Article 2209 of the Civil Code apply only "in the absence of express contract as to such rate."

At this juncture, I note that in view of the limited definition of the term "forbearance" under the Usury Law, it is important to recognize that the parties may stipulate[167] on the payment of interest even when a transaction does not

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[165] Id. at 12-15.

[166] *Isla v. Estorga*, supra note 19, at 5.

[167] See for instance Civil Code, Article 1589. The vendee shall owe interest for the period between the delivery of the thing and the payment of the price, in the following three cases:

(1) Should it have been so stipulated;

(2) Should the thing sold and delivered produce fruits or income;

(3) Should he be in default, from the time of judicial or extrajudicial demand for the payment of the price.

involve a loan or forbearance.[168] For instance, interest may be imposed as part of the purchase price, to encourage cash sales, or to compensate the seller for the "time price differential" in a sale of goods on credit or a sale on installments.[169] Such stipulations should likewise be respected pursuant to the principle of autonomy of contracts[170] and the principle of obligatory force where "contracts have the force of law between the contracting parties [which] should be complied with in good faith."[171] In determining the validity, effect, remedies or defenses as to the same, the provisions on obligations and contracts or any other applicable law shall apply.

b. Compensatory Interest

In contrast with monetary or conventional interest, compensatory interest is the "[interest] that [may be] imposed by law or by the courts as penalty or indemnity for damages."[172] It is demandable by law under Article 2209 of the Civil Code "even in the absence of express stipulation, verbal or written, regarding payment of interest."[173] To recall, Article 2209 provides:

> ART. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent *per annum*. (Underscoring supplied)

i. Article 2209 applies to delay in the payment of any monetary obligation

As the provision unequivocally states and contrary to the baseless pronouncement in the *ponencia*,[174] the obligation to pay compensatory interest arises in all cases where there is delay in the payment of a sum of money, *i.e.*, loans/forbearances or non-loans/non-forbearances. Article 2209 of the Civil Code grants the obligee or creditor a substantive right to recover interest as indemnity for the delay in the payment of any sum of money.[175]

Hence, while sums due under contracts of sale, contracts of service, contracts of employment, just compensation arising from expropriation proceedings, insurance claims, contracts of lease, *etc.*, do not constitute loans or forbearances of money, goods, or credits, and are not subject to the BSP-prescribed interest rate,[176] said obligations nevertheless incur interest

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168 See CIVIL CODE, Art. 1306.
169 *Emata v. Intermediate Appellate Court*, supra note 102, at 234.
170 CIVIL CODE, Art. 1306.
171 Id., Art. 1159.
172 *Isla v. Estorga*, supra note 19, at 5.
173 *Siga-an v. Villanueva*, supra note 144, at 772.
174 *Ponencia*, p. 12.
175 See *Castelo v. Court of Appeals*, supra note 17, at 21.
176 *Reformina v. Tomol, Jr.*, supra note 17, at 478-480; *National Power Corp. v. Angas*, supra note 17, at 47.

under Article 2209 of the Civil Code at the legal rate of 6% *per annum* as a penalty or indemnity for delay or breach.[177]

In contrast, the BSP-prescribed rate of interest, *in the absence of stipulation*, must be imposed as a penalty or indemnity for delay in the payment of any outstanding loan or forbearance because the Usury Law expressly authorizes the BSP to prescribe the "rate allowed in judgments" (*i.e.*, compensatory interest rate) in litigations involving such loans and forbearances.[178] Again, I reiterate my disagreement with the conclusion reached by the *ponencia* that the "legal interest rate in Article 2209 of the Civil Code has been amended" by P.D. 116. While simple and expedient, it is contrary to established jurisprudence and the basic principles of statutory construction.

