THE CIVIL ASPECT OF CRIMES IN THE PHILIPPINES – A MODEL OF CONTROVERSY, CHAOS AND CONFUSION*

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I. INTRODUCTION

It is a situation frequently appearing in Philippine jurisprudence and common in everyday life. A vehicle is moving through a city street at a very fast clip. A pedestrian crosses the same street unaware of the impending danger. The driver of the vehicle sees the pedestrian and tries to avoid him. Unfortunately, he fails to do so. The vehicle hits the pedestrian causing the latter severe physical injuries that inevitably lead to his death. Eventually, the driver is subject to criminal prosecution for reckless imprudence resulting in homicide. At the same time, the heirs of the pedestrian seek civil liability for the death of their decedent.

At this point, the heirs face a legal dilemma that pertains to their manner of recovering civil liability. Currently, Philippine law provides for two general remedies to avail of civil liability from conduct constituting a crime. The first remedy is a civil action *ex-delicto* or one for the recovery of civil liability arising from the offense charged. The second remedy is an independent civil action or one for the recovery of civil liability arising from quasi-delict or *culpa aquiliana*. These twin remedies are present not only in situations similar to the one earlier narrated. It is present in every instance wherein a crime results in damage or injury to other persons, whether the crime is committed through *dolo* or *culpa*.

Hence, the same set of facts can give rise to these two distinct remedies each with its own basis in substantive law and its own procedural rules. Each of these remedies is beset with various issues when taken by itself or in context with the other remedy and other relevant legal principles.

This scenario spawns one of the most unique and controversial aspects of Philippine law beleaguered by issues that are subject to much debate and confusion among law students, practitioners, commentators, and even Justices of the Supreme

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Court. The topic spans three separate fields of law – civil, criminal and remedial law – and is tackled in countless cases decided under Philippine jurisprudence.

This paper seeks to examine the Philippine model for the recovery of civil liability from conduct constituting a crime. The study consists of separate discussions on the two general remedies for recovering civil liability. Each discussion will tackle the remedy's basis in substantive law and procedural framework. However, the focus will be on the issues arising from each remedy by itself and *vis-a-vis* the other remedy and other relevant legal principles. The paper will be concluded by presenting recommendations on how the Philippine model can be improved.

II. ORIGIN OF THE PHILIPPINE MODEL

The Philippine model for the recovery of civil liability from crimes is a brainchild of the framers of the New Civil Code. The foundation of the entire model is Article 1157 of the code, which states that:

> Art. 1157. Obligations arise from:
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> 1. Law;
> 2. Contracts;
> 3. Quasi-contracts;
> 4. Acts of omissions punished by law; and
> 5. Quasi-delicts.

Evidently, Article 1157 provides for five sources of obligations, two of which are acts or omissions punished by law or delicts and quasi-delicts. Penal laws, subject to pertinent provisions of the New Civil Code govern civil obligations arising from criminal offenses or delicts.[1] On the other hand, Articles 2176 to 2194 of the code and special laws govern obligations derived from quasi-delicts.[2] Article 2176 provides the definition of a quasi-delict:

> Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict

[1] CIVIL CODE, art 1161.
[2] CIVIL CODE, art 1162.

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At first glance, it seems that the concept of a quasi-delict is mutually exclusive from that of a delict in the sense that an act considered a delict may not constitute a quasi-delict and vice versa. Civil liability for delicts arises only from acts which constitute crimes, while that for quasi-delicts arises from acts which do not. This clear delineation between delicts and quasi-delicts was expressly provided in the Old Civil Code. The relevant provisions of the old code are Articles 1089, 1092 and 1093:

> Art. 1089. Obligations are created by law, by contracts, by quasi-contracts, and *by illicit acts and omissions or by those in which any kind of fault or negligence occurs.*
>
> Art. 1092. Civil obligations, arising from crimes or misdemeanors, shall be governed by the provisions of the Penal Code.
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> Art. 1093. Those arising from acts and omissions in which fault or negligence, *not punished by law*, occur, shall be subject to the provisions of chapter second of title sixteen of this book. (italics supplied).

However, a comparison of the old and new provisions of the code will reveal that the delineation has been abolished. First of all, Article 2176 of the new code, whose predecessor was Article 1093 of the old code, omitted the phrase "not punished by law." Hence, the concept of a quasi-delict was made applicable to all acts resulting from fault or negligence, whether or not the act constitutes a crime. Second, the New Civil Code introduced Articles 32, 33 and 34 which made certain acts already punishable as crimes (i.e. violation of civil liberties, defamation, fraud) subject to a separate and distinct civil action for damages that shall proceed independently of the criminal action. Finally, Article 2177 distinguished between civil liability arising from crime and quasi-delict in the event that they arise from the same act. The article states that:

> Art. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant.

In light of the aforementioned, a violation of Article 365 of the Revised Penal Code on quasi-offenses can be considered both a delict and a quasi-delict. The effect is the same in case of fraud, defamation or any of the acts covered by Articles

32, 33, and 34 of the New Civil Code. Furthermore, such violation gives rise to two separate and distinct civil liabilities pursuant to Article 2177 which can be recovered by filing the proper civil action. The only limitation is that the private offended party cannot recover damages twice.

It does not end there. Eventually, Article 2176 was interpreted by our Supreme Court to also cover criminal acts committed intentionally and voluntarily.[3] As a result, the scope of Article 2176 grew much broader. It now covers not only acts resulting from fault or negligence whether or not punishable by law but also acts punishable by law committed with malicious intent.

Hence, conduct constituting a crime, whether or not committed through *dolo or culpa*, may give rise to two kinds of civil liabilities – one arising from delict and one arising from quasi-delict. Corollarily, civil liability can be recovered in two ways 1) a civil action *ex-delicto* or one for the recovery of civil liability arising from the offense charged and 2) an independent civil action or one for the recovery of civil liability arising from quasi-delict or *culpa aquiliana*.[4] A detailed discussion of each remedy is warranted for a better understanding of the Philippine model for the recovery of civil liability resulting from a crime. Helpful to this discussion is a look into the substantive and procedural rules governing each remedy as well as this issues and implications resulting therefrom.

III. CIVIL ACTION *EX-DELICTO*

A. LEGAL BASIS

The first mode of recovering civil liability resulting from a crime is the civil action *ex-delicto* or one for the recovery of civil liability arising from the offense charged. This remedy finds its basis in Article 100 of the Revised Penal Code which states that:

> Art. 100. *Civil Liability of a person guilty of a felony* – Every person criminally liable for a felony is also civilly liable.

It can also be based on Article 1157 of the New Civil Code which states that:

> Art. 1157. Obligations arise from:

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[3] Andamo v. Intermediate Appellate Court, G.R. No. 74761 November 6, 1990, 191 SCRA 201 (1990).

[4] Barredo v. Garcia, 73 Phil. 609 (1942).

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(4) Acts or omissions punished by law (italics supplied)

These provisions recognize the dual character of a crime, namely: (1) as an offense against the state because of the disturbance of the social order; and (2) as an offense against the private person injured by the crime.[5]

1. Criminal liability in the Absence of Civil Liability

Nevertheless, both these provisions, more so Article 100 of the Revised Penal Code, are misleading in the sense that they imply that civil liability is always a consequence of criminal liability. In reality, not all criminal convictions result in civil liability. Convictions for crimes such as treason, espionage, gambling, drug possession, bribery and illegal possession of firearms, do not include an award of civil liability. The reason is the absence of a private offended party in all these crimes.

But it is not just the element of a private offended party that is necessary for there to be civil liability. It is also essential that such party suffer damage or injury. Thus, if the crime committed could not or did not cause any damage to the private offended party, the offender is not civilly liable even if he is criminally liable.[6] Examples of crimes with a private offended party but no damage or injury to them are attempted theft and light threats.

Hence, it would be more accurate to state that there is civil liability in cases where private persons have suffered damages resulting from the crime.[7] In order that a crime may give rise to civil liability, it is imperative that not only public interest is affected but also that personal injury or damage is inflicted upon a particular victim of the crime.[8] Thus, the legal basis for the civil liability in such a situation is not really Article 100 of the Revised Penal Code, but the general provision of Article 20 of the New Civil Code that, "Every person, who contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same."[9] In the end, what gives rise to the civil liability is the obligation to repair or to make

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[5] Occena v. Icamina, G.R. No. 82146 January 22, 1990, 181 SCRA 328, 333 (1990).
[6] I L. REYES, THE REVISED PENAL CODE 867 (14th ed. 1998).
[7] U.S. v. Heery, 25 Phil. 600, 608 (1913).
[8] A. TADIAR, *Civil Liability for Criminal Conduct: Concept and Enforcement*, 58 PHIL. L. J. 64, 66 (1983).
[9] *Id.*

whole the damage caused to another by one's act or omission, whether done intentionally or negligently and whether or not punishable by law.[10]

2. Civil Liability in the Absence of Criminal Liability

That criminal liability does not always imply civil liability has already been discussed in the preceding paragraphs. Conversely, a declaration that the accused is not criminally liable does not *ipso facto* mean that he is not civilly liable. The New Civil Code has made this clear by saying that, "When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted."[11] By virtue of this provision, a subsequent civil action is not barred by an acquittal of an accused in the criminal action on the ground of reasonable doubt. This as well as other effects of an acquittal on reasonable doubt will be discussed more thoroughly in a later section of this paper.

Reasonable doubt is not the only ground for acquitting someone accused of a crime. There are other kinds of acquittals based on different grounds but the result is the same – a finding that the accused is not criminally liable. However, as to his civil liability, the results may be different.

For instance, an accused may be acquitted of the crime charged on the ground of a justifying[12] or exempting circumstance[13] under the Revised Penal Code.

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[10] Occena v. Icamina, G.R. No. 82146 January 22, 1990, 181 SCRA 328, 333 (1990).

[11] CIVIL CODE, art. 29.

[12] Art. 11. *Justifying circumstances.* – The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment or other evil motive.

4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present:

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it.

Third. That there be no other practical and less harmful means of preventing it.

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

This has been referred to as a case of "factual guilt but legal innocence."[14] Whether or not civil liability is also extinguished depends on which specific justifying or exempting circumstance is involved.

To illustrate, for justifying circumstances, the general rule is that there is no civil liability. The exception is in case of a state of necessity or avoidance of a greater evil or injury[15] where the person for whose benefit the harm has been prevented shall be civilly liable in proportion to the benefit which he may have received.[16] It must be noted that the person civilly liable may be the accused or someone else, as long as he is the one who benefited from the damage or injury caused.[17] The civil liability of such a person is likewise embodied in specific provisions of the New Civil Code[18], which provisions find their bases on the principle of unjust enrichment.[19]

On the other hand, for exempting circumstances the general rule is that there is civil liability[20] except in cases of injury caused by mere accident[21] and failure

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6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

[13] Art. 12. *Circumstances which exempt from criminal liability.* – The following are exempt from criminal liability:

1. An imbecile or an insane person, unless the latter has acted during a lucid interval.
When the imbecile or an insane person has committed an act which the law defines as a felony (*delito*), the court shall order his confinement in one of the hospitals or asylums established for person thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.
2. A person under nine years of age.
3. A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Article 80 of this Code.
4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.
5. Any person who acts under the compulsion of an irresistible force.
6. Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.
7. Any person who fails to perform an act required by law, when prevented by some lawful or insuperable cause.

[14] *Supra* note 8 at 67.

[15] REVISED PENAL CODE, art. 11, par. (4).

[16] REVISED PENAL CODE, art. 101, par. (4).

[17] *Supra* note 6 at 890, *citing* Tan v. Standard Vacuum, 91 Phil 672 (1952).

[18] Art. 23. Even when an act or event causing damage to another's property was not due to the fault or negligence of the defendant, the latter shall be liable for indemnity if through the act or event he was benefited.
Art. 432. The owner of a thing has no right to prohibit the interference of another with the same, if the interference is necessary to avert an imminent danger and the threatened damage, compared to the damage arising to the owner from the interference, is much greater. The owner may demand from the person benefited indemnity for the damage to him.

[19] I A. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 86 (1990)

[20] REVISED PENAL CODE, art. 101.

[21] REVISED PENAL CODE, art. 12, par. 4.

to perform a duty when prevented by some lawful or insuperable cause.[22] It must be noted once again that the party civilly liable is not necessarily the accused. In case of an act committed by an imbecile, insane person or a minor exempt from criminal liability, civil liability devolves upon the persons having legal authority or control over them, if the latter are at fault or negligent.[23] The imbecile, insane person or minor accused of the crime will only be civilly liable himself in the absence or insolvency of persons with legal authority.[24] In case the act is committed under compulsion of an irresistible force or under impulse of an uncontrollable fear, civil liability falls upon the persons using violence or causing fear.[25] Similarly, in the absence or insolvency of such persons, the accused shall be the one liable.[26]

A third ground for the acquittal of someone accused of a crime is a factual determination that the accused did not commit the crime charged. In other words, the trial court acquitted the accused not merely because the evidence presented failed to establish his guilt but instead pointed towards the opposite direction – his innocence. This is the case where a mistake in identity has been made or where the defense of alibi is given full credit.[27] The Rules of Court refer to this as a finding that the act or omission from which the civil liability may arise did not exist.[28] The result of such finding is the extinction of the civil action. It bears emphasis that the civil action extinguished is only the civil action *ex-delicto*.[29] The right to file an independent civil action persists notwithstanding. The availability of such civil action despite a finding that the act or omission from which the civil liability may arise did not exist is one of the contentious issues created by the Philippine model for the recovery of civil liability from crimes. This issue will be discussed in a later section of this paper.

B. PROCEDURE FOR RECOVERING CIVIL LIABILITY

The concept of a civil action *ex-delicto* and the procedural rules governing it are the products of Spanish and American influences in our law. While a civil action *ex-delicto* is of Spanish origin, tracing its roots to the Old Civil Code and Old Penal Code (both of which were brought into the Philippines by Spain during our days as

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[22] REVISED PENAL CODE, art. 12, par. 7.

[23] REVISED PENAL CODE, art. 101.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Supra* note 8 at 67.

[28] RULES OF COURT, rule 111, sec. 2.

[29] There is some debate on what civil action is extinguished by a finding that the act or omission from which the civil liability may arise did not exist. While the prevailing view is that it is only the civil action *ex-delicto*, there are those who argue that it also includes the independent civil action. This debate will be discussed in a later section of the paper.

their colony), the Philippine Rules on Criminal Procedure are generally of American origin. This creates an anomalous situation wherein the enforcement of a substantive right founded on civil law precepts is governed by rules founded on common law precepts. This warrants a further look into the procedural rules governing the civil action ex-delicto for further understanding.

Generally, there are two ways to recover civil liability *ex-delicto*: 1) institute the civil action with the criminal action and 2) reserve the civil action and file it separately from the criminal action.

1. Institute with the Criminal Action -- The Fusion of Criminal and Civil Actions

a) Origin and Rationale

Instituting the civil action together with the criminal action is a peculiarity in Philippine law.[30] It is perhaps the most salient deviation from the American rules on criminal procedure from which Philippine rules find their roots. Majority of Philippine rules on criminal procedure – such as the rules on bail, arraignment and plea, arrest and search and seizure – are essential replicas of their American counterparts. But the rule on prosecution of civil actions[31] is one with completely no American influence.

In the United States, the only concern in the criminal action is to make the offender answerable for the injury to society caused by his violation of the law. It has no interest in the civil aspect of the case involving the injury to the private offended party.[32] Such concern is completely left on the shoulders of the private offended party who can address it by means of a civil action for tort.

