TITLE:	RELIEFS AND REMEDIES OF ILLEGALLY DISMISSED EMPLOYEES: WHAT LAW STATES AND WHAT JURISPRUDENCE GRANTS
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DATE:	2014

ABSTRACT:

One of the most controversial issues in labor law pertains to the sufficiency of reliefs available to an employee whose dismissal has been declared illegal by the courts. Despite the numerous amendments to the Labor Code introduced by several Presidential Decrees, Executive Orders, mga Batas Pambansa and Republic Acts from the time of its enactment in 1974, the issue of adequacy, let alone propriety and appropriateness of the reliefs provided therein, continues to bedevil not only employees, employers and practitioners but the courts as well.

At the center of the controversy is Article 294 [formerly 279] of the Labor Code. Entitled "Security of Tenure," the provision undoubtedly seeks to provide the reliefs and remedies to an employee whose dismissal has been declared illegal. Yet, a close reading thereof would readily indicate that it is not complete by itself in terms of providing the adequate and appropriate reliefs to an illegally dismissed employee. It fails to consider the reliefs which are appropriate for a given case whose factual environmental circumstances do not fall squarely within the ambit of the situations contemplated therein.

The Supreme Court, in a number of cases, had to supplement its provision with novel and newly-minted reliefs which, for lack of legal foundation, are declared as doctrines during the time of their promulgation but only to be subsequently changed and superseded by new ones which only lead to further confusion and obfuscation.

There are significant deficiencies in Article 294 [279] which this paper shall seek to unearth, explore and expound upon. Undoubtedly, these inadequacies in Article 299 [279] do not only result in confusion but in flip-flopping decisions of the High Court. In fact, it may be said that the Supreme Court is engaging in judicial legislation when it is constrained to introduce reliefs and remedies not found in Article 294 [279] if only to fill up the gaps in the law.

In the face of these deficiencies in the law, the High Court cannot rightfully be accused of undue legislation since its intention is simply to fill-up the gaps in the law which, if not remedied through appropriate congressional fiat, may further exacerbate the perennial confusion over this issue. However, there can be no gainsaying that by not adequately filling up the gaping loophole in the law through appropriate, timely legislation, the Supreme Court is given much latitude and leeway which, without intending it to be, may result in the deprivation of an illegally dismissed employee to his right to security of tenure — the very constitutional guarantee sought to be strengthened, promoted and protected by Article 294 [279]. For no matter how well-intentioned the Supreme Court may be in its effort at addressing the inadequacy and imperfection of the law, it cannot be discounted that any instability, ambiguity and uncertainty in the law as to the proper relief or correct remedy to which an illegally dismissed worker is entitled as a matter of right, would have an adverse net effect on his constitutionally and legally guaranteed right to security of tenure. Without saying more, granting reliefs and remedies which tend to change in accordance with the ambivalent demands and uncertain exigencies of the times, is not promotive of the principle of security of tenure, much less, protective of the tenet of social justice.

TITLE:	THE EFFECTS OF CLIMATE CHANGE ON SOVEREIGN DEBT AND DEFAULT UNDER A BILATERAL INVESTMENT TREATY: EXAMINING THE LEGAL CONSEQUENCES OF CLIMATE CHANGE ON SOVEREIGN DEBT AND DEFAULT UNDER A BILATERAL INVESTMENT TREATY, AND A STATE'S SUBSEQUENT CLAIM OF NECESSITY
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DATE:	2014

ABSTRACT:

In December 2012, Typhoon Bopha unexpectedly hit the island of Mindanao, a "region of the Philippines usually spared from natural disasters. While the island was familiar with disasters arising from insurgencies that have beset them for decades, no one could have been prepared for the devastation that Bopha brought. The consequences were devastating: roughly six million afflicted, almost two thousand dead, and damage estimated at more than P7B. Nevertheless, while its sheer magnitude came 2s *a surprise to many, Bopha merely represented a growing phenomenon that science 'lad long forewarned: climate change.*

Meanwhile, as the Philippines slowly came to terms with the devastating effects Bopha, a country 6,000 miles away was facing a disaster of a different sort. Greece,which had long suffered from the financial mismanagement of its sovereign debt, was in the middle of an overwhelming economic crisis. At the center of this economic crisis was the likely possibility that Greece would default on dozens of Bilateral Investment Treaties (“BIT”) it had previously entered into with various foreign investors from all over the world. Today, while austerity measures are strictly in place, the possibility that reeve will default on these BITs still looms large. Consequently, foreign investors land to lose billions of dollars.