In other words, Article 2209 covers monetary obligations involving both loans/forbearances and non-loans/non-forbearances in that interest in the form of indemnity will accrue when a debtor/obligor incurs in delay. They differ, however, as to the *imposable rate* of interest as the Usury Law expressly empowered the BSP to determine "the rate allowed in judgments" involving loans and forbearances of money, goods, or credits.[179]

Hence, when a debtor/obligor incurs delay in the payment of a sum arising from a loan or forbearance, compensatory interest shall be due under Article 2209 (which grants the creditor/obligee a substantive right to the payment of interest in the form of indemnity) *in relation to* Section 1 of the Usury Law (which provides for the imposable rate, *i.e.*, the rate prescribed by the BSP as "the rate allowed in judgments" involving loans and forbearances). On the other hand, when a debtor incurs delay in the payment of a sum of money not constituting a loan or forbearance, compensatory interest shall be due under Article 2209 (which grants the creditor/obligee a substantive right to the payment of interest in the form of indemnity) at the 6% *per annum* legal rate (which provides the imposable rate in monetary obligations not constituting a loan or forbearance).

Article 2209 and Section 1 of P.D. 116 are explicit, however, that the BSP-prescribed rate (in loans/forbearances) and the 6% *per annum* legal rate under Article 2209 (in non-loans/non-forbearances) apply only when *there is no stipulation as to the rate*.

Hence, the parties may agree (and often do) on the imposition of penalty interest[180] in case of delay or breach. Such stipulations are valid

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177 See *Reformina v. Tomol, Jr.*, id. at 480; *National Power Corp. v. Angas*, id. at 48.

178 P.D. 116, Sec. 1 as interpreted by *Reformina v. Tomol, Jr.*, id.

179 *Reformina v. Tomol, Jr.*, id. at 478-479; *National Power Corp. v. Angas*, supra note 17, at 45-46.

180 In this sense, penalty interest partakes of the nature of both monetary (in that it must be stipulated in writing and it is subject to the rule on unconscionable interest rates) and compensatory interest (in that it is imposed as a penalty for delay or breach of any kind of monetary obligation). The payment of interest as a penalty is expressly recognized under Article 1226 of the Civil Code, which however, may be equitably reduced by the courts under Article 2227 if found to be iniquitous or unconscionable.

provided only that they are not iniquitous or unconscionable.[181] In fact, "the New Civil Code permits an agreement upon a penalty apart from the monetary interest. *If the parties stipulate this kind of agreement,* the penalty does not include the monetary interest, and as such the two are different and distinct from each other and may be demanded separately."[182] Hence, in *State Investment House, Inc. v. Court of Appeals*,[183] the Court held:

> [T]he appropriate measure for damages in case of delay in discharging an obligation consisting of the payment of a sum or money, is the payment of [the stipulated] penalty interest at the rate agreed upon; and in the absence of a stipulation of a particular rate of penalty interest [*i.e.,* when penalty interest was intended but no rate was stipulated], then the payment of additional interest at a rate equal to the regular monetary interest; and if no regular interest had been agreed upon, then payment of legal interest[.][184]

In sum, Article 2209 of the Civil Code and Section 1 of the Usury Law are unequivocal in that: should parties stipulate on the payment of interest, such stipulation should control for the payment of compensatory interest. Further, as Article 2212 already imposes compensatory damages on any stipulated interest that has accrued at the time of judicial demand,[185] I agree with the *ponencia*[186] that no other compounding of interest should accrue unless otherwise stipulated.[187]

ii. Article 2212 applies to any accrued stipulated interest

Finally, when parties stipulate on the payment of interest, Article 2212 will apply by operation of law to the stipulated amount that has accrued at the time of judicial demand, *viz.*:

> ART. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

In *Hun Hyung Park v. Eung Won Choi,*[188] the Court explained however that —

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[181] CIVIL CODE, Art. 2227; *Erma Industries, Inc. v. Security Bank Corp.*, G.R. No. 191274, December 6, 2017, 848 SCRA 34, 47 states: "Whether a penalty charge is reasonable or iniquitous is addressed to the sound discretion of the courts and determined according to the circumstances of the case. The reasonableness or unreasonableness of a penalty would depend on such factors as "the type, extent and purpose of the penalty, the nature of the obligation, the mode of breach and its consequences, the supervening realities, the standing and relationship of the parties[.]"