In the Philippines, the civil action *ex-delicto* may be instituted together with the criminal action resulting in a fusion of the civil and criminal aspects in only one case. The rationale is to promote efficiency in the judicial process and to discourage multiplicity of suits. In addition, aggrieved parties can save litigation expenses since they need not avail of the services of a private lawyer by relying on the public prosecutor to handle the civil aspect.

The source of this specific rule in Philippine criminal procedure is actually Spanish law. Most of the sections of Rule 111 of the Revised Rules on Criminal

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[30] *Supra* note 8 at 64.
[31] RULES OF COURT, rule 111.
[32] J. SCHEB *et. al.*, CRIMINAL LAW AND PROCEDURE 6-7 (1999).

Procedure dealing with the prosecution of civil actions can be traced to a specific provision in Spain's old Code of Criminal Procedure.[33] Thus, Philippine rules on criminal procedure can be considered as principally American, with a Spanish flavor.

The probable reason behind the incorporation of Spanish procedural rules is to reconcile American rules with existing substantive law (most of which was derived from Spain). The American approach of treating civil liability as beyond the grasp of criminal law proved inconsistent with the Spanish concept that a crime is a source of civil obligation. However, rather than simplifying matters, it appears that this move greatly contributed to the controversy, chaos and confusion.

b) Kinds of Institution or Fusion

The fusion of criminal and civil actions may take place either expressly or impliedly. It is express when the civil action is filed prior to the commencement of the criminal action and the private complainant subsequently elects to consolidate it with the criminal action. On the other hand, it is implied when the criminal action commences and the private complainant does not reserve or waive the civil action or institute it prior to the filing of the criminal action.

i. Express

Express fusion can be seen in Rule 111, Section 2 of the Revised Rules of Criminal Procedure which states:

> SEC. 2. *When separate civil action is suspended.* – After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action.
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> If the criminal action is filed after the said civil action has already been instituted, the latter shall be suspended in whatever stage it may be found before judgment on the merits. The suspension shall last until final judgment is rendered in the criminal action. Nevertheless, before judgment on the merits is rendered in the civil action, the same may, upon motion of the offended party, be consolidated with the criminal action in the court trying the criminal action. In case of consolidation, the evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action without prejudice to the right of the prosecution to cross-

[33] E. GARCIA, *Torts under the Spanish Law*, 2 PHIL. L. J. 27, 33-35 (1915).

> examine the witnesses presented by the offended party in the criminal case and of the parties to present additional evidence. The consolidated criminal and civil actions shall be tried and decided jointly (underscoring supplied).

When a private offended party files a civil action *ex-delicto* prior to the institution of the criminal action, such civil action cannot be deemed instituted with the criminal action. This is because the filing of the civil action is tantamount to an implied reservation.[34] However, the private offended party is allowed to consolidate the two actions and he can accomplish this by filing a motion in the court where the criminal case is pending asking for such consolidation.[35] As soon as he does this, he is deemed to have expressly instituted the civil action with the criminal action.

ii. Implied

On the other hand, implied institution or fusion can be seen in Rule 111, Section 2 of the Revised Rules of Criminal Procedure which states:

> SECTION 1. *Institution of criminal and civil actions.* – (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action, unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action (underscoring supplied).
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> xxx.

The general rule is that the institution of the criminal action includes the institution of the civil action *ex-delicto*. The three exceptions to this rule are: 1) when the offended party waives the civil action; 2) when he reserves the right to institute the civil action separately; and 3) when he institutes the civil action prior to the criminal action.[36]

iii. Special Cases

It is important to note that for some types of criminal actions, the rules on institution are different. For example, in cases of violation of Batas Pambansa Blg. 22 or the Bouncing Checks Law, no reservation to file the civil action *ex-delicto* is

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[34] I C. SANGCO, TORTS AND DAMAGES 199 (1993), *citing* Garcia v. Florido, 52 SCRA 421 (1972).
[35] RULES OF COURT, rule 111, sec. 2.
[36] R. AGPALO, HANDBOOK ON CRIMINAL PROCEDURE 96 (2001).

allowed.[37] The only instance a separate civil action is allowed is when it is filed prior to the criminal action. Even then the private complainant has the option to consolidate the civil action with the criminal action.[38]

Another case is a criminal action for offenses under the jurisdiction of the *Sandiganbayan*. In this instance, the civil action for the recovery of civil liability shall at all times be simultaneously instituted with the criminal action. Hence, there is no right of reservation on the part of the private offended party. However, as in a prosecution for B.P. 22, the civil action may prosper if filed prior to the criminal action. The difference is that the moment the criminal action is filed, the civil action, as long as no judgment has been rendered therein, shall be transferred and consolidated with the criminal action.[39]

c) Issues and Implications

Whether the institution of the civil action with the criminal action is express or implied, the results are the same. Both actions proceed simultaneously and jointly in the same court and under the same judge.[40] The public prosecutor has the task of handling both aspects of the case (subject to the right of the private complainant to his own counsel) while the defense attorney has to deal with a two-pronged attack on his client. Evidence need to be presented only once even if it is relevant to and admissible in both actions. In fact, in cases of express institution, evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action.[41] Finally, judgment may dispose of both the civil and criminal aspects of the case.[42]

In light of these effects, the fusion of the criminal and civil actions may appear laudable, especially when considering the objective of the Rules of Court of securing a just, speedy and inexpensive disposition of every action and proceeding.[43] However, such a conclusion will not easily be arrived at when one considers the implications of the fusion and the several issues which arise therefrom.

i. Intervention of a Private Prosecutor

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[37] RULES OF COURT, rule 111, sec. 1, par. (b).
[38] *Id.*
[39] Pres. Decree. No. 1606, sec. 4 as amended by Rep. Act No. 8249.
[40] RULES OF COURT, rule 111, sec. 2.
[41] *Id.*
[42] RULES OF COURT, rule 120, sec. 2.
[43] RULES OF COURT, rule 1, sec 6.

While fusion will vest the public prosecutor with the authority to handle the civil aspect of a case (in addition to the criminal aspect), private offended parties are not precluded from availing themselves of their own counsel to act as private prosecutor.[44] The role of the private prosecutor is to represent the private offended party for the recovery of civil liability. Hence, he cannot intervene in the prosecution of the case when from the nature of the crime no civil liability arises (i.e. illegal possession of firearms, drug possession) or when the civil action *ex-delicto* is not instituted in the criminal case.[45]

The hiring of a private prosecutor has become a common practice among private offended parties. Public prosecutors are generally known to be heavily laden with cases which prevents them effectively handling the civil aspects instituted therein. This encourages private offended parties to employ private counsel to take care of the civil aspect. Public prosecutors usually welcome the presence of private prosecutors with open arms and occasionally authorize them to preside over the prosecution of the entire case, subject to their direction and control.

This development defeats one of the purposes of the fusion of the criminal and civil aspects of a case – reducing litigation expenses. As mentioned earlier, Spain coined the idea of fusion so that her subjects no longer have to seek private counsel and merely rely on the public prosecutor to handle the case in its entirety. Thereby, the costs of litigation fall primarily on the shoulders of the state. Back then, the move proved auspicious as the people of Spain and her colonies took advantage of the opportunity.[46] However, it appears that the purpose is no longer served today as private parties (at least those who can afford to) generally prefer to employ their own lawyer to ensure that the civil aspect of the case is more effectively prosecuted.

ii. *Judgment Subject to Multiple Appeals*

Fusion subjects judgment in the case to appeals by three different parties. Under Rule 122, Section 1 of the Revised Rules on Criminal Procedure, "Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy." The term "any party" includes the government, the accused, and the offended party whose civil action *ex-delicto* is instituted in the criminal action.[47]

Moreover, the right to appeal of each of these three parties differs insofar as they do not cover the same aspects of the case. The right of the government to

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[44] RULES OF COURT, rule 110, sec. 16.
[45] Gorospe v. Gatmaitan, 98 Phil. 600, 603 (1956).
[46] *Supra* note 8 at 65.
[47] *Supra* note 36 at 510.

appeal is limited to the criminal aspect of the case. Insofar as the civil aspect is concerned, the government is not a party in interest as this is exclusively the concern of the private offended party. It is to be noted that his right to appeal the criminal aspect is subject to the right of the accused against double jeopardy. An appeal is generally considered as an act which puts an accused in a second jeopardy of conviction. This results in a limited number of instances wherein the government can appeal unfavorable judgments. The instances wherein the government is allowed to appeal a decision of the trial court are if: (1) the dismissal is made upon motion, or with the express consent of the defendant, (2) the dismissal is not an acquittal or based upon consideration of the evidence or on the merits of the case, and (3) the question to be passed upon by the appellate court is purely legal.[48]

Unlike the government, the right of the accused to appeal covers both the criminal and civil aspects of the case. This is logical considering that he is a party in interest in both cases.[49]

Finally, the right of the private offended party to appeal is limited to the civil aspect of the case.[50] He may appeal either because the lower court has refused or failed to award damages or because that awarded is unsatisfactory on other grounds. [51] This is given to him in light of the possible adverse effect of the judgment on his claim for civil damages *ex-delicto*, which is the basis for his right to intervene in the prosecution of the criminal action. Conversely, the offended party has no right to appeal when the action only involves the criminal aspect as when he reserved, waived or previously filed the civil action *ex-delicto*.[52]

It must be emphasized that the right of the private offended party to appeal the civil aspect is separate from the right of the accused to appeal the criminal aspect. Hence, even if judgment has become final because the accused commenced to serve his sentence, the trial court does not lose jurisdiction over the civil aspect of the case.[53] The private offended party is still allowed to file an appeal if he finds the trial court's judgment, insofar as the civil aspect is concerned, unsatisfactory. Similarly, an appeal by the accused does not preclude an appeal by the private offended party.[54]

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[48] IV O. HERRERA, REMEDIAL LAW 819 (2001), *citing* People v. City of Manila, G.R. No. L-36528 September 24, 1987, 154 SCRA 125 (1987).

[49] *Supra* note 34 at 196.

[50] People v. Santiago, G.R. No. 80778 June 20, 1989, 174 SCRA 152 (1989).

[51] *Supra* note 34 at 196.

[52] Martinez v. Court of Appeals, G.R. No. 112387 October 13, 1994, 237 SCRA 575 (1994).

[53] People v. Rodriguez, 97 Phil 351 (1955).

[54] People v. Ursua, 60 Phil 252 (1934).

However, the private offended party cannot appeal when the accused was completely exonerated as illustrated in the case of *Sadio v RTC of Antique*.[55] In that case, a criminal complaint against a judge for the issuance of unjust interlocutory order was filed alleging that the accused violated the private complainant's right to due process. The complaint was dismissed when the trial court judge found that there was no denial of due process. The private complainant sought to appeal the dismissal. The Supreme Court deemed the civil action dismissed with the criminal action. In finding that due process was not denied, the trial court effectively exonerated the accused and thus extinguished the civil action connected in the criminal case.

Furthermore, an appeal by the offended party is not allowed if this is not confined to the civil aspect of the case. For instance, in *Heirs of Rillorta v Firme*[56] the appeal that the civil award should be increased since the accused should have been found guilty of homicide rather than less serious physical injuries was denied. Although the appeal pertained to the civil aspect of the case, the ground relied on affected the criminal aspect. This is not permitted for two reasons: (1) it allows the private complainant to appeal the criminal aspect of the case and (2) it places the accused in double jeopardy.

The offended party's right to appeal includes the filing of a special civil action of certiorari under Rule 65 to set aside a disputed order of the trial court.[57] It also includes the right to appeal an order of dismissal of the case upon motion of the prosecutor.[58]

Undoubtedly, the existence of multiple rights to appeal complicates the Philippine framework for the recovery of civil liability for crimes. This may even militate against the objective of attaining the speedy resolution of cases. A case in point is *Neplum, Inc. v Orbeso*[59] wherein it was stated that private offended parties may appeal the civil aspect of judgment 15-days from the time he had actual or constructive knowledge of the judgment, whether it be during promulgation or as a consequence of service of the notice of decision. This deviates from the period imposed on the government and the accused which is 15-days from promulgation (the reason being that both parties must be present during promulgation). While the ruling will help ensure that the offended party's right to due process is protected, it delays the final disposition of the case.

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[55] G.R. No. 94143 September 24, 1991, 201 SCRA 744 (1991).
[56] G.R. No. L-34904 January 29 1988, 157 SCRA 518 (1988).
[57] People v. Santiago, G.R. No. 80778 June 20 1989, 174 SCRA 143 (1989).
[58] People v. Santos, G.R. No. L-25033 October 31, 1969, 30 SCRA 100 (1969).
[59] G.R. No. 141986, July 11, 2002.

iii. *Convergence of Evidentiary Rules*

Generally, the rules on evidence shall be the same in all courts and in all trials and hearings.[60] The reasons behind the uniformity in the rules on evidence are: (1) the relation between the evidence and the fact to be proved is always the same, without regard to the kind of case in which fact is to be proven, and (2) if the rules of evidence prescribe the best course to arrive at the truth, they must be the same in all cases and in all civilized countries.[61]

Nevertheless, the rules are not entirely the same in all instances. The same section of the Revised Rules on Evidence providing for uniformity also recognizes that the law or the rules may provide otherwise.[62] If some rules are applicable in specific cases only, it is because of special considerations affecting a particular issue or a particular sort of evidence with respect to that case.[63]

In criminal and civil cases, the rules on evidence differ in only a few respects. The quantum of evidence, the presumption of innocence, the privilege against testimonial compulsion, and the admissibility of an offer of compromise are some examples of these differences. The differences were created in light of the material distinctions between civil and criminal proceedings.[64] Although few in number, these differences are enough to complicate matters whenever there is fusion of criminal and civil actions. Their common effect is that the judge has to treat each aspect of the case differently. While it sounds simple in writing, it is more complicated in practice. The dichotomy forces judges to govern the same action with two different sets of evidentiary rules with contradict each other in some respects.

1. Quantum of Evidence

Rule 133, Section 1 of the Revised Rules on Evidence states:

> Section 1. *Preponderance of evidence, how determined.* -- In civil cases, the party having the burden of proof must establish his case by preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witness' manner of testifying, their intelligence, their means and opportunity of

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[60] RULES OF COURT, rule 128, sec. 2.
[61] R. FRANCISCO, EVIDENCE 7 (1996).
[62] *Supra* note 60.
[63] V O. HERRERA, REMEDIAL LAW 19 (1999).
[64] *Supra* note 61 at 7.

> knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number (underscoring supplied).

In the Philippines, preponderance of evidence means that the evidence as a whole adduced by one side is superior that that of the other.[65] In the United States, this was defined as the proof which leads the jury to find that the existence of the contested fact is more probable than its non-existence.[66]

Under the principle of preponderance of evidence, the plaintiff must rely on the strength of his evidence and not on the weakness of the defendant's claim. Even if the evidence of the plaintiff may be stronger than that of the defendant, there is no preponderance of evidence on his side if such evidence is insufficient in itself to establish his cause of action.[67]

On the other hand, Rule 133, Section 2 states that:

> *SEC. 2. Proof beyond reasonable doubt* -- In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as excluding the possibility of error, produces absolute certainty. Moral certainty is only required, or that degree of proof which produces conviction in an unprejudiced mind (underscoring supplied).

The quantum of evidence in criminal cases was brought about by the unequal statures of the parties in a criminal case. On one side there is the state with unlimited means at its disposal. On the other hand, there is the accused who is usually left to his own devices.[68] The requirement of proof beyond reasonable doubt seeks to level the playing field between these two parties.