Unfortunately, the ill-fated cases of Greece and the Philippines are no longer uncommon. Today, the issues of climate change, sovereign debt and default under BITs re some of the most pressing that the international community is facing. And while the legal issues that may eventually arise from them may seem isolated at first, the far-reaching effects of climate' change, sovereign debt, and default make it inevitable that these distinct legal issues Will one day interact. What would happen if sovereign default under a BIT was due to the adverse effects of climate change?

Over the decades, when a State was forced to default under a BIT, the most common defense raised was the doctrine of necessity. It has been invoked from as far back as 1911 by Turkey, to as recently as 2006 by Argentina. In invoking the doctrine of necessity, the State would argue that default was the only means necessary to safeguard an essential State interest from a grave and imminent peril. A successful invocation of the doctrine of necessity would mean that a State is justified in defaulting on its sovereign debt. Thus, no violation of international law occurs.

It is in light of this context that the thesis seeks to explore the legal implications that may arise in case a State defaults under a BIT due to the adverse effects of climate change. The thesis proposes that in case a State defaults under a BIT due to the adverse -effects of climate change, no violation of international law occurs. There is no violation because the adverse effects of climate change create a state of necessity that justifies any default on the part of the State. Accordingly, the default of the State under the BIT due to the adverse effects of climate change does not amount to a violation of international law.

The challenge of the thesis, therefore, is to establish that the adverse effects of climate change meet all the requisites of the doctrine of necessity, as they have been 'aid down under international law. Meeting all the requisites of necessity would establish that, indeed, the default of the State under the BIT due to the adverse effects of climate change would be justified under international law.

While the thesis seeks to contribute to the existing literature of climate change, sovereign debt, default and the doctrine of necessity, it is likewise a novel attempt at examining the legal consequences that may arise once these distinct legal issues interact. Clearly, there is a need today to re-examine the doctrine of necessity in light of our growing understanding of climate change and sovereign debt and default under BITs.

TITLE:	DIGITAL RESALE: ASSESSING THE IMPACT OF R.A. NO. 10372 AND THE FIRST SALE DOCTRINE ON DIGITAL MEDIA TRANSACTIONS IN THE PHILIPPINES
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DATE:	2014

ABSTRACT:

Licensing agreements are commonplace in today's digital age of content distribution as a means of restricting the use of digital media in the Internet. In popular media distribution platforms such as Apple Inc. 's iTunes, these licensing agreements take the form of "clickwrap" or "shrinkwrap" agreements that are used as a means of retaining control over the music, movies, and applications bought by consumers in the digital environment. While consumers could confidently assert ownership of legitimately purchased physical copies of the aforementioned copyrighted works, the certainty of their ownership over the digital version of such products remains a largely open question. In the Philippines, this question has yet to be touched by our jurisprudence. However, it seems that the recently amended Intellectual Property Code already provides for the basis by which claims of ownership over digital media can be made_ It now becomes imperative to determine the ;statutory basis of digital ownership, due to the rapid expansion and ubiquity of broadband internet access in the country. The changes introduced by Republic Act No. 103 72 to our Intellectual Property Code, in particular the removal of importation limits on copyrighted goods, could have a significant effect on digital ownership of such goods in the internet. Eventually our courts will have to resolve the following questions: "Are consumers of digital copyrighted products mere licensees, or are they full owners of their copies?" and "In the event that they are indeed owners pursuant to a digital sale, can they resell their own copies without fear of copyright infringement?"

Amidst the owner-licensee debate, extending the effect of the First Sale Doctrine to the digital space seems to provide the answer to settle the issue. Therefore, the allowable extent that the First Sale Doctrine will exhaust digital copyright should be precisely determined. Since Philippine jurisprudence has hardly explored, much less interpreted, the provisions of law covering the exhaustion doctrine, resort must be had to the general principles of International Copyright Law to clarify the principles underlying our own statutes. Thereafter, there is a need to look beyond our jurisdiction, in particular to the United States and the European Union whose courts have already encountered several cases wherein the First Sale Doctrine has been invoked in relation to copyrighted goods in the digital environment.