[182] *Tan v. Court of Appeals*, 419 Phil. 857, 865 (2001); italics supplied.

[183] 275 Phil. 433 (1991).

[184] Id. at 444.

[185] See *Hun Hyung Park v. Eung Won Choi*, supra note 19, at 16.

[186] *Ponencia,* pp. 11-12.

[187] CIVIL CODE, Art. 1959. Without prejudice to the provisions of Article 2212, interest due and unpaid shall not earn interest. However, the contracting parties may by stipulation capitalize the interest due and unpaid, which as added principal, shall earn new interest. See also Civil Code, Article 2209.

[188] Supra note 19.

> x x x "interest due" in Article 2212 refers only to *accrued* interest. A look at the counterpart provision of Article 2212 of the new Civil Code, Article 1109 of the old Civil Code, supports this. It provides:
>
> > Art. 1109. **Accrued interest** shall draw interest at the legal rate from the time the suit is filed for its recovery, even if the obligation should have been silent on this point.
> >
> > In commercial transactions the provisions of the Code of Commerce shall govern.
> >
> > Pawnshops and savings banks shall be governed by their special regulations. (Emphasis and underscoring supplied)
>
> In interpreting the above provision of the old Civil Code, the Court in *Zobel v. City of Manila*, ruled that Article 1109 applies only to conventional obligations containing a stipulation on interest. Similarly, Article 2212 of the new Civil Code contemplates, and therefore applies, only when there exists stipulated or conventional interest. [189] (Underscoring supplied)

In view of the foregoing, the *ponencia* grossly erred in applying Article 2212 even to situations where there is no stipulated interest.[190]

Further, like the differential treatment under Article 2209 with respect to the imposable rate of interest, the BSP-prescribed rate of interest must be imposed on any accrued interest under Article 2212 (even if it does not technically constitute a loan or forbearance) because the Usury Law likewise expressly authorizes the BSP to prescribe the "rate allowed in judgments" (*i.e.*, compensatory interest rate) "in litigations involving such loans and forbearances." [191] In all other types of monetary obligations involving stipulated accrued interest however, the 6% *per annum* rate under the Civil Code applies.

Summarizing the foregoing:

If the parties stipulate on the payment of interest and the rate thereof — then the stipulated interest rate controls and should be applied, and not the BSP-prescribed rate (for loans/forbearances) nor the 6% *per annum* legal rate under Article 2209 (for non-loans/non-forbearances), unless the law otherwise provides.[192]

In addition, any stipulated interest that has **accrued** at the time of judicial demand (*i.e.*, the total stipulated amount of interest due computed in accordance with the parties' agreement up to judicial demand, or from extra-judicial demand up to judicial demand) should additionally earn interest

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189 Id. at 16-17.
190 *Ponencia*, p. 18, paragraph 2.
191 P.D. 116, Section 1 as interpreted by *Reformina v. Tomol, Jr.*, supra note 17, at 478-479.
192 CIVIL CODE, Art. 2209.

under Article 2212 at the BSP-prescribed rate of interest (in loans/forbearances) or the 6% *per annum* legal rate under Article 2209 (in non-loans/non-forbearances involving sums of money), although the obligation may be silent on this point.