This requirement manifests the policy of the law that it is preferable for the guilty to remain unpunished than for an innocent person to suffer a long prison term

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[65] Sapu-an v. Court of Appeals, G.R. No. 91869 October 19, 1992, 214 SCRA 701 (1992).
[66] J. STRONG, MCCORMICK ON EVIDENCE 514 (1999).
[67] *Supra* note 65.
[68] *Supra* note 61 at 577.

unjustly.[69] This is embodied in the maxim, "*Tutuis semper est errare acuietandod quam in puniendo*" (It is better to err in acquitting than in punishing).

Proof beyond reasonable doubt does not require absolute certainty but only moral certainty or that degree of proof which produces a conviction in an unprejudiced mind.[70] A more detailed definition is, "that degree of assurance which induces a man of sound mind to act, without doubt, upon the conclusions to which it leads."[71]

In light of these two distinct quanta of evidence, a judge handling a criminal case wherein the civil action *ex-delicto* is instituted will have to rule each aspect of the case with a different mindset as to the sufficiency of evidence. This can be a problem since the same evidence is usually presented to prove facts relevant to both the criminal and civil aspects of the case. Consequently, the judge is placed in an unenviable position of considering the same evidence in two different ways.

2. Presumption of Innocence

Under the Constitution, in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.[72] This constitutional guarantee is embodied in the Revised Rules on Evidence which creates a presumption, albeit disputable, that a person is innocent of crime or wrong.[73]

Just like the requirement of proof beyond reasonable doubt in criminal cases, the presumption of innocence was created to level the playing field between the accused and the state. However, the two differ insofar as the proof beyond reasonable doubt is a result of the evidence presented while the presumption of innocence is considered as evidence introduced by the law to be considered by the court.[74]

The presumption is limited to the criminal aspect of the case and will not apply insofar as the civil aspect is concerned. In cases wherein there is fusion, this places the court in a position of presuming the accused innocent on one hand and having no such presumption as to his civil liability on the other hand. Once again,

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[69] People v. Paguntalan, G.R. No. 116272 March 27, 1995, 242 SCRA 753 (1995).
[70] People v. Bacalzo, G.R. No.89811 March 22, 1991, 195 SCRA 557 (1991).
[71] BLACK'S LAW DICTIONARY 1008 (6th ed.)
[72] CONST, art. III, sec. 14, par. (2).
[73] RULES OF COURT, rule 131, sec. 3, par. (a).
[74] *Supra* note 61 at 578.

this complicates the proceedings as it forces the judge to look at the case in two different ways.

3. Privilege Against Testimonial Compulsion

Under the Constitution, no person shall be compelled to be a witness against himself.[75] This was established on grounds of public policy because if a party was required to testify, he would be placed under the strongest temptation to commit perjury.[76] It was also grounded on humanity because it would prevent the extorting of confession by duress.[77] The government is not allowed to call an accused as a witness to incriminate him and to furnish the missing evidence necessary form his conviction.[78]

However, this right against self-incrimination does not grant a witness blanket authority to refuse to take the witness stand. What he is merely given is the privilege to refuse answering a question that may require an incriminating answer. The case is different for someone accused in a criminal proceeding. An accused is given the right to be exempt from being compelled to be a witness against himself.[79] Hence, unlike an ordinary witness, the accused can refuse to take the witness stand outright and refuse to answer any and all questions.[80]

Hence, this situation brings about the question of the right of the accused not to be a witness against himself in criminal cases where the civil action is instituted therewith. While it is clear that he may not be compelled to testify insofar as the criminal action is concerned, it is uncertain whether or not he can be called to testify on the civil aspect of the case.

4. Admissibility of Offer of Compromise

In civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror. But in criminal cases, except those involving quasi-offenses or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.[81]

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[75] CONST, art. III, sec. 17.
[76] U.S. v. Navarro, 3 Phil. 143 (1904).
[77] *Id.*
[78] Chavez v. Court of Appeals, G.R. No. L-29169 August 19, 1968, 24 SCRA 663 (1968).
[79] RULES OF COURT, rule 115, sec. 1, par. (e).
[80] Cabal v. Kapunan, G.R. No. L-651059, December 29, 1962.
[81] RULES OF COURT, rule 130, sec. 27.

The reason why such an offer is not admissible in civil cases is the policy of the law to favor the settlement of disputes, to foster compromises, and to promote peace. If every offer could be used as evidence against the one making it, many settlements would be prevented and unnecessary litigation would be produced and prolonged.[82]

On the other hand, the offer is admissible in criminal case because the law seeks to prevent the stifling of criminal prosecution by "buying off" the prosecution's witnesses.[83] This is in accordance with the nature of a crime as an offense against the state.

In line with these rules, an offer of compromise can be considered as evidence characterized by multiple admissibility.[84] It is inadmissible to prove the fact of liability in civil case but is admissible to prove guilt in criminal cases. This multiple admissibility causes problems whenever there is fusion of actions. The judge is placed at a predicament as to how he will treat evidence of an offer of compromise.

iv. Effect of Judgment in Criminal Case

In disposing of the criminal case, the trial court can either convict or acquit the accused. The effects of either judgment on the civil action instituted in the criminal case will depend on the findings of the court.

1. Conviction

In case of a judgment of conviction, it is mandatory on the part of the trial court to award all damages proved.[85] The first paragraph of Rule 120, Section 2 of the Revised Rules on Criminal Procedure requires a judgment of conviction to state the civil liability or damages caused by the wrongful act or omission to be recovered from the accused by the offended party. The key is that such injury or damage be proved in the course of the proceedings; otherwise an award of civil liability will have no basis. If no evidence proving civil liability is presented or if the evidence presented is insufficient or inadmissible, the trial court will have no other recourse but to deny civil liability. However, this does not preclude the private offended party from filing an appeal insofar as the civil aspect of the case is concerned.

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[82] *Supra* note 61 at 186.

[83] *Supra* note 66 at 419.

[84] Multiple admissibility arises when evidence offered is considered admissible to prove a certain fact but not admissible to prove a different fact.

[85] Heirs of Castro v Bustos, G.R. No. L-25913 February 28, 1969, 27 SCRA 328 (1969).

2. Acquittal – in General

The effect of an acquittal on the civil action *ex-delicto* instituted with the criminal action will depend on the ground for the acquittal. If it is based on an exempting circumstance, the trial court is not precluded from awarding civil damages, subject to certain exceptions. On the other hand, if it is based on a justifying circumstance, no civil liability may be awarded, but this is also subject to a certain exception. Civil liability in case of an acquittal based on an exempting or justifying circumstance is discussed in depth in a previous section of this paper.

3. Acquittal on Reasonable Doubt

If the acquittal is based on reasonable doubt, the existence of civil liability will not be foreclosed. This is expressly provided for in Article 29 of the New Civil Code which states:

> Art. 29. When the accused in a criminal prosecution is acquitted on the ground that guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found malicious.
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> If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.

This article is an entirely new provision without any predecessor in the Old Civil Code. The reason for its insertion was aptly justified by the Code Commission as follows:

> The old rule that the acquittal of the accused in a criminal case also releases him from civil liability is one of the most serious flaws in the Philippine legal system. It has given rise to numberless instances of miscarriage of justice, where the acquittal was due to a reasonable doubt in the mind of the court as to the guilt of the accused. The reasoning followed is that inasmuch as the civil responsibility is derived from the criminal offense, when the latter is not proved, civil liability cannot be demanded.

> This is one of those cases where confused thinking leads to unfortunate and deplorable consequences. Such reasoning fails to draw a clear line of demarcation between criminal liability and civil responsibility, and to determine the logical result of the distinction. The two liabilities are separate and distinct from each other. One affects the social order and the other, private rights. One is for punishment or correction of the offender while the other is for reparation of damages suffered by the aggrieved party. [86]
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> xxx.

4. Acquittal on Factual Innocence

If the acquittal is not based on reasonable doubt, but a finding that the accused did not commit the crime, there can be no civil liability. This is expressly provided in the last paragraph of Rule 111, Section 2 of the Revised Rules on Criminal Procedure, which states that: "The extinction of the penal action does not carry with it extinction of the civil action. However, *the civil action based on delict may be deemed extinguished if there is an express finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist* (italics supplied)."

It should be pointed out that unlike Rule 111, Section 2 of the Revised Rules on Criminal Procedure, Article 29 of the New Civil Code does not expressly state that the civil action is extinguished if there is a finding that the act or omission from which the civil liability may arise did not exist. Hence, it can be argued that Rule 111, Section 2 is *ultra vires* insofar as it modifies a substantive law. However, it is submitted that such statement is implied from the words of Article 29. Moreover, jurisprudence has filled any gap as it has been repeatedly held that the acquittal of the accused will not necessarily extinguish civil liability unless the court declares that the fact from which civil liability might arise does not exist.[87]

5. What Civil Liability Refers to

That the private offended party may file a civil action despite an acquittal based on reasonable doubt is clearly mandated by Article 29. It is also clear that a finding that the fact from which civil liability might arise does not exist will bar the filing of a civil action. What is not clear is the whether the civil action referred to is the civil action *ex-delicto* or the independent civil action.

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[86] REPORT OF THE CODE COMMISSION 45-46.

[87] Tan v. Standard Vacuum Oil Company, 91 Phil. 672 (1952).

There are those who believe that the civil action contemplated in Article 29 is an independent civil action different from that based on the crime.[88] Hence, this is the civil action that may be filed upon an acquittal based on reasonable doubt and is barred by a finding that the act from which civil liability arises does not exist

Others are of the view that Article 29 contemplates the civil action *ex-delicto*.[89] Hence, a civil action *ex-delicto* may be filed despite an acquittal based on reasonable doubt but it is foreclosed by a finding that the act from which civil liability arises does not exist. The finding has no effect on the independent civil action which is still allowed to prosper.

The Supreme Court agrees with the latter view. In *Marcia vs. Court of Appeals*[90] the Supreme Court held that an acquittal based on the finding that the facts upon which civil liability did not exist bars the filing of an independent civil action if *based on crime*. Conversely, an acquittal based on reasonable doubt will allow the civil action *ex-delicto* to be subsequently filed. Take note that while this case used the term "independent civil action", it was not pertaining to a civil action under Articles 32, 33, 34 and 2176 of the New Civil Code but to one arising from the offense charged but proceeding separately.

This ruling was affirmed in *Heirs of Guaring vs. Court of Appeals*[91] where the Court held that acquittal of the accused, even if based on a finding that he is not guilty, does not carry with it extinction of the civil liability based on quasi-delict. This implies that the civil liability extinguished is the one *ex-delicto* as there is no other civil liability to speak of.

Furthermore, the Rules of Court clearly state that what is extinguished by an acquittal on the ground that the act from which civil liability arises does not exist is the civil action *ex-delicto*. The rules state that, ". . . the *civil action based on delict* may be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist (italics supplied)."

In light of what jurisprudence and the Rules of Court provide, it is clear that the prevailing interpretation of Article 29 of the New Civil Code is that it applies to civil actions *ex-delicto*. While it appears to be the more reasonable interpretation, it

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[88] *Supra* note 34 at 164.

[89] *Supra* note 48 at 177. *See also* C. VASQUEZ, *Civil Liability Arising From Crimes*, 2 TRENDS IN REMEDIAL LAW, PROCEEDING OF THE INSTITUTE ON REMEDIAL LAW REVISITED 7 (1978).

[90] G.R. No. L- 34529 January 27, 1983, 120 SCRA 193, 199 (1983).

[91] G.R. No. 108395 March 7, 1997, 269 SCRA 283, 288 (1997).

does not mean that it is without error. This interpretation fails to consider that a criminal action wherein the civil action *ex-delicto* is instituted is separately appealable by the private offended party. As a consequence, it inadvertently gives the private offended party two chances to prevail in a civil action *ex-delicto*.

The following set of facts will illustrate: The trial court renders a judgment acquitting the accused on reasonable doubt but without any finding on his civil liability. The private offended party decides to appeal the judgment. This is allowed pursuant to the principle that the civil aspect of the case is separately appealable by the private offended party. Unfortunately, the appellate court finds no merit in the appeal and dismisses it. The judgment becomes final and executory.

Under ordinary circumstances, the private offended party will no longer have any recourse but to accept the final judgment. However, under the prevailing interpretation of Article 29, the private offended party is allowed to file a civil action *ex-delicto* anew without any regard to the previous final judgment. Evidently, the scenario violates the rule on *res judicata* and subjects the accused to multiple suits based on the same cause of action.

Perhaps a better interpretation is that Article 29 applies to civil actions *ex-delicto* but only when these are not instituted with the criminal action. In this case, the private offended party may file a subsequent civil action *ex-delicto* in case of acquittal (as long as it is not based on a finding that the act from which civil liability arises does not exist). If the civil action was instituted with the criminal action, the remedy would not be to file a new civil action, but to appeal. In either case, the independent civil action is not affected as it can proceed regardless of the status or result of the criminal action. An acquittal of the accused, even if based on a finding that the act from which civil liability arises does not exist, will not bar such an action. However, it is important to note that this remains a topic of controversy as it subjects the accused to multiple suits resulting from the same act. This will be discussed later in the section on independent civil actions.

6. Award of Civil Liability in Judgment of Acquittal

Before ending this section, it must be mentioned that civil liability is not only enforceable in a separate civil action in case the accused is acquitted on reasonable doubt. An award of civil liability can be made by the court in the very same judgment acquitting the accused. Admittedly, Article 29 does not make any mention of the trial court's power to award damages in the same decision acquitting the accused. It only mentions the filing of a civil action after the judgment of acquittal is rendered. Nevertheless, it is believed that such a power can be implied from the article. Where the preponderance of evidence in support of the civil action

has already been presented but inadequate to sustain a conviction in the criminal action, it would be illogical and absurd to require the private offended party to institute another civil action for the same damages.[92] This is in line with the distinct and separate character of the criminal and civil liability of the accused.

A judgment of acquittal awarding civil liability was affirmed in *Padilla v. Court of Appeals*[93]. In that case, a policeman accused of grave coercion was acquitted by the Court of Appeals of the criminal charge but was ordered to indemnify the private complainants for civil damages. The accused questioned the Court of Appeals' award of civil damages arguing that this was barred by the judgment of acquittal. The Supreme Court upheld the Court of Appeals finding that a judgment of acquittal operates to extinguish criminal liability but not civil liability. Furthermore it enumerated three instances wherein civil liability is not extinguished by acquittal: (1) where the acquittal is based on reasonable doubt, (2) where the court expressly declares that the liability of the accused is not criminal but only civil in nature, and (3) where civil liability does not arise from the criminal act of which the accused was acquitted. Finally it declared that since the facts to be proved in the civil action were already established in the criminal case, requiring a separate civil action would mean needless clogging of court dockets and unnecessary duplication of litigation.

1. Reserve Civil Action

The second way to recover civil liability *ex-delicto* is to reserve the civil action and file it separately from the criminal action. In this way, the two actions will be completely separated from the other. Moreover, each action will generally have no effect whatsoever on the other's proceedings. In this instance, the fusion of actions, so to speak, does not exist.

a) Kinds of Reservation

Just like in the case wherein the civil action *ex-delicto* is instituted with the criminal action, the reservation of the civil action can be either express or implied. It is express if the private offended party reserves the right to institute the civil action separately whenever a criminal action is instituted. On the other hand, it is implied if, the civil action is filed prior to the criminal action and the private offended party does not move to consolidate them.

i. Express

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[92] *Supra* note 34 at 164.

[93] G.R. No. L-39999 May 31, 1984, 129 SCRA 558 (1984).

Express reservation is found in Rule 111, Section 1 of the Revised Rules of Criminal Procedure which states:

> SECTION 1. *Institution of criminal and civil actions.* – (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action, unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action (underscoring supplied).
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> xxx.

The general rule is that the civil action *ex-delicto* is impliedly instituted with the criminal action. If the private offended party wishes to institute it separate from the criminal action, one of the things he can do is to reserve it. This is usually accomplished through a manifestation by the private offended party, filed in the court wherein the criminal case is pending, saying that he chooses to reserve the filing of the civil action.

