

# Provisional Remedies

**1. ATTACHMENT (Rule 57)** - a process under which, at the commencement of the action or at any time before the entry of judgment, the debtor's real or personal property may be seized and held as security for the satisfaction of any judgment that may eventually be made against him and in favor of the plaintiff in the following cases:

(a) in an action for the recovery of money or damages arising from a law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

(b) in an action for the recovery of money or property embezzled, fraudulently misapplied or converted to his own use by a public officer, corporation official, or attorney, factor, broker, agent or clerk in the course of his employment as such, or of any person in a fiduciary capacity, or for a willful violation of duty;

(c) recovery of property or any part thereof that is unjustly or fraudulently taken, detained or converted, concealed or disposed of to prevent its being found or taken;

(d) in an action against a party who has been guilty of a fraud in contracting a debt or incurring an obligation, or in the performance of the obligation;

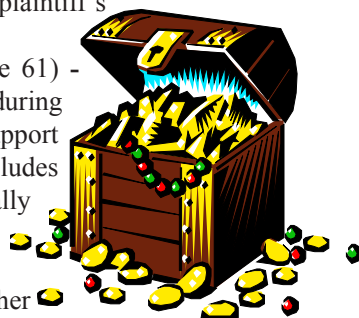
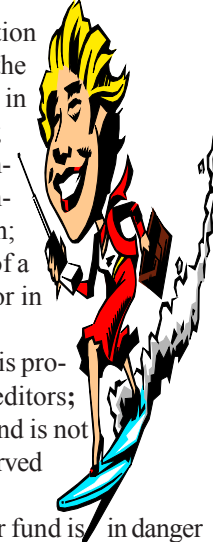
(e) against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors;

(f) in an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication

**2. RECEIVERSHIP (Rule 59)** - when a property or fund is in danger of being lost, removed or materially injured unless a receiver is appointed to administer it; in foreclosure of mortgage to prevent waste or injury.

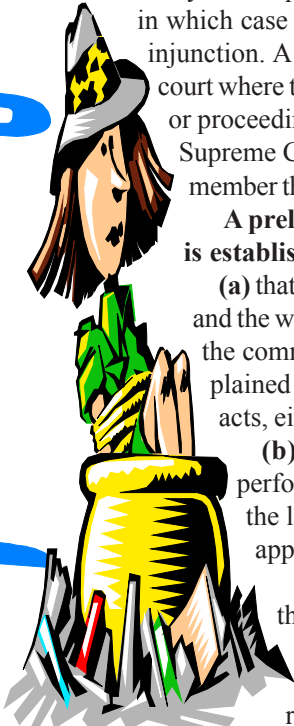
**3. REPLEVIN (Rule 60)** - recovery of the plaintiff's personal property from the defendant

**4. SUPPORT PENDENTE LITE (Rule 61)** - support given to the plaintiff by the defendant during the pendency of a principal action for such support or in criminal cases where the civil liability includes support for the offspring. The court provisionally determines the pertinent facts, the necessities of the applicant, the resources of the adverse party, the probable outcome of the case, and other circumstances. If the court in its judgment finds the person giving support not liable for such, he may then ask for restitution or reimbursement.



# Injunction, temporary restraining order

**5. PRELIMINARY INJUNCTION (Rule 58)** - an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction. A preliminary injunction may be granted by the court where the action or proceeding is pending. If the action or proceeding is pending in the Court of Appeals or in the Supreme Court, it may be issued by the said court or any member thereof.



**A preliminary injunction may be granted when it is established :**

(a) that the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) that the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) that a party, court, agency or person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

A temporary restraining order (TRO) may be issued ex- parte by the executive judge of a multiple sala court but it is good for seventy two (72) hours only. Within twenty four (24) hours after receiving the records of the case and/or from the sheriff's return, the trial judge must, after a summary hearing, either grant or deny the application for a TRO. If granted, it is effective only for twenty (20) days and is automatically lifted after such period. During the effectivity of the TRO, the hearing for the issuance of a writ of preliminary injunction may be held.

A TRO issued by the Court of Appeals or a member thereof is good for sixty (60) days from service on the party sought to be enjoined, while a TRO granted by the Supreme Court or a member thereof is effective until lifted by order.