If the parties do <u>not</u> stipulate on the payment of interest[193] — then the debtor will be liable for the payment of compensatory interest at the BSP-prescribed rate of interest (for loans/forbearances, pursuant to Article 2209 of the Civil Code in relation to the Usury Law, as amended) and the legal rate of 6% *per annum* (for non-loans/non-forbearances consisting of the payment of sums of money, pursuant to Article 2209 of the Civil Code).[194]

However, no interest on interest may be imposed because "Article 2212 of the new Civil Code contemplates, and therefore applies, only when there exists stipulated or conventional interest."[195]

iii. Reckoning Point and Duration

If the parties stipulate on the payment of interest — then the same will run in accordance with the parties' agreement, or in the absence thereof, from extrajudicial or judicial demand.[196] Further, the stipulated rate of interest shall continue to run until full payment, contrary to paragraph 3 of *Nacar* and *Eastern Shipping Lines*, because Article 2209 of the Civil Code and Section 1 of the Usury Law apply "in the absence of express contract as to such rate." On this matter, I agree with the *ponencia* that "unless the stipulated interest is excessive and unconscionable, there is no legal basis for the reduction of the stipulated interest at any time until full payment of the principal amount. The stipulated interest remains in force until the obligation is satisfied."[197]

If the parties do <u>not</u> stipulate on the payment of interest — then compensatory interest at the BSP-prescribed rate of interest (for loans/forbearances; pursuant to Article 2209 of the Civil Code in relation to

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[193] P.D. 116, Sec. 1 and CIVIL CODE, Article 2209.

[194] *Siga-an v. Villanueva*, supra note 144, at 772.

[195] *Hun Hyung Park v. Eung Won Choi*, supra note 19, at 17.

[196] Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declares; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

[197] *Ponencia*, p. 11; emphasis omitted.

the Usury Law, as amended) or at the 6% *per annum* legal rate (for non-loans/non-forbearances involving sums of money, pursuant to Article 2209 of the Civil Code) will accrue from the time of delay, *i.e.*, based on the parties' agreement, or from judicial or extrajudicial demand,[198] and should likewise continue to run until full payment. I submit that the interest imposed on the delay in the payment of an obligation should continue because the obligor's delay continues for as long as the amount due has not been fully paid.

As to the reckoning point however, I find that the immediately preceding rule must be read in relation to Article 2213 of the Civil Code, which holds that "[i]nterest cannot be recovered upon unliquidated claims or damages, except when the demand can be established with reasonable certainty." Hence, when the monetary claims are unliquidated and unknown, compensatory interest begins to run only from the date the decision becomes *final and executory* as it is only at that point where the claim is established with reasonable certainty. It must be remembered that delay can arise only with respect to liquidated sums.

To be sure, I find no legal basis for the practice in *Eastern Shipping Lines* of lumping all sums due (including stipulated interest, compensatory interest and the interest under Article 2212) and imposing a singular interest rate after a decision becomes final and executory. I reiterate my position that the BSP-prescribed interest rate should not automatically apply to final and executory judgment awards (as provided in paragraph 3 of *Eastern Shipping Lines* and *Nacar* and as adopted by the *ponencia*[199]) because it is not a forbearance of credit. The New York Supreme Court arrived at the same conclusion in *Kay Lewis Enterprises v. Lewis-Marshall Joint Venture*,[200] *viz.*:

> In addition, the argument of the Attorney-General is most persuasive in that the terms of the statute restrict the new interest rates to a "loan or forbearance of any money, goods or things in action", and it is beyond dispute that a judgment, once rendered, is not a loan or forbearance although the judgment may be based upon a loan or forbearance (*Ferris* v. *Hard*, 135 N. Y. 354). While the recent case of *Mandelino* v. *Fribourg* (23 N Y 2d 145), referred to by the Attorney-General in his aforesaid opinion, is not directly in point, it does indicate that the Court of Appeals has adopted the rule of strict construction in defining "loan or forbearance" where interest rates are concerned.[201]

As discussed, stipulated interest (monetary or penalty) and compensatory interest when liquidated and known begin to run in accordance with the parties' agreement, or in default thereof, upon extrajudicial demand or judicial demand and continue to run until full

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198 Id.
199 Id. at 15.
200 59 Misc. 2d 862 (1969).
201 Id. at 864.