The rules also set a cut-off point on the private offended party's right to reserve the civil action. According to the second paragraph of Rule 111, Section 1, "It must be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation." The failure to reserve before the cut-off point results in the implied institution of the civil action *ex-delicto* with the criminal action. At the same time, the private offended party can no longer choose to file the civil action separately.

There is a two-fold rationale behind the cut-off point. On one hand, it prevents the private offended party from trifling with the law by reserving the civil action anytime during the pendency of the case if he feels that his chances for recovering liability are not so good. This is precisely what happened in the case of *Virata vs. Ochoa*[94] wherein the private complainant reserved the right to file a separate civil action shortly before the termination of the case despite the active participation of his private counsel in the proceedings.

On the other hand, the cut-off point will protect the private offended party in case the accused decides to plead guilty. In such an event, the accused will be convicted without any evidence being presented, including evidence of damages. Consequently, the trial court cannot award civil liability as it has no basis for such. This problem is remedied by the cut-off point as the private offended party may still

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[94] G.R. No. 46179 January 31, 1978, 81 SCRA 472 (1978).

reserve the civil action as the presentation of evidence by the prosecution has not yet taken place. In fact, it will never take place in light of the plea of guilt.

Reservation of the civil action *ex-delicto* prevents it from being instituted until final judgment has been entered in the criminal action. This is clearly provided in the first paragraph of Rule 111, Section 2 which states that, "After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action." The reason for this is that the result of the criminal action may affect the civil action based on the offense charged, depending on whether the accused is convicted or acquitted.[95]

Finally, it must be noted that the prescriptive period for filing the civil action *ex-delicto* is suspended during the pendency of the criminal action. It will be revived only upon final judgment in the criminal case.

ii. Implied

Implied reservation can also be seen in Rule 111, Section 1 of the Revised Rules of Criminal Procedure which states:

> SECTION 1. *Institution of criminal and civil actions.* – (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action, unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action (underscoring supplied).
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> xxx.

Implied institution can also be prevented by the filing of the civil action *ex-delicto* prior to the criminal action. This act can be considered as an implied reservation.[96]

The civil action *ex-delicto* filed prior to the criminal action is suspended by the subsequent institution of the criminal action. It can only be revived upon final judgment in the criminal action. This is provided by the second paragraph of Rule 111, Section 2 which states that, "If the criminal is filed after the said civil action has already been instituted, *the latter shall be suspended in whatever stage it may be found before judgment on the merits.* The suspension shall last until final judgment is rendered in the

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[95] *Supra* note 34 at 200.

[96] *Supra* note 34 at 199 *citing* Garcia v. Florido 52 SCRA 421 (1972).

criminal action." (italics supplied). The reason for this is the same as in express reservation which is that the result of the criminal action may affect the civil action *ex-delicto*. Similarly, the prescriptive period of the civil action is suspended during the pendency of the criminal case.

It is to be noted that the private offended party has the option of consolidating the civil action *ex-delicto* with the criminal action. In such a case, the situation will be converted from implied reservation to express institution. This was discussed in a previous section of this paper.

The situation will be altogether different if no criminal action is filed during the pendency of the civil action *ex-delicto*. In this case, the civil action can proceed without interruption until final judgment. At this point, the filing of a criminal action will no longer affect the civil action as final judgment has already been rendered. This situation is clearly provided for in Article 30 of the New Civil Code which states:

> Art. 30. When a separate civil action is brought to demand civil liability arising from a criminal offense, and no criminal proceedings are instituted during the pendency of the civil case, a preponderance of evidence shall likewise be sufficient to prove the act complained of.

b) Issues and Implications

i. In General

By separating the two actions from one another, several of the issues and implications of fusion – the intervention of a private prosecutor, multiple appeals, and converging rules on evidence – will not arise. This is because of the clear delineation between the criminal and civil actions.

The intervention of a private prosecutor in the criminal action is not allowed as the private complainant no longer has an interest therein. In case of fusion, his interest arises from the fact that the civil aspect of the case is being litigated with the criminal. If the private offended party chooses to reserve, he totally removes the civil aspect from the picture.

The implication of multiple appeals is no longer present for the same reasons. With the separation of the civil aspect of the case, the trial court judge has no authority to render any judgment pertaining to civil liability. In the event that he

does, he will be acting without jurisdiction. Absent any jurisdiction over the civil aspect of the case, the private offended party has nothing to appeal.

Finally, there will no longer be any problem with evidentiary rules. With the separation of the criminal and civil aspects of the case, it would be easy to determine what set of evidentiary rules shall apply.

ii. Effect of Judgment in Criminal Case

There is one more issue discussed in the section on fusion that remains applicable to reservation. This is the issue pertaining to the effect of a judgment in the criminal action on the civil action *ex-delicto*.

The relevant provisions of law are still Article 29 of the New Civil Code and Rule 111, Section 2 of the Revised Rules on Criminal Procedure. To reiterate, Article 29 allows the subsequent filing of a civil action despite judgment of acquittal based on reasonable doubt. Rule 111, Section 2 bars the civil action if there's a finding that the act from which civil liability arises does not exist.

As discussed earlier, the civil action referred to by these two provisions is the civil action *ex-delicto* and not an independent civil action. In line with this, an acquittal based on reasonable doubt allows the filing of the civil action *ex-delicto* previously reserved. But if the acquittal is based on a finding that the act from which civil liability arises does not exist, such civil action reserved is barred. This takes place notwithstanding the fact that the criminal action did not involve the civil aspect of the case.

It is important to note that the reservation of the civil action *ex-delicto* does not allow the court presiding over the criminal action to award civil damages whether the court convicts or acquits the accused. The case is different if there is a fusion of actions wherein the trial court is generally authorized to render judgment on the civil aspect of the case. If the civil action is reserved, the civil aspect of the case will always be tackled subsequent to and separate from the criminal action. The exceptions are: (1) when there is a finding that the fact from which civil liability arises does not exist and (2) when the civil action has been dispensed prior to the institution of the criminal action.

As mentioned earlier, a civil action *ex-delicto* filed prior to the criminal action can proceed to final judgment as long as it is not interrupted by the institution of the criminal action. If the criminal action is filed after judgment has become final, it will no longer have any influence on the civil case, even if it is found that the fact from which civil liability arises does not exist. Hence, a judgment in the civil action

finding the accused civilly liable will remain unchanged even if the subsequent criminal action results in an acquittal on the ground that the act from which civil liability arises does not exist.

IV. INDEPENDENT CIVIL ACTIONS

A. ORIGIN, RATIONALE AND HISTORY

Under the old substantive and procedural rules, namely Article 1092 of the old Civil Code, Article 17 of the old Penal Code and Article 122 of the Law of Criminal Procedure, an injured party can only recover damages for punishable acts or omissions based on a civil action arising from the offense committed. The right to recover damages was completely dependent upon the result of the criminal case. Hence, upon the institution of the criminal action, the civil action arising from the offense charged is deemed impliedly instituted together with the criminal action. But the injured party has the option of either instituting the civil action ahead of the criminal action, or reserve the right to institute the civil action separately after the criminal action has been instituted. In either case, the party injured shall have to wait until final judgment is rendered in the criminal case because such judgment is determinative of whether or not there would be a basis for the filing of a civil action.[97]

As a consequence, if the civil action is instituted first and a criminal action subsequently, the former should be suspended until a judgment is rendered in the latter. If the accused is acquitted, then the suspended civil case should be terminated. But if the accused is convicted, the civil case can proceed. Similarly, in the event that the institution of the civil action is reserved in the criminal case, only a conviction in the latter would pave the way for the subsequent filing of the civil case. Otherwise, the filing of the civil case would have no legal basis.[98]

Under the laws then in force, the recovery of civil liability based on a punishable act or omission was too reliant on the outcome of the criminal case. Moreover, there was too much dependence on the actuation of the prosecuting attorney because he is the one responsible for ensuring the criminal responsibility of the accused. It is this overbearing dependence that prompted the Code Commission to introduce the principle of independent civil actions in the new Civil Code. The underlying purpose of independent civil actions, according to the Commission is to "allow the citizen to enforce his right in a private action brought

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[97] *Supra* note 34 at xxxiii.

[98] *Id.*

by him, regardless of the action of the State attorney."[99] As a practical matter, the Commission also took note of the fact that it was not conducive to civic spirit and to individual self-reliance and initiative to accustom the citizens to depend upon the government for the vindication of their own private rights. Freedom and civic courage simply could not thrive in such a paternalistic system of law.[100]

Code Commission Chairman Dean Jorge C. Bocobo fully agreed with this theory. In *Corpus v. Paje*,[101] Justice Capistrano recalled the remarks made by the great civilist:

> In America, the injured party in a crime has the initiative. Through his lawyer, he immediately files a civil action for damages against the offender. In the Philippines, the offended party depends upon the fiscal to demand in the criminal action the damages he has suffered. I think it is about time to educate our people on the American way by giving the injured party in a crime the initiative to go to court through his lawyer to demand damages, and for this purpose we should give him an independent civil action for damages.[102]

Thus, the birth of independent civil actions in Philippine jurisdiction came. While the rules that have been applicable thereto have been very confusing to say the least, the right granted to the injured party to recover the civil liability in punishable acts or omissions, *sans* dependence on the prosecuting attorney, was an exciting prospect indeed. Among the rights proposed to be introduced in the Civil Code Project were the following:

(1) Art. 36[103] which grants a cause of action when one's civil liberties have been trampled with;
(2) Art. 28 which grants a cause of action when one's dignity, personality, privacy or peace of mind is violated or offended;
(3) Art. 37[104] which creates an independent civil action in case of defamation, fraud, or physical injuries;
(4) Art. 33[105] which authorizes the bringing of a civil action after the acquittal of the accused in a criminal prosecution upon the ground that his guilt has not been proven beyond reasonable doubt; and

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[99] *Id.*
[100] REPORT OF THE CODE COMMISSION 46-47.
[101] G.R. No. L-26737 July 31, 1969, 28 SCRA 1062 (1969).
[102] *Id.*
[103] now CIVIL CODE, art. 32.
[104] now CIVIL CODE, art. 33.
[105] now CIVIL CODE, art. 29.

(5) Articles 29, 30 and 38[106] which provide for separate civil actions for damages that may be brought by private persons against public officials for neglect of duty.[107]

B. LEGAL BASIS

As the Civil Code now stands, independent civil actions are provided for under Articles 32, 33, 34 and 2176, the latter in conjunction with Art. 2177, to wit:

> Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:
>
> (1) Freedom of religion;
>
> (2) Freedom of speech;
>
> (3) Freedom to write for the press or to maintain a periodical publication;
>
> (4) Freedom from arbitrary of illegal detention;
>
> (5) Freedom of suffrage;
>
> (6) The right against deprivation of property without due process of law;
>
> (7) The right to a just compensation when private property is taken for public use;
>
> (8) The right to the equal protection of the laws;
>
> (9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;
>
> (10) The liberty of abode and of changing the same;

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[106] now CIVIL CODE, art. 34.

[107] REPORT OF THE CODE COMMISSION 46.

(11) The privacy of communication and correspondence;

(12) The right to become a member of associations or societies for purposes not contrary to law;

(13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;

(14) The right to be free from involuntary servitude in any form;

(15) The right of the accused against excessive bail;

(16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf;

(17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;

(18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and

(19) Freedom of access to the courts.

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter was instituted) and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

> Art. 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, shall require only a preponderance of evidence.
>
> Art. 34. When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action.
>
> Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a *quasi-delict* and is governed by the provisions of this Chapter.
>
> Art. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover twice for the same act or omission of the defendant.

1. *The American Way:* Articles 32, 33 and 34 of the new Civil Code

The creation of Article 32, which provided for an independent civil action for violations of civil liberties, was deemed essential for the effective maintenance of democracy in our country. The Code Commission believed that in most cases the threat to freedom originated from abuses of power by government officials and peace officers. However, the citizen had to depend on the prosecuting attorney for the institution of a criminal action for the wrongful act to be punished and for the recovery of civil liability. Frequently, however, the prosecuting attorney would not commence the criminal action, because of a variety of reasons. For one, he may be burdened with too many cases. Secondly, he may be of the belief that the evidence is insufficient; or three, he may simply be disinclined to prosecute a fellow public official especially if the latter is of higher rank. As a result, the aggrieved citizen is unable to gain access to the courts and more often than not, losses the opportunity to recover damages.[108]

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[108] REPORT OF THE CODE COMMISSION 30.

Furthermore, when the prosecuting attorney files a criminal action, what is required is proof beyond reasonable doubt. Unfortunately, the same degree of proof is required to recover the civil liability in the same action. Hence, the chances of recovery are substantially minimized. By reason of the introduction of independent civil actions, the civil case may proceed entirely separate and would merely require a preponderance of evidence.[109]

The Code Commission also observed that oftentimes, the trampling of civil liberties was made in subtle, clever, and indirect ways that actually do not come within the pale of the Penal Code. These are the cunning devices of suppressing or curtailing freedom, which are not criminally punishable, that posed the greatest danger to democracy. With the introduction of Article 32, the aggrieved citizen would always have an adequate civil remedy before the courts, even in those instances where the act or omission complained of does not constitute a crime.[110]

The dependence of the aggrieved citizen on the action of the prosecuting attorney, and consequently, the dilution of the legal remedy afforded to him by law is the very same reason why Articles 33 and 34 were inserted in the new Civil Code. The Code Commission wanted to give an additional remedy to the aggrieved citizen by filing an independent civil action, without relying on the prosecuting attorney's decision to proceed with the criminal case or not. This is what Dean Bocobo meant when he said that "I think it is about time to educate our people the American way by giving the injured party in crime the initiative to go to court through his lawyer to demand damages, and for this purpose, we should give him an independent civil action for damages."[111]

Interestingly, the introduction of Article 33 in the new Civil Code was actually a trial run of sorts. Dean Bocobo elaborates:

> Let us begin with just three crimes which are of common occurrence, namely, defamation, fraud and physical injuries. Depending on the success of the experiment, when the new Civil Code may come up for revision about fifty (50) or one hundred years (100) from now, it will be up to our successors in the Code Commission to add more crimes to the three already mentioned or make the provision comprise all crimes causing damages to the injured party. This civil action, as in America, should proceed independently of the criminal action and should be proved by preponderance of

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[109] *Id.*

[110] *Id.* at 30-31.

[111] Corpus v. Paje, 28 SCRA 1062 (1969), *See* note 1.

> evidence. Defamation may be oral or written. Fraud comprises all forms of estafa. Physical injuries is to be understood in its ordinary meaning and does not included homicide or murder because where physical injuries result in homicide or murder, the reason for the law (namely, to give the injured party personally the initiative to demand damages by an independent civil action) ceases, for the reason that a dead person can no long personally, through his lawyer, institute and independent civil action for damages.

On the other hand, Article 34 seems to be a redundancy at first, in view of Article 27 of the Civil Code which gives any person suffering material or moral loss a right to file an action for damages against any public servant or employee who refuses or neglects without just cause to perform his official duty. Notice that both articles deal with nonfeasance of official duty. However, Article 34 is more specific in the sense that it pertains solely to members of a city or municipal police force who refuse or fail to render aid or protection to any person in case of danger to life or property. Moreover, under this article, the plaintiff is not required to prove material or moral loss. It is enough that the police officer refuses to render aid or protection. As a practical advantage, Article 34 also gives the plaintiff the right to hold the city or municipality subsidiarily liable in case the police officer is insolvent. The foregoing advantages, coupled with the procedural benefits of independent civil actions as opposed to an ordinary civil action, makes the right provided by Article 27 more tangible and real in the form of Article 34.

2. *Article 2176*: Americanizing *quasi-delicts* via Barredo v. Garcia

Art. 2176 in relation to Art. 2177 on *quasi-delicts* are, however, not as new as the introduction of independent civil actions in the Civil Code. The legal institution of *quasi-delicts* is of ancient lineage, dating back to the Twelve Tables, the Lex Aquilia and the Institute of Justianian in Roman Law.[112] Although not specifically named *quasi-delicts*, the Twelve Tables is the first written law that was found to be related to these kinds of actions because it provided remedies to injured parties for damages to their property. In time however, these actions became obsolete, owing mainly to the enactment of the Lex Aquilia. Through it, a process was created to determine the compensation that was to be made for a particular kind of damage or injury. Unfortunately, its provisions were not as broad as their progeny, dealing mainly with cases involving the killing or wounding of beasts, slaves or another's property.[113]

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[112] Barredo v. Garcia, 73 Phil 609. *See also* B. BALDERRAMA, THE PHILIPPINE LAW ON TORTS AND DAMAGES 3 (1952).

[113] *Id.* at 3-4.

The Institutes of Justianian, for the first time, designated as *quasi-delicts* those groups of acts or omissions sufficiently offensive to be actionable wrongs but were not included in offenses known as *delicts* or crimes. These groups of wrongs were of praetorian origin but were not considered as a separate class of obligation prior to the time of the Justinian. The term *quasi-delict* in accordance with the Institutes, covers principally wrongs not resulting from the intent or malice of the offender but rather from his whole ignorance or negligence. The origin, therefore, of *quasi-delict* as it is presently known in our Civil Code, can be traced to the Institutes of Justinian, and is now recognized as distinct contribution of the Roman Law to our civil law.[114] Furthermore, it is interesting to detail what specific acts the Institutes consider as *quasi-delicts*, because to a certain extent, some still exist in the new Civil Code,[115] to wit:

> The Institutes of Justinian mention four forms of quasi-delicts although it is not to be understood that such list is exhaustive. They were, however, the principal quasi delicts of Justinian's time, and were as follows: (1) An unjust judgment due to the favor or ignorance of a judex[116]; (2) throwing or pouring any thing from an upper window to the injury of passers-by; (3) hanging dangerous articles over public thoroughfares; and (4) damage to or thefts to property committed by servants of shipmasters, innkeepers, and stablekeepers.[117]

Although unlike Articles 32, 33 and 34, *quasi-delicts* are not expressly referred to as independent civil actions, it can be gleaned from Article 2177 that the damage done pursuant to fault or negligence under Article 2176 is a responsibility entirely separate and distinct from the civil liability arising from negligence under the Penal Code. Perhaps, the confusion as to whether *quasi-delicts* are to be treated as independent civil actions or not is due to the fact that initially, there was really no "independence" to speak of. The reason for this is that *quasi-delicts*, as much as law, contracts, *quasi*-contracts and acts or omissions punishable by law are distinct sources of obligations.[118] Independent civil actions under Articles 32, 33 and 34 are

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[114] *Id.* at 4.

[115] As an illustration, Article 2180 makes owners and managers of an establishment responsible for damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry. Another example is Article 2191, which makes proprietors liable for damages caused by the falling of trees situated at or near highways or lanes, if not cause by *force majeure*.

[116] A judge or magistrate.

[117] BALDERRAMA, *supra* note 114 at 7, *citing* W. BURDICK, PRINCIPLES OF ROMAN LAW AND THEIR RELATION TO MODERN LAW 495.

[118] CIVIL CODE, art. 1157.

called such because the acts or omissions that give rise thereto are acts or omissions already punishable by law.[119] The latter are already distinct sources of obligations yet recovery may still be obtained for the same acts or omissions with respect to civil liability based on independent civil actions under the aforementioned articles.

Originally, the same could not be said for *quasi-delicts* because such acts or omissions could only refer to ones arising from negligence, which are not punishable by law. This was a logical inference considering that *delicts* or crimes on the other hand, pertained to intentional or negligent acts or omissions punishable by law. Thus, both *delicts* and *quasi-delicts* retained their separate character as independent sources of civil liability.[120] Considering however, that all or nearly all acts or omissions which cause injury to persons or damage to property are punishable by law, to adopt this obvious and logical distinction would lead to the virtual extinction of *quasi-delict* as a source of civil liability or would so constrict its field as to make it an ineffective source of such liability. To prevent such a narrow construction, and in the belief that the legislature could not have had such an intention, the Supreme Court, in the landmark case of *Barredo v. Garcia*[121] ruled that *quasi-delicts* are not limited to acts or omissions not punishable by law, but includes also those which are punishable. Hence, this case had the effect of enlarging the field of *quasi-delicts*, making the concept a more effective independent source of civil obligation. Moreover, where the *delict* and the *quasi-delict* are rooted in the same act or omission, the injured party is free to consider it as either and institute whatever civil action he deems appropriate, subject only to the proscription that he cannot recover under both.[122] Therefore, with the assistance of *Barredo v. Garcia*, the concept of *quasi-delict* was able to enter the arena of independent civil actions.

C. PROCEDURE FOR RECOVERING CIVIL LIABILITY

With respect to independent civil actions, the injured party need not waive nor reserve the filing of the civil action. This stems from the fact that such actions can proceed entirely separate and distinct from the criminal action and would only require a preponderance of evidence. However, it is erroneous to assume that the independent civil actions under Article 32, 33, 34 and 2176 of the Civil Code are all exceptions to the general rule that the institution of the criminal action necessarily includes the institution of the civil action arising out of the offense charged, and are to be filed and to be allowed to proceed independently of the criminal action. The reason for this is that not all the articles enumerated involve civil actions which arise

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[119] *See* VASQUEZ *supra* note 89 AT 8-9.

[120] C. SANGCO, *Is the Institution of Quasi-delict Conceptually Dead?*, SAN BEDA L.J. 15 (1973).

[121] 73 Phil 607 (1942).

[122] *Supra* note 120 at 15-16.

from crimes. With respect to those which do not have the same factual basis as the act or omission constituting a crime, it is incorrect to state that they may be filed separately and independently of the criminal action, simply because they do not envision the commission of a criminal offense. In other words, the institution of some types of independent civil actions would not necessitate or even give way to the institution of a criminal action. One such instance is the civil action based on *quasi-delict* which, by its very nature, is not a civil action based on a crime. Moreover, Articles 32 and 34 referring to violations of civil liberties and the failure of police officers to render aid or protection to any person in distress may or may not involve a violation of penal law. The only provision perhaps where there is a congruence of the act or omission upon which the civil and criminal liabilities are predicated is Article 33 which refers to cases of defamation, fraud and physical injuries, all of which constitute a crime penalized under our Penal Code.[123] A more precise wording of the principle of independence of such civil action would be:

> A civil action arising from a crime may be instituted separately and allowed to proceed independently of the criminal action only in cases of defamation, fraud (swindling or estafa), physical injuries (including death), and in the acts contemplated in Article 32 and 34 whenever they shall constitute a violation of the penal law.[124]

Semantics notwithstanding, the importance of the remedy provided for by the Civil Code with respect to independent civil actions under Articles 32, 33, 34 and 2176 is that it may proceed separately and without reference to the criminal action. Hence, it would not be necessary to make a reservation in order to file a case grounded on an independent civil action. As will be discussed *infra*, although the Rules of Court as well as conflicting jurisprudence have muddled the issue of whether or not independent civil actions should be reserved, under the present Rules, the issue has hopefully come to an end—*that indeed, no reservation is required.* Consequently, independent civil actions may proceed before or simultaneous with the institution of the criminal action, or after judgment has been rendered in the latter. In fact, it is not even necessary for a criminal action to be filed at all.

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[123] *See* VASQUEZ, *supra* note 89 at 8-9.
[124] *Id.* at 9.

D. ISSUES WITH RESPECT TO INDEPENDENT CIVIL ACTIONS

1. Tossing the coin: Reviewing the reservation requirement

The rules on the requirement of reservation before a separate civil action independent of the criminal case can be filed has been subject to different interpretations in judicial decisions as well as successive modifications in procedural law such that it has become imperative to keep abreast with the current status of the rule. Otherwise, one may easily be confused and apply a rule that has been rendered moot by a modification in the Rules of Court or by a new decision of the Supreme Court. It is therefore necessary to trace the history of the rule to its very beginnings.

The 1940 Rules of Court were formulated under the old Civil Code when civil obligations arising from criminal offenses were governed by the provisions of the old Penal Code and the Law of Criminal Procedure, which were then in force. The only civil action that could be litigated, as contemplated in then Rule 111, was one arising from the offense charged.[125] To accommodate the introduction of the independent civil actions in the new Civil Code, certain amendments had to be made in the Rules.[126] Hence, Section 2 of Rule 111 was revised in 1964 to provide as follows:

> SEC. 2. *Independent civil action.* – In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of the criminal case, *provided the right is reserved as required in the preceding section.*[127] Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence (italics supplied).

Initially, it is obvious that a reservation to file an independent civil action must be made in the criminal case before one may subsequently be brought by the injured party. Though a little more than five years after this took effect,[128] the reservation requirement, admittedly a mere procedural rule, came under attack for

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[125] C. SANGCO, *Comments and Suggestions of Rule 111 and on Demurrer to Evidence in Rule 119, 1985 Rules on Criminal Procedure*, SAN BEDA L. J., 5 (1986).

[126] *See* O. HERRERA, TREATISE ON HISTORICAL DEVELOPMENT AND HIGHLIGHTS OF AMENDMENTS OF RULES ON CRIMINAL PROCEDURE 2 (2001).

[127] SECTION 1. *Institution of criminal and civil actions.* – When a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately.

[128] The 1964 Rules of Court took effect on January 1, 1964.

being an unauthorized amendment of substantive law, supposedly because the provisions on independent civil actions of the Civil Code did not require any reservation before a separate civil action could be instituted.[129]

2. *Corpus v. Paje and Garcia v. Florido*: Traveling great distances on foot

This was the comment made by Justice Capistrano, the ponente in the case of *Corpus v. Paje.*[130] However, the same was only embodied in a footnote and could at most, be regarded as *obiter dictum*, the main issue in the case being the effect of acquittal of the accused on the subsequent filing of a civil case based on *quasi-delict* for the same act. [Un]fortunately, the legality of the reservation requirement was discussed *a little bit more* by the Court in *Garcia v. Florido,*[131] which incidentally, cited the very same footnote written by Justice Capistrano.

In that case, German Garcia together with his wife, hired and boarded a car owned and operated by Marcelino Inesin and driven by Ricardo Vayson for the purpose of attending a medical conference in Zamboanga City. While the car was negotiating a curve along the highway, it collided with an oncoming passenger bus owned and operated by Mactan Transit Co., Inc. and driven by Pedro Tumala. As a result of the collision, the spouses Garcia sustained physical injuries that necessitated medical treatment and hospitalization. Subsequently, they filed an action for damages against both the owners and drivers of the car and the passenger bus. Bus owner Mactan Transit Co., Inc. and driver Pedro Tumala filed a motion to dismiss, arguing principally that the spouses Garcia had no cause of action because 20 days before the filing of the action for damages, Tumala was charged with "double serious and less serious physical injuries through reckless imprudence" in the Municipal Court of Sindangan, Zamboanga del Norte. Their theory was that, no civil action could be instituted until the criminal case was finally adjudicated. The spouses filed their opposition, alleging that what they were seeking to recover is civil liability based on *quasi-delict* and not civil liability based on the crime. In dismissing the complaint for damages, the trial court ruled that whether or not "the action for damages is based on criminal negligence or civil negligence known as *culpa acquiliana* in the Civil Code or tort under American law" there "should be a showing that the offended party expressly waived the civil action or reserved his right to institute it separately." On appeal, the Supreme Court reversed the ruling of the trial court. It was of the view that with the institution of the action for damages, the spouses Garcia had in effect abandoned their right to press recovery for damages in the criminal case, and have opted instead to recover them in the present civil case. As a result, the civil

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[129] *See* footnote 2 of Justice Capistrano in Corpus v. Paje, G.R. No. L-26737 July 31, 1969.
[130] *Id.*
[131] G.R. No. L-35095 August 31, 1993, 52 SCRA 420 (1973).

liability of the owners and drivers of both the car and the bus ceased to be involved in the criminal action. The Court added that an offended party loses his right to intervene in the prosecution of the criminal case not only when he has waived the civil action or expressly reserved his right to institute, but also when he has actually instituted the civil action.

In other words, during the pendency of the criminal case, a civil action for damages based on *quasi-delict* need not be reserved if one is actually filed in court. This seems to be the implication considering that the loss of the right to intervene in the criminal case and consequently, the loss of the right to litigate the civil aspect thereof is the effect of actually filing an independent civil action while the criminal case is pending. The same effect is present when, during the criminal case, the injured party waives the civil action or expressly reserves the right to institute it separately. Ultimately, this case resulted in an amendment or perhaps more accurately, an expansion of Section 1 of Rule 111, by adding:

> When a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action, reserves his right to institute it separately, *or actually institutes a civil action while the criminal action is pending* (italics supplied).

The problem with this ruling is that it does not categorically state that independent civil actions may be filed without making any reservation in the criminal case. Suppose the spouses Garcia did not file a civil action for damages based on *quasi-delict* during the pendency of the criminal case and actually filed it after judgment was rendered in the latter. If they did not make any reservation to file a separate civil action during the pendency of the criminal case, would the subsequent civil action for damages be allowed? Or would it be barred for failure to make a reservation? Some comfort would been available had the concurring opinion of Justice Barredo been made part of the main decision. He explains in this wise:

> These provisions[132] definitely create civil liability distinct and different from the civil actions arising from the offense of negligence

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[132] referring to—

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Art. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant.

> under the Revised Penal Code. Since Civil Case No 2850 is predicated on the above civil code articles and not on the civil liability imposed by the Revised Penal Code, *I cannot see why a reservation had to be made in the criminal case.* As to the specific mention of Article 2177 in Section 2 of the Rule 111,[133] it is my considered view that the latter provision is inoperative, it being substantive in character and is not within the power of the Supreme Court to promulgate, and even if it were not substantive but adjective, it cannot stand because of its inconsistency with Article 2177[134], an enactment of the legislature superseding the Rules of 1940.[135] (italics supplied)

3. *[IN]decisiveness of the Supreme Court*: Abellana v. Marave

In spite of these shortcomings, the Supreme Court again had the opportunity to squarely address the reservation requirement in *Abellana v. Marave.*[136] In this case, while driving his cargo truck, Francisco Abellana hit a motorized pedicab which resulted in various injuries to its passengers. Abellana was charged with the crime of physical injuries through reckless imprudence in the City Court of Ozamis City. He was found guilty as charged and damages were also awarded to the offended parties. Abellana appealed to the Court of First Instance of Misamis Occidental. At this stage, the offended parties filed with another branch of the Court of First Instance of the same province a separate and independent civil action for damages and impleaded Abellana's employer as an additional party defendant. Both of them sought the dismissal of the subsequent civil action on the ground that no reservation was made in the City Court, hence, the same could not be allowed at the stage of appeal. The Court of First Instance rejected their proposition. On appeal, the Supreme Court sustained the lower court's findings on two grounds. First, citing *People v. Jamisola,*[137] the Court stated that:

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[133] SEC. 2. *Independent civil action.* – In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of the criminal case, provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

[134] *See* note 132, *supra.*

[135] *See* note 131, *supra.*

[136] G.R. No. L-27760 May 29, 1974, 57 SCRA 107 (1974).