payment. All other unliquidated and unknown monetary awards (for instance, moral, exemplary damages, attorney's fees, etc.) may not earn interest at this point as the quantification of damages has not been reasonably ascertained.[202]

However, once a judgment becomes final and executory, all previously unliquidated and unknown claims/damages are established with reasonable certainty — thus, already liquidated — and become due and demandable. Hence, said amounts should begin to earn interest not because the interim period is a forbearance of credit, but because the non-payment of a final and executory decision constitutes delay under Article 2209 of the Civil Code. *Juan F. Nakpil & Sons v. Court of Appeals*[203] is unequivocal that "[i]t is delay in the payment of such final judgment, that will cause the imposition of the interest."[204]

Like the differential treatment under Article 2209 of the Civil Code as regards the imposable interest rates, the BSP-prescribed rate of interest must be imposed when previously unliquidated damages arising from loans/forbearances become final and executory because the Usury Law expressly authorizes the BSP to prescribe the "rate allowed in judgments" (*i.e.*, compensatory interest rate) "in litigations involving such loans and forbearances."[205] As these unliquidated damages arose from litigations involving loans and forbearances, they fall within the scope of the BSP-prescribed rate of interest. All other previously unliquidated damages arising from non-loans and non-forbearances should earn interest at 6% *per annum* from the time the judgment becomes final and executory until full payment.

In sum, monetary awards that do not already earn stipulated interest or which could not previously earn compensatory interest as the same were unliquidated or unknown shall, when the judgment becomes final and executory, earn compensatory interest at the BSP-prescribed rate of interest (as part of the "rate allowed in judgments" in litigations involving loans/forbearances, pursuant to the Usury Law, as amended[206]) or at the legal rate of 6% *per annum* (in litigations that are not for loans/ forbearances pursuant to Article 2209 of the Civil Code) — from finality until full payment.

I simplify all the foregoing rules in my proposed guidelines below.

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202 See CIVIL CODE, Article 2213.
203 243 Phil. 489 (1988).
204 Id. at 498.
205 P.D. 116, Section 1 as interpreted by *Reformina v. Tomol, Jr.*, supra note 17.
206 *Reformina v. Tomol, Jr.*, supra note 17.

Guidelines on the Imposition of Interest

I. Loans and Forbearances[207] of Money, Goods, or Credit

A. *If the parties stipulate on the payment of interest and the rate thereof*, the interest due shall be that which has been stipulated.[208] Such interest shall run in accordance with the parties' agreement,[209] or in default thereof, from extrajudicial or judicial demand,[210] and shall continue to run until full payment. Such stipulated interest shall, except as otherwise provided, be controlling and the BSP-prescribed compensatory interest rate will not apply.[211] In addition, any stipulated interest that has accrued at the time of judicial demand shall itself earn interest at the BSP-prescribed rate from judicial demand until full payment.[212]

(i) If the parties stipulate on the payment of interest but (1) no rate was specified or (2) a rate was specified but the same is void for being unconscionable or iniquitous, for violating the mutuality of contracts, or for any other reason, the prevailing BSP-prescribed rate of interest at the time the parties executed their agreement will apply as a surrogate for the parties' intent.[213]

B. *If the parties do not stipulate on the payment of interest*, the indemnity for damages for delay shall be the payment of interest at the prevailing BSP-prescribed rate of interest[214] reckoned from the date of extrajudicial or judicial demand[215] and shall continue to run until full payment. No interest on interest shall be due under Article 2212 of the Civil Code.[216]

C. Any other monetary award in relation to such loans or forbearances shall bear interest at the BSP-prescribed rate of interest from the time the decision becomes final and executory[217] and shall continue to run until full payment.

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207 A forbearance is (1) an agreement or contractual obligation (2) to refrain from enforcing payment or to extend the period for the payment of (3) an obligation that has become due and demandable, (4) in return for some compensation or interest.