[137] G.R. No. L-27332 November 28, 1969, 30 SCRA 555 (1969).

> The rule in this jurisdiction is that upon appeal by the defendant from a judgment of conviction by a municipal court, the appealed decision is vacated and the appealed case 'shall be tried in all respects anew in the court of first instance as if it had been originally instituted in court.' *So it is in civil cases under Section 9 of Rule 40* (italics supplied).[138]

Unfortunately, the Court did not proffer any explanation as to why the effect of the *de novo* rule applied in civil cases. Aside from the cursory statement, "so it is in civil cases under Section 9 of Rule 40," the Court did not bother to elaborate on how it arrived at the conclusion that no reservation would be required considering that the criminal case would be tried "anew in all respects." The most logical inference would be that since the criminal case would be tried *de novo*, no relation exists between the what was filed in the municipal court and what was brought on appeal in the court of first instance because the case would actually be tried as if originally instituted in the latter. Hence, there would be no need to reserve because the criminal case would be treated as if it was never commenced in the municipal court level. If it was never commenced, technically, there would be no pending criminal case where the reservation should have been made. In connection, since the criminal case would be tried *de novo,* then the requirement of reservation can be made in the court of first instance because it would be tried as if originally instituted therein. This was exactly what was done by the injured parties. Before the court of first instance tried the criminal case, they made a reservation to file, as in fact they did, the corresponding separate civil action.

Second, the Court also said that pursuant to Article 33 of the Civil Code, in cases of physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence. Without directly saying it, the Court seems to imply that the provision does not require any reservation before a civil action for physical injuries is brought. In fact it is expressly stated that such civil action shall *proceed independently of the criminal prosecution.* Furthermore, in ruling that the requirement of

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[138] Abellana v. Marave, G.R. No. L-27760 May 29, 1974, 57 SCRA 106, 111-112 (1974). Section 9 of then Rule 40 provides:

> A perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court, and the action when duly docketed in the Court of First Instance shall stand for trial *de novo* upon its merits in accordance with the regular procedure in the court, as though the same had never been tried before and had been originally there commenced. If the appeal is withdrawn, or dismissed for failure to prosecute, the judgment shall be deemed revived and shall forthwith be remanded to the justice of the peace or municipal court for execution.

reservation provided in Rule 111 should not be read literally because the civil actions provided for by Civil Code do not require it, the Court stated thus:

> [It is a] substantive right, not to be frittered away by a construction that could render it nugatory, if through oversight, the offended parties failed at the initial stage to seek recovery for damages in a civil suit...the grant of power to this Court, both in the present Constitution and under the 1935 Charter, does not extend to any diminution, increase or modification of substantive right. It is a well-settled doctrine that a court is to avoid construing a statute or legal norm in such a manner as would give rise to a constitutional doubt.
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> The law as an instrument of social control will fail in its function if through an ingenious construction sought to be fastened on a legal norm, particularly a procedural rule, there is placed an impediment to a litigant being given an opportunity of vindicating an alleged right.[139]

At the outset, it may well appear that because of this ruling, the question of reservation as well as the confusion caused by *Corpus v. Paje* and *Garcia v. Florido* finally came to an end. After all, the Court did state categorically that the rights granted by the Civil Code in the case of independent civil actions are substantive in nature and "could not be frittered away by a construction that could render it nugatory." However, the problem is that notwithstanding this statement, the Court did not invalidate Section 2 of Rule 111. Perhaps, at most, the Court considered the provision dubious. This is the logical inference from its statement that, "the restrictive interpretation they would place on the applicable rule does not only result in its emasculation but also *give rise to a serious constitutional question* (italics supplied)"[140] A provision which gives rise to serious constitutional question is far different from an unconstitutional one. While the former may have doubtful legality and may in the future be declared void by judicial fiat, there should be no uncertainty with respect to its application because a provision of law is presumed constitutional until otherwise declared so by the Supreme Court. The hesitation of the Court to invalidate Section 2 of Rule 111 is of course understandable. It must be remembered that pursuant to the Constitution,[141] the very same Court has the authority to promulgate rules

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[139] Abellana v. Marave, G.R. No. L-27760, May 29, 1974.

[140] *Id.*

[141] CONST. (1935), art. VIII, sec. 13. "The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights.

regarding pleadings, practice and procedure in all courts. Therefore, Section 2 of Rule 111, as part of the Rules of Court, is actually its brainchild. It would be embarrassing for the Court to promulgate something and afterwards declare it unconstitutional. Naturally, the Court just decided to wait for the appropriate time to change the rules. Sadly, it took longer than expected, namely, 21 years from the time the 1964 amendment took effect before further amendments in the 1985 Rules were introduced.

Pursuant to *Corpus v. Paje, Garcia v. Florido,* and *Abellana v. Marave*, the Supreme Court in promulgating the 1985 Rules of Criminal Procedure, deliberately deleted from Section 2 of the old rule the requirement of reservation of the right to file an independent civil action.[142] Hence, the provision was reworded thus:

> Sec. 2. *Independent civil action.* – In the cases provided for in Articles 32, 33 and 34 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action may be brought by the injured party during the pendency of the criminal case. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

Note that the clause in the first sentence, "provided the right is reserved as required in the preceding section," was omitted. But, like tossing a coin, the Court, only three years after promulgating the 1985 Rules made another amendment in the 1988 Rules by again requiring reservation before an independent civil action could be filed.[143]

The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law to the Philippines." The 1935 Constitution is cited because this was in force at the time the decision was decided. However, the same power is also granted to the Supreme Court in the 1987 Constitution.

[142] Diong Bi Chu v. Court of Appeals, G.R. No. 49588 December 21, 1990, 192 SCRA 554, 559 (1990) *citing* Bonite v. Zosa, G.R. No. L-33772 June 20, 1988, 162 SCRA 173 (1988).

[143] Section 2 of Rule 111 of the 1985 Rules resurfaced as Section 3 in the 1988 amendment:

> Sec. 3. *When civil action may proceed independently.* – In the cases provided for in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action which has been reserved may be brought by the offended party, shall proceed independently of the criminal action, and shall require only a preponderance of evidence. (underscoring supplied)

4. *Maniago v. Court of Appeals*: Light at the end of the tunnel?

This change was applied by the Court in *Maniago v. Court of Appeals*.[144] In this case, Ruben Maniago was the owner of shuttle buses that were used in transporting employees of Texas Instruments, Inc. from the Baguio City proper to its plant site. Sometime in 1990, one of his buses figured in a vehicular accident with a jeepney owned by Alfredo Boado. As a result of the accident, a criminal case for reckless imprudence resulting in damage to property and multiple physical injuries was filed against Maniago's driver. A month later, Boado filed a civil case for damages against Maniago himself. Maniago moved for the suspension of the proceedings in the civil case against him citing the pendency of the criminal case against his driver. He argued that the civil action could not proceed independently of the criminal case because no reservation of the right to bring it separately had been made in the criminal case. The trial court ruled that no reservation was required and that the civil action could proceed independently. The Court of Appeals, on the authority of *Garcia v. Florido* and *Abellana v. Marave*, affirmed. The Supreme Court overturned the rulings of the courts *a quo*. It maintained that the cases cited rested on considerations other than that no reservation is needed. In attacking the applicability of *Garcia v. Florido*, the Court stated:

> The statement that Rule 111, Sec. 1 of the 1964 Rules in an "unauthorized amendment of substantive law, Articles 32, 33 and 34 of the Civil Code, which do not provide for the reservation" is not the ruling of the Court but only an aside, quoted from an observation made in the footnote of a decision in another case.[145]

The applicability of *Abellana v. Marave*, was similarly criticized:

> [T]he basis of the decision in that case was the fact that the filing of the civil case was equivalent to a reservation because it was made after the decision of the City Court convicting the accused had been appealed. Pursuant to Rule 123, Sec. 7 of the 1964 Rules, this had the effect of vacating the decision in the criminal case so that technically, the injured parties could still reserve their right to institute a civil action while the criminal case was pending in the Court of First Instance. The statement "the right of a party to sue for damages independently of the criminal action is a substantive right which cannot be frittered away by a construction that could render nugatory"

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[144] G.R. No. 104392 February 20, 1996, 253 SCRA 674 (1996).

[145] *Id.* at 682. The Court was referring to the comment made by Justice Capistrano in footnote 1 of Corpus v. Paje, 28 SCRA 1062 (1969).

without raising a "serious constitutional question" was thrown in only as additional support for the ruling of the Court.[146]

The Court ruled further:

> [T]he requirement that before a separate civil action may be brought it must be reserved does not impair, diminish or defeat substantive rights, but only regulates their exercise in the general interest of orderly procedure. The requirement is merely procedural in nature. For that matter the Revised Penal Code, by providing in Art. 100 that any person criminally liable is also civilly liable, gives the offended party the right to bring a separate civil action, yet no one has ever questioned the rule that such action must be reserved before it may be brought separately.
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> Indeed, the requirement that the right to institute actions under the Civil Code separately must be reserved is not incompatible with the independent character of such actions. There is a difference between allowing the trial of civil actions to *proceed* independently of the criminal prosecution and requiring that, before they may be *instituted* at all, a reservation to bring them separately must be made. Put in another way, it is the conduct of the trial of the civil action-not its institution through the filing of a complaint-which is allowed to proceed independently of the outcome of the criminal case (italics supplied).

The controversy with respect to the requirement of reservation was supposed to have ended with the categorical pronouncements of the Court in *Maniago v. Court of Appeals*. After all, the rule has been changed three times since it was introduced in the 1964 amendment of the Rules. The successive modifications that were made have been a cause of great distress to legal practitioners all over the country. But as history would unfold, *Maniago* was actually not the light at the end of the tunnel. At most, it was only a momentary flicker, because unbeknownst to all, the tunnel was still far from its end.

On December 1, 2000, Section 3 of Rule 111 was again amended, this time to read as follows:

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[146] Maniago v. Court of Appeals, G.R. No. 104392 February 20, 1996, 253 SCRA 674, 682-683 (1996).

> Sec. 3. When civil action may proceed independently. – In the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.

Notice that just like the 1985 Rules, no reservation is required for the filing of independent civil actions brought under Articles 32, 33, 34 and 2176 of the Civil Code. Does this obvious omission abrogate the ruling of the Court in *Maniago v. Court of Appeals*? We think so, for the following reasons.

First, the Court did say in that case that, "the requirement that before a separate civil action may be brought, it must be reserved does not impair, diminish or defeat substantive rights, but only regulates their exercise in the general interest of orderly procedure. The requirement is merely procedural in nature." In other words, the Court took pains to emphasize that substantive rights were not being diminished, but were only being regulated. Therefore, if the present Rules, in the interest of regulation or orderly procedure, did not see fit to require reservation before independent civil actions could be filed, then it cannot be gainsaid that is not necessary anymore.

Second, several commentators have also shared the same view.[147]

Third, the confusion has been finally settled by the Court in *DMPI Employees Credit Cooperative, Inc. (DMPI-ECCI) v. Velez and Villegas.*[148] In this case, an information for estafa was filed against Carmen Mandawe in the Regional Trial Court of Misamis Oriental for alleged failure to account to Eriberta Villegas a certain sum of money. Villegas entrusted the amount to Mandawe as an employee of DMPI-ECCI for deposit. Subsequently, Villegas filed a complaint, also with the Regional Trial Court, against Mandawe and DMPI-ECCI for a sum of money and damages with preliminary attachment arising out of the same transaction. DMPI-ECCI sought the dismissal of the complaint on the ground *inter alia*, that there is a pending criminal case for estafa arising out of the same facts. Sustaining the argument of DMPI-ECCI, the trial court dismissed the civil case. However, on motion by Villegas, it reversed itself and recalled the dismissal of the civil case. Hence, DMPI-ECCI filed a special civil action for certiorari with the Supreme Court. On the issue of whether the civil case could proceed independently of the criminal

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[147] *Supra* note 126 at 47. *See also Supra* note 36 at 123-124.

[148] G.R. No. 129282, November 29, 2001.

case for estafa without having reserved the filing of the civil action, the Court through Justice Pardo, ruled rather tersely in the affirmative, to wit:

> *There is no more need for a reservation of the right to file the independent civil actions under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines.* The reservation and waiver referred to refers only to the civil actions for the recovery of the civil liability arising from the offense charged. This does not include recovery of civil liability under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission which may be prosecuted separately even without reservation.
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> Thus, Civil Case No. CV-94214, an independent civil actions for damages on account of the fraud committed against respondent Villegas under Article 33 of the Civil Code, *may proceed independently even if there was no reservation as to its filing.* (italics supplied)

Hopefully, the present phraseology of Section 3 of Rule 111, as well as the case of *DMPI-ECCI*, has finally written *finis* to the reservation controversy. Currently, the rule is that no reservation is required to be made in the criminal case for an injured party to bring a suit for damages grounded on the independent civil actions provided for in Articles 32, 33, 34 and 2176 of the Civil Code. Conceptually, this is only sound and appropriate, considering that the Code Commission had really every intention of making such civil actions as independent as possible.

5. *Independent civil actions*: Recovering civil liability in the criminal case

Under the 1940 Rules of Court, the amendments introduced in 1964, as well as the 1985 Rules of Court, the rule on implied institution was not much of an issue. On the contrary, it was very clear that in the institution of a criminal action, what was deemed impliedly instituted therein is the civil action for the recovery of civil liability arising out of the offense charged. In other words, the civil action involved was one for the recovery of civil liability *ex-delicto*.

Unfortunately, the 1988 amendments introduced a rule, which was not only historically deviant, but was manifestly unsound. Section 1 of Rule 111 was modified thus:

> Sec. 1. *Institution of criminal and civil actions.* – When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party

> waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.
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> *Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.*
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> A waiver of any of the civil actions extinguishes the others. The institution of, or the reservation of the right to file, any of said civil actions separately waives the others. (italics supplied)
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Owing to this amendment, what was considered impliedly instituted was not only the civil action for the recovery of civil liability *ex-delicto,* but also the independent civil actions based on Articles 32, 33, 34 and 2176 of the Civil Code. This presented an anomalous situation. For example, suppose Jose intentionally assaults Mario, causing physical injuries to the latter. Subsequently, an information is filed against Jose, charging him with serious physical injuries. Mario neither waives the filing of a civil action nor reserves the right to institute it separately. Naturally, the civil action is impliedly instituted with the criminal action. But what civil action is impliedly instituted? Based on the 1988 amendment, it is both the civil action based on civil liability *ex-delicto* and one that may be based on either Articles 33 (physical injuries) and 2176 (*quasi-delict*) of the Civil Code. Does this mean therefore that in the criminal action, two civil actions are proceeding simultaneously? If such is the case, and Mario intervenes through a private prosecutor, would he be allowed to prove damages in both cases and then merely choose which gives him the higher award? After all, the Rules only provide for a proscription against double recovery, which based on existing jurisprudence, is a proscription against *actual* double recovery and does not prevent the litigation of two civil actions at the same time.[149] Note that the third paragraph of Section 1 of Rule 111 with respect to the 1988 amendment only provides that "a waiver of any of the civil actions extinguishes the others" and that "the institution of, or the reservation of the right to file, any of said civil actions separately waives the others." Suppose Mario intervenes in the criminal case and tries to prove the civil liability *ex-delicto* of Jose. Is his act of intervention tantamount to a waiver? No, definitely not, because waiver contemplates a renunciation of one's right to file a civil action. Is it a reservation? No, because a reservation is a preservation of the right to file a civil action separately. May it then be considered an "institution" to file a civil action, which has the effect of waiving all

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[149] *See* Casupanan v. Laroya, G.R. No. 145391, August 26, 2002 and Cancio v. Isip, G.R. No. 133978, November 12, 2002 with respect to proscription of actual double recovery.

the other civil actions? In other words, if Mario files a civil action based on civil liability *ex-delicto*, may it be considered an "institution" within the meaning of the third paragraph of Section 1 of Rule 111 in order to have the effect of a waiver of the right to bring an action based on Articles 33 or 2176 of the Civil Code? Although such an interpretation would have made things a lot simpler, we think not. First, bear in mind that with the filing of the criminal action for serious physical injuries, the civil action *ex-delicto* and the civil action under Articles 33 or 2176 of the Civil Code were already impliedly instituted with the criminal action. Hence, the intervention of Mario in the criminal case in order to prove the civil liability *ex-delicto* of Jose could not have been an "institution" because the institution was already made at the time of the filing of the criminal action. Second, the institution which is referred to in that section of the rule contemplates a situation where a civil action is instituted before the filing of the criminal action. Note that the preceding paragraph of that section provides for the implied institution of the recovery of the civil liability with the criminal action "unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action *prior to the criminal action.*" The phrase, "prior to the criminal action," was omitted in the succeeding paragraph because it was logically unnecessary. It would just have the effect of restating the obvious.

Suppose Mario does not waive, reserve or file a civil action prior to the criminal action, and neither does he intervene in the criminal case. Since there are two civil actions, which theoretically, were impliedly instituted and should proceed simultaneously with the criminal case, what would happen if the judge decides to award damages? Otherwise stated, regardless if there was a judgment of conviction or acquittal, on what basis would the judge award damages to Mario? Would it be on the basis of civil liability *ex-delicto* of Jose? Or would it be based on Articles 33 or 2176 of the Civil Code? Or can he just determine the damages that Mario sustained on both civil actions, and then make the latter decide which award to take?

In addition, suppose Jose assaulted Mario on the occasion of his functions as an employee of Luis. Since the filing of a criminal case included the implied institution of the civil liability *ex-delicto* of Jose and the independent civil action based on either Articles 33 and 2176 of the Civil Code, then Mario could rely on Article 2176 on *quasi-delict* to recover the damages he sustained from Luis, the employer of Jose. This is pursuant to the direct liability imposed upon the employer by Article 2180 of the Civil Code, the pertinent portion of which provides:

> Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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> The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

The consequence of including independent civil actions in the rule on implied institution with the criminal action is that the court may adjudge the employer of the accused liable on the basis of *quasi-delict* even if the former is not a party to the criminal action. This is indeed an anomalous situation because even in cases of mere subsidiary liability of the employer,[150] the same cannot be determined in the criminal action, not only because he is not a party thereto, but also because it is essential to show additional requisites. To illustrate, it would be necessary first, to prove that the convicted accused employee was unable to satisfy the judgment of damages rendered against him or is insolvent; second, that the felonious act or omission was committed while he was engaged in the discharge of his duties; and finally, that his employer was engaged in an industry.[151]

Perhaps, it is the confusion and anomaly wrought by the inclusion of the independent civil actions under Articles 32, 33, 34 and 2176 together with the civil actions *ex-delicto* in the criminal action that prompted the Supreme Court to change the 1988 amendment by reverting to the 1940 Rules of Court which deemed as instituted with the criminal action only the civil liability arising from the offense charged. Note that the civil liability is deemed instituted, and not merely "impliedly" instituted with the institution of the criminal action. The revision was actually a modification of the recommendation of the Committee on the Revision of the Rules

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[150] Articles 102 and 103 of the Revised Penal Code:

Art. 102. *Subsidiary civil liability of innkeepers, tavernkeepers and proprietors of establishments.* – In default of the persons criminally liable, innkeepers, tavernkeepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulations shall have been committed by them or their employees.

Innkeepers are also subsidiarily liable for the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposit of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them with respect to the care of and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees.

Art. 103. *Subsidiary civil liability of other persons.* – The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.

[151] *See* Marquez v. Castillo, 68 Phil. 568.

of Court to deem as impliedly instituted only the civil liability of the accused from all sources of obligations arising from the same act or omission. The purpose of the Committee was to limit the civil liability instituted with the criminal action to that of the accused and not the employer. The Supreme Court took a step further by limiting the civil liability that is deemed instituted with the criminal action only to the civil liability arising from the offense charged. As a result, the employer may no longer be held civilly liable for *quasi-delict* in the criminal action. All decisions to the contrary by the Supreme Court are no longer controlling.[152]

6. *Acquittal based on factual innocence*: Does it include extinction of civil liability based on an independent civil action?

It has been mentioned earlier that extinction of the penal action does not carry with it extinction of the civil.[153] As a general rule, when the accused is acquitted in the criminal action, the injured party is not barred from filing a subsequent civil action. But that rule must be qualified. The acquittal here contemplated is first, an acquittal based on reasonable doubt; second, an acquittal were the court expressly declares that the liability of the accused is not criminal but civil in nature, as in felonies of estafa, theft and malicious mischief committed by certain relatives who thereby incur only civil liability; and third, an acquittal where there is a declaration that the civil liability does not arise from or is not based upon the criminal act of which the accused was convicted.[154] However, if the acquittal proceeds from a declaration in the final judgment that the fact from which the civil liability might arise did not exist, by implication, the extinction of the penal action necessarily carries with it the extinction of the civil action. Note that this is the only type of acquittal that extinguishes the liability of the accused for damages. Otherwise known as acquittal based on "factual innocence," the rule, as many believed it to be, is that acquittal of this kind absolves the accused from *any* form of civil liability. This

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[152] *Supra* note 48 at 166-167. The rulings in Maniago v. Court of Appeals, 253 SCRA 674 (1996); San Ildefonso Lines v. Court of Appeals, G.R. No. 119771 April 24, 1998, 289 SCRA 568 (1998); and Rafael Reyes Trucking v. People, G.R. No. 129029 April 3, 2000, 329 SCRA 600 (2000) are now inapplicable.

[153] RULES OF COURT, rule 111, sec. 2.

[154] Padilla v. Court of Appeals, 129 SCRA 558 (1984). Alfredo Tadiar actually added two more kinds of acquittal. One is an acquittal where there is factual guilt but legal innocence. In this case, whether or not the civil liability is extinguished will depend on the legal basis. If it is based on a justifying circumstance, it will not give rise to the civil liability of anyone. But if it is based upon an exempting circumstance, civil liability will not be extinguished as to the third person to whom responsibility is imputed for the conduct of the exempted offender. The second kind of acquittal is based on the dismissal of the case on procedural/constitutional violations. *See* A. TADIAR, *Civil Liability for Criminal Conduct: Concept and Enforcement*, 58 PHIL. L.J. 64, 67-69, 71 (1983).

includes both civil liability *ex-delicto* as well as civil liability that arises from independent civil actions.[155]

But interestingly, the Supreme Court in *Elcano v. Hill*[156] did not share the same view. In this case, Reginald Hill, a minor, was charged with the killing of Agapito Elcano in the Court of First Instance of Quezon City. After due trial, he was acquitted on the ground that his act was not criminal because of "lack of intent to kill, coupled with mistake." Subsequently, the parents of the deceased Agapito, filed a complaint against Reginald and his father, Atty. Marvin Hill, based on *quasi-delict* under Article 2180 in relation to Article 2176 of the Civil Code. Both of them filed a motion to dismiss. The trial court sustained the defendants and dismissed the complaint. On appeal, the Supreme Court ruled that the acquittal of Reginald in the criminal case did not bar the subsequent filing of a complaint for damages. It explained in this wise:

> [T]he extinction of civil liability referred to in Par. (e) of Section 3, Rule 111,[157] refers exclusively to civil liability founded on Article 100[158] of the Revised Penal Code, whereas the civil liability for the same act considered as a *quasi-delict* only and not as a crime is not extinguished even by a declaration in the criminal case that the criminal act charged has not happened or has not been committed by the accused.
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> It results, therefore, that the acquittal of Reginald Hill in the criminal case has not extinguished his liability for *quasi-delict*, hence that acquittal is not a bar to the instant action against him.

The Court explicitly stated that a declaration in the criminal case that the criminal act charged has not happened or has not been committed by the accused does not result in the extinction of the civil action based on *quasi-delict*. In other words, even if there is a declaration that the facts from which the civil might arise did not exist, a judgment of acquittal would still not extinguish the *quasi-delictual* liability of the accused. In making this conclusion, the Court extensively cited *Barredo v. Garcia*, and reiterated that *quasi-delicts* include voluntary and negligent acts, which may be punishable by law. In effect, the Court is saying that since the institution of

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[155] *Id.* at 67

[156] G.R. No. L-24803 May 26, 1977, 77 SCRA 98 (1977).

[157] Referring to the 1964 Rules of Court.

[158] Every person criminally liable for a felony is also civilly liable.

quasi-delicts is a distinct source of civil obligation, the fact that it now "invaded" to a certain extent, the legal sphere of *delicts* does not make it less distinct and separate. What can be said at most is that the civil liability that is extinguished with the extinction of the penal action based on factual innocence is the civil liability *ex-delicto* and the *quasi-delictual* liability, which has "invaded" the legal sphere of *delicts* as a source of obligation. Logically, there still remains the *quasi-delictual* liability arising from a distinct and separate source of civil obligation totally unrelated to *delicts*. Hence, even if the judgment of acquittal proceeds from a declaration that the facts from which the civil might arise did not exist, it could do nothing more but pronounce extinction of all liabilities that arise from the legal sphere of *delicts*, but not to the separate legal sphere of *quasi-delicts*.

Notwithstanding the orthodox manner in which the Court rendered its decision, it appears to have changed its mind two years later in *Mendoza v. Arrieta*.[159] In this case, a three-way vehicular accident occurred along Mac Arthur Highway in Bulacan involving a Mercedes Benz owned and driven by Edgardo Mendoza, a private jeep owned and driven by Rodolfo Salazar, and a gravel and sand truck owned by Felipino Timbol and driven by Freddie Montoya. As a consequence, two separate informations for "Reckless Imprudence Causing Damage to Property" were filed against Salazar and Montoya. The case against Salazar was for the damage caused to the Mercedes Benz while the case against Montoya was for the damage caused to the jeepney. In separate cases, the trial court found Montoya guilty as charged but acquitted Salazar in view of its findings that the collision between Salazar's jeepney and Mendoza's Mercedes Benz was the result of the former having been bumped from behind by the truck driven by Montoya. After the termination of both criminal cases, Mendoza filed a civil action based on *quasi-delict* against Salazar and Timbol, the latter in his capacity as owner of the gravel and sand truck driven by Montoya. Both filed their respective motions to dismiss, and both were accordingly granted by the trial court hearing the civil case.

What is relevant here is the civil action commenced with respect to Salazar because he was previously acquitted in a criminal case wherein Mendoza was also the complainant. Was Salazar's acquittal based on factual innocence? Assuming it was, did it have the effect of extinguishing the *quasi-delictual* civil liability? The Court answered the first question in the affirmative. It ruled that "crystal clear is the trial court's pronouncement that under the facts of the case, jeep-owner-driver Salazar cannot be held liable for the damages sustained by petitioner's (Mendoza) car. In other words, 'the fact from which the civil might arise did not exist.'"[160] This factual

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[159] Mendoza v. Arrieta, G.R. No. L-32599 June 29, 1979, 91 SCRA 115 (1979).
[160] *Id.* at 123.

appreciation of the court is correct. Based on the criminal charge, Salazar could not have been recklessly imprudent because the cause for his damaging Mendoza's Mercedes Benz was the bumping behind of the jeepney he was driving by the truck driven by Montoya. In other words, in the eyes of the law, Salazar committed no act which would give rise to criminal responsibility. In fact, in hitting Mendoza's Mercedes Benz, Salazar committed no act at all because his jeepney was bumped from behind. Accordingly, the Court ruled that:

> Inasmuch a petitioner's (Mendoza) cause of action as against jeep-owner driver Salazar is *ex-delicto*, founded on Article 100 of the Revised Penal Code, the civil action must be held to have been extinguished in consonance with Section 3(c), Rule 111 of the Rules of Court, which provides:
>
> Sec. 3. Other civil actions arising from offenses. – In all cases not included in the preceding section the following rules shall be observed:
>
> xxx
>
> (c) Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.
>
> xxx
>
> And even if petitioner's (Mendoza) cause of action as against jeep-owner-driver Salazar was not *ex-delicto*, the end result would be the same, it being clear from the judgment in the criminal case that Salazar's acquittal was not based upon reasonable doubt xxx (underscoring supplied).[161]

Note that in spite of the civil action based on *quasi-delict* that was subsequently filed by Mendoza against Salazar and Montoya, the Court held that the "circumstances attendant to the criminal case yields to the conclusion that petitioner (Mendoza) had opted to base his cause of action against jeep-owner-driver Salazar on *culpa criminal* and not *culpa acquiliana*, as evidenced by his active participation and

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[161] *Id.* The Court said that, "the end result would be the same, it being clear from the judgment in the criminal case that Salazar's acquittal was not based upon reasonable doubt", because the acquittal proceeded from a declaration that the fact from which the civil might arise did not exist.

intervention in the prosecution of the criminal suit against Salazar."[162] But the Court also said that "even if petitioner's (Mendoza) cause of action as against jeep-owner-driver Salazar were not *ex-delicto*, the end result would be the same." Therefore, in case the judgment of acquittal proceeds from a declaration that the fact from which the civil might arise did not exist, the same does not only extinguish civil liability *ex-delicto*, but also other kinds of civil liabilities, including those based on *quasi-delict*. Although that statement by the Court is arguably an aside, considering that it is not necessary to resolve the issues involved, the ruling on its face appears to be in direct conflict with the ruling of the Court in *Elcano v. Hill*. Recall that in *Elcano*, even if the judgment of acquittal is based on factual innocence, it would have no effect and consequently, would not extinguish *quasi-delictoal* civil liability.

The difference between the two cases is really one of construction. The concept of factual innocence appears to have interpreted dissimilarly by the Court. When the judgment of acquittal proceeds from a declaration that the act from which the civil might arise did not exist, what does it exactly mean? Does it mean that the accused is acquitted because no criminal act occurred? Or does it mean that the accused was acquitted because there was really no act at all to begin with? The Court in *Elcano* was of the view that factual innocence does not extinguish *quasi-delictoal* liability because the judgment of acquittal only means that no criminal act existed. Hence, it does not preclude the application of the other types of civil obligations. Observe that in *Elcano*, the accused Reginald Hill actually killed the victim, Agapito Elcano. There is no question that the accused committed an act. However, such act did not result in criminal responsibility because of the "lack of intent to kill, coupled with mistake" on the part of the accused. But the Court said that the same act could give rise to civil liability based on *quasi-delict* because of its nature as a separate and distinct source of civil obligation. Apparently, the Court failed to distinguish between factual innocence and legal innocence attended by factual guilt.

On the other hand, the Court in *Mendoza* construed factual innocence to mean the non-existence of the act from which any liability, whether penal or criminal, could arise. Note that in *Mendoza*, the act from which Salazar was being held criminally and civilly liable did not exist to begin with. The damage he caused was due to the fact that his jeepney was bumped from behind by the truck driven by Montoya. Hence, he could not have done any act which would give rise to any kind of liability.

We believe that the statements made by the Court in *Mendoza* are more accurate. The construction to the statement "the fact from which the civil might

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[162] *Id.* at 122.

arise did not exist" should mean that the act could not give rise to both criminal and civil liability. It cannot be restricted, as held by the Court in *Elcano*, to mean only the non-existence or absence of the criminal act. Otherwise, the rule would not have been worded in such a way.

Unfortunately, the Court in promulgating the 2000 Rules on Criminal Procedure again muddled the issue by revising Section 2 of Rule 111. The fourth paragraph now reads:

> The extinction of the penal action does not carry with it extinction of the civil action. However, the civil action based on *delict* shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability might arise did not exist (underscoring supplied).

The rule as it now stands is a virtual adoption of the rule enunciated in *Elcano*. The Court in effect, accepted the construction that factual innocence only means that the criminal act did not exist. Hence, a civil action based on *quasi-delict* may be filed in spite of the acquittal of the accused because it arises from a distinct and separate source of civil obligation. In limiting the extinction to civil liability *ex-delicto* in cases of acquittal based on factual innocence, the Court is simply reeling from the effects of the landmark case of *Barredo v. Garcia*, decided more than 60 years ago, where the concept of *quasi-delicts* was expanded to include damage caused by intentional or voluntary acts punishable by law. Obviously, the distinct nature of *quasi-delicts* and *delicts*, which the Court in *Barredo* belabored to emphasize was taken into account. Otherwise, there would have been no need to qualify the extinction to civil actions based on *delict* because acquittal based on factual innocence should result in extinction of any kind of liability.

V. RELATIONSHIP BETWEEN CIVIL ACTION EX-DELICTO AND INDEPENDENT CIVIL ACTION

A. IN GENERAL

Among the topics tackled in this paper, perhaps the most controversial one involves the relationship of the civil action *ex-delicto* and the independent civil action to each other. Any look into the controversy can begin with one simple question – do they involve the same cause of action? The answer to the question, which has been the same since the time of the much-celebrated case of *Barredo v. Garcia*,[163] is that they are not. The same answer can be gleaned from a mere reading of Article

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[163] 73 Phil 607 (1942).

2177 of the New Civil Code which treats responsibility for quasi-delict as entirely separate and distinct from the civil liability arising from crimes. However, this is not to say that the discussion is over. This is because two different views qualify the rule that the two civil liabilities pertain to different causes of action. The first view is that they are alternative causes of action, which means that the selection of one remedy is tantamount to a waiver of the other. The second view is that they are independent causes of action, hence both remedies can proceed simultaneously and independently of each other. A detailed discussion of each view follows.

B. ALTERNATIVE CAUSES OF ACTION – THE TRADITIONAL VIEW

The view that civil liability from delict and quasi-delict pertain to alternative causes of action can trace its origin to the case of *Barredo v. Garcia*. In that case the driver of a taxicab was subject to a criminal action for homicide through reckless imprudence for his role in a collision that resulted in the death of a 16-year old boy. The driver was convicted but the trial court did not rule on the civil aspect of the case as the boy's parents reserved the civil action. After the judgment of conviction, the parents filed an action based on quasi-delict against the proprietor of the taxicab to enforce his primary liability under Article 1903 of the New Civil Code. The proprietor said that he is not primarily liable under quasi-delict but subsidiarily liable under the Penal Code as the act in question constituted a crime. Hence, the proper remedy was to file a civil action *ex-delicto* against the driver, then hold the employer subsidiarily liable in case of the insolvency of the former. The Court ruled in favor of the parents stating that:

> In this jurisdiction, the same negligent act causing damage may produce civil liability arising from crime under Art. 103 of the Revised Penal Code; or create an action for *quasi-delito* or *culpa aquiliana* under Arts. 1902 and 1903 of the Civil Code,
>
> xxx
>
> Since the plaintiffs are free to choose what remedy to take, they preferred the second, which is within their rights.[164]

By saying that the private offended party has a choice between the two causes of action, *Barredo v. Garcia* gave birth to the view that civil liability arising from delict and quasi-delict are alternative causes of action or what will be referred to afterwards as the traditional view. This view means that suing under one cause of action amounts to a waiver of the other. But as long as the private offended party

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[164] 73 Phil 607, 610, 614-615 (1942).

has yet to make a choice, the two causes of action are available to him in the alternative.

The traditional view is synonymous to the concept of election of remedies. This refers to a choice by a party between inconsistent remedial rights, the assertion of one being necessarily a repudiation of the other.[165] The concept of election of remedies was reflected in the previous version of the Revised Rules on Criminal Procedure which provided that the institution of any of the civil actions separately waives the others.[166]

Implicit from the traditional view is the interpretation that the rule on the prohibition on double recovery under Article 2177 of the New Civil Code refers to a prohibition on enforcement, not on actual recovery. Thus, the filing of one civil action is considered a bar to the other action.

It is to be noted that under the traditional view, the concepts of *litis pendentia* and *res judicata* will not take place. This is due to the fact that both concepts require a common element before either of them can arise – identity of causes of action.

Litis pendentia is defined as a situation wherein another action is pending between the same parties and for the same cause of action[167] The effect *of litis pendentia* is the dismissal of one of the two pending actions. On the other hand, *res judicata* refers to a thing or matter settled by judgment. [168] The effect is that the judgment is conclusive as to the rights of the parties and their privies and constitutes an absolute bar to a subsequent action involving the same cause of action[169]

While both *litis pendentia* and *res judicata* do not arise under the traditional view, it does not follow that the effects of either will not be felt. Under the traditional view, either the pendency or a final judgment in one civil action will bar or dismiss the other. However, these are not grounded on *litis pendentia* or *res judicata* reasons, but on the doctrine of election of remedies.

The traditional view has been the dominant view since *Barredo v. Garcia* was promulgated. However, several events have taken place which lead to the conclusion that it has been supplanted by a new view.

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[165] Mellon Bank v. Magsino, G.R. No. 71479 October 18, 1990, 190 SCRA 633 (1981).
[166] RULES ON CRIMINAL PROCEDURE (1985), rule 111, sec. 1, par. (3).
[167] RULES OF COURT, rule 16, sec. 1, par. (e).
[168] BLACK'S LAW DICTIONARY 1305 (6th ed.)
[169] *Id.*

C. INDEPENDENT CAUSES OF ACTION – THE PREVAILING VIEW

The traditional view has been supplanted by a different view that treats delict and quasi-delict as independent causes of action. This can be inferred from a change made in the rules on criminal procedure. When the Revised Rules on Criminal Procedure were promulgated in 2000, one of the notable amendments was the omission of the sentence that the institution of any of the civil actions separately waives the others. This implied that the new rules no longer consider the institution of one civil action a waiver of the others.

The prohibition on double recovery under Article 2177 should not be construed as a proscription on double enforcement, but on actual recovery. This means that the two civil actions can proceed simultaneously without any apprehension that one will be dismissed due to the pendency of the other. It also means that a final judgment in one may not bar the other or prevent it from continuing. All the private offended party needs to do is stay the execution of the judgment of the first civil action. Ultimately, the private offended party can wait for the termination of both civil actions then choose which among the two judgments he prefers to execute. Naturally, it will be the one with the higher award of civil liability.

The view that the civil action *ex-delicto* and the independent civil action are based on independent causes of action is the prevailing view in Philippine jurisprudence. In the case of *Casupanan vs. Laroya,*[170] the Supreme Court said that:

> Thus, the offended party can file two separate suits for the same act or omission. The first is a criminal case where the civil action to recover civil liability *ex-delicto* is deemed instituted, and the other a civil case for quasi-delict – without violating the rule on non-forum shopping. The two cases can proceed simultaneously and independently of each other. The commencement or prosecution of the criminal action will not suspend the civil action for quasi-delict. The only limitation is that the offended party cannot recover damages twice for the same act or omission of the defendant.

Just as in the traditional view, both *litis pendentia* and *res judicata* will not arise under the prevailing view. But unlike the traditional view, even the effects of these two concepts will not be felt. By virtue of their independent nature, both civil actions can proceed independently until final judgment, subject only to the limitation on double recovery.

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[170] G.R. No. 145391, August 26, 2002.

However, it can be argued that final judgment in one action may still bar proceedings in the other action notwithstanding their independence. It can be barred on the ground of collateral estoppel or conclusiveness in judgment. This concept is embodied in Rule 39, Section 47(c) of the Revised Rules on Civil Procedure which states that: "In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appear upon its face to have been so adjudged, or which was actually and necessary included therein or necessary thereto."

Unlike *res judicata*, collateral estoppel or conclusiveness in judgment does not require identity of causes of action. However, for judgment in the first action to act as a bar to the second action, it must be shown that the subject matter of the second action was in issue and deemed adjudged in the former action. Hence, it must be shown that judgment in a civil action *ex-delicto* includes the subject matter of an independent civil action or vice versa.

D. IDENTICAL CAUSES OF ACTION – THE RADICAL VIEW

Notwithstanding that both the traditional and prevailing views advocate the belief that civil liability based on delict and quasi-delict arise from different causes of action, there is a third view that says the contrary. However, there is hardly any support in Philippine law and jurisprudence for this view. This is understandable considering the clear mandate of Articles 1157 and 2177 of the New Civil Code.

Despite the absence of basis in Philippine laws and jurisprudence of this view, it relies on a basic analysis of the elements of a cause of action. The elements of a cause of action are: (1) a legal right in the plaintiff, (2) a correlative legal duty of the defendant, and (3) an act or omission of the defendant in violation of plaintiff's right.[171] From a mere glance of these elements, it can be seen that civil liability *ex-delicto* and civil liability from quasi-delict have an overlapping element – the act or omission of the defendant in violation of the plaintiff's right. In case of criminal conduct giving rise to civil liability for both delict and quasi-delict, the operative act or omission of the accused giving rise to both liabilities is always the same.

But it doesn't end there. Even the first two elements of each cause of action arguably pertain to the same thing. In case of a cause of action for delict or quasi-delict both the legal right of the plaintiff and the correlative duty of the defendant can be traced to the same provision in the New Civil Code -- Article 20 --

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[171] I O. HERRERA, REMEDIAL LAW 282 (2000), *citing* Rebollido v. Court of Appeals, G.R. No. 81123 February 28, 1989, 170 SCRA 800 (1989).

which states that, "Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same."

Article 20 establishes the right of every person to be free from any damage caused by another, whether through malice or negligence. It also establishes the correlative duty on every person to refrain from causing such damage to others. This right and correlative duty are the first and second elements, respectively, of a cause of action for delict and quasi-delict.

Hence, each and every element of a cause of action for delict and a cause of action for quasi-delict can be argued to be the same. This is undoubtedly true for the third element as there is only one act or omission which gives rise to both civil actions – the defendant's criminal conduct. On the other hand, there is strong ground to believe that even the first two elements are the same. The result of this correspondence in elements is a very weak basis for considering the two causes of action as distinct. At most, any distinction can be considered artificial or created merely by fiction of law.

But it is not only the overlapping elements that point to the sameness of the two causes of action. The test that has traditionally been employed to determine sameness of causes of action also point towards that direction. The test referred to is the "same evidence test" which was provided for in the American case of *Norwood vs. MacDonald*[172].

> It is to be observed that in the application of the doctrine of res judicata, if it is doubtful whether a second action is for the same cause of action as the first, *the test generally applied is to consider the identity of facts essential to their maintenance, or whether the same evidence would sustain both.* If the same facts or evidence would sustain both, the two actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action. If however, the two actions rest upon different states of facts, or if different proofs would be required to sustain the two actions, a judgment in one is no bar to the maintenance of the other (italics supplied).[173]

In case of a civil action *ex-delicto* and an independent civil action based on the same act, the same requisite facts have to be proven. These are: 1) damage or injury to the plaintiff, 2) an act or omission of the defendant, and 3) the relationship between the two other facts such that the defendant's act or omission is the

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[172] 52 N.E. 2nd 67 (1943).
[173] *Id.* at 71.

proximate cause of the damage or injury to plaintiff. Proving these ultimate facts requires the presentation of the same evidence by the plaintiff. Hence, under the "same evidence test," the two causes of action are the same.

On top of this, there is a trend in the United States to view causes of action on a transaction-to-transaction basis. This means that the same act, regardless of the number of remedies it creates and the number of rights it violates, can create only one cause of action. The Restatement (Second) of Judgments puts it the following manner:

> The present trend is to see claim in factual terms and to make it coterminous with the transaction regardless of the number or substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; regardless of the number of primary rights that may have been invaded; and regardless of the variations of evidence needed to support the theories or rights. The transaction is the basis of the litigative unit or entity which may not be split.[174]

In this light, it does not matter that the same act or omission of the defendant is considered violative of several rights of the plaintiff. It is also immaterial that such conduct gives rise to the twin remedies of a civil action *ex-delicto* and an independent civil action. Everything boils down to the fact that there is only one transaction which violated the various rights and gave rise to the various remedies. Consequently, this one transaction will be considered as the plaintiff's sole cause of action.

VI. CONCLUSION AND RECOMMENDATIONS

The issues emerging from the Philippine model for recovering civil liability from criminal conduct are too numerous to discuss. Nevertheless, those that were discussed in this paper, albeit just a handful, comprise what are considered as the most controversial and confusing ones. The existence of these issues can be traced to two peculiar facets of the Philippine model – (1) the overlapping spheres of delicts and quasi-delicts and (2) the fusion of criminal and civil actions.

The overlapping spheres of delicts and quasi-delicts create an artificial distinction between two kinds of civil liability arising from the same act. This dual civil liability, in turn, grants a plaintiff the twin remedies of a civil action *ex-delicto* and

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[174] RESTATEMENT (SECOND) OF JUDGMENTS, sec. 24 comment (a) (1982), *as cited in* ANTONIO R. BAUTISTA, TOWARDS FURTHER REFORM IN CIVIL PROCEDURE, 75 PHIL. L. J. 172 (2000).

an independent civil action. It is from these twin remedies that the issues on reservation, election of remedies, and identity of cause of action arise.

On the other hand, fusion of criminal and civil actions gives rise to issues on multiple appeals and evidence. Apparently, what was originally envisaged as a means of achieving simplicity and efficiency in litigation ended up defeating the very purposes for its creation.

Undoubtedly, several moves have been made to rectify the problems. For instance, the Revised Rules on Criminal Procedure now clarifies the rule on reservation along with several new cases decided by the Supreme Court. However, these moves did not really settle the controversy. At best, they merely declared what view the law currently agrees with. At worst, they aggravated the situation by further fueling the chaos and confusion.

Moreover, there is no reason to conclude that the current stance of the Supreme Court is final. Future amendments to the rules or new rulings in cases might once again change the prevailing view. This is not unlikely considering that the rules and jurisprudence have always been fickle when it comes to these issues. Ultimately, the controversy, chaos, and confusion that characterizes the Philippine model will be here to stay unless substantial amendments are made not only to procedural law but to substantive law as well.

What amendments should be made then? First and foremost, there should be a clear delineation between the concepts of a delict and a quasi-delict. This can be accomplished by simply removing crimes from the purview of a quasi-delict, whether these are committed through *dolo* or *culpa*. Implied from this is the abolition of the independent civil actions under Articles 32, 33 and 34, insofar as they involve conduct also punished as a crime. By establishing a clear delineation, the artificial distinction between civil liability from delict and quasi-delict will be eliminated. More importantly, conduct which constitutes a crime will give rise to only one kind of civil liability that can be recovered through only one remedy. This would get rid of any issues emanating from the overlapping spheres.

The amendment is actually a reversion to the Old Civil Code's definition of a quasi-delict. The reversion may evoke the same concerns on injustice that the Code Commission had at the time they were framing the New Civil Code. These concerns can be addressed by retaining Article 29 insofar as it allows the civil action to prosper in case of acquittal on reasonable doubt. It can also be addressed by a second amendment to the procedural rules. It is advisable to enact procedural amendments completely separating the civil action from the criminal action, regardless of the fact that civil liability arises from the offense charged.

By doing this, the civil action will be prosecuted separately from the criminal action similar to a tort action in the United States. The criminal action's sole concern will be the accused's criminal liability. Enforcement of civil liability will be the prerogative of the offended party through a separate civil