208 CIVIL CODE, Art. 1159; P.D. 116, Sec. 1 in relation to CIVIL CODE, Art. 2209.

209 Id.

210 Id., Art. 1169.

211 P.D. 116, Sec. 1 in relation to CIVIL CODE, Art. 2209 which apply only "in the absence of agreement."

212 CIVIL CODE, Art. 2212; *Isla v. Estorga*, supra note 19.

213 *Spouses Abella v. Spouses Abella*, supra note 145, at 386 in relation to *Isla v. Estorga*, id.

214 P.D. 116, Sec. 1 in relation to CIVIL Code, Art. 2209 and *Reformina v. Tomol, Jr.*, supra note 17.

215 CIVIL CODE, 1169.

216 *Hun Hyung Park v. Eung Won Choi*, supra note 19.

217 CIVIL CODE, Art. 2213 in relation to Art. 2209 and *Reformina v. Tomol, Jr.*, supra note 17.

II. All Other Monetary Obligations Not Constituting Loans or Forbearances

A. *If the parties stipulate on the payment of interest and the rate thereof*, the interest due shall be that which has been stipulated.[218] Such interest shall run in accordance with the parties' agreement,[219] or in default thereof, from extrajudicial or judicial demand,[220] and shall continue to run until full payment. Such stipulated interest shall, except as otherwise provided, be controlling as the compensatory interest.[221] In addition, any stipulated interest that has accrued at the time of judicial demand shall itself earn interest from judicial demand until full payment at the 6% *per annum* legal rate provided under Article 2209 in relation to Article 2212 of the Civil Code.[222]

(i) In determining the validity, effect, remedies, or defenses applicable to the same, the provisions on obligations and contracts or any other applicable law shall apply.

B. *If the parties do not stipulate on the payment of interest*, the indemnity for damages for delay shall be the payment of interest at the 6% *per annum* legal rate under Article 2209 reckoned from the date of extrajudicial or judicial demand[223] and shall continue to run until full payment. No interest on interest shall be due under Article 2212 of the Civil Code.[224]

(i) However, interest upon unliquidated claims or damages cannot be recovered until the decision becomes final and executory.

C. All other unliquidated monetary claims, damages, or awards in relation thereto (*i.e.*, non-loans/non-forbearances) shall bear interest at the 6% legal rate under Article 2209 of the Civil Code from the time the decision becomes final and executory[225] and shall continue to run until full payment.

WHEREFORE, I vote that the Decision dated April 21, 2016 of the Court of Appeals be **AFFIRMED** with **MODIFICATION**, as follows:

> Petitioner Lara's Gifts & Decors, Inc. is ordered to pay respondent Midtown Industrial Sales, Inc. the following:

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218 Id., Arts. 1159 and 2209 which apply only "in the absence of agreement."
219 Id.
220 Id., Art. 1169.
221 Id., Arts. 1159 and 2209 which apply only "in the absence of agreement."
222 Id., Art. 2212 and *Isla v. Estorga*, supra note 19.
223 Id., Art. 1169.
224 *Hun Hyung Park v. Eung Won Choi*, supra note 19.
225 See CIVIL CODE, Art. 2213 in relation to Art. 2209.

1. ONE MILLION TWO HUNDRED SIXTY-THREE THOUSAND ONE HUNDRED FOUR PESOS and 22/100 (₱1,263,104.22) representing the principal obligation plus stipulated interest fixed at 24% *per annum* to be computed from January 22, 2008, the date of extrajudicial demand, until full payment.

2. Legal interest at the rate of 6% *per annum* on the total 24% *per annum* interest that has accrued on the principal obligation during the period between extrajudicial demand and judicial demand, to be reckoned from the date of judicial demand on February 5, 2008 until full payment.

3. The sum of FIFTY THOUSAND PESOS (₱50,000.00) as attorney's fees, plus legal interest thereon at the rate of 6% *per annum,* to be computed from the finality of this Decision until full payment.

4. Cost of the suit.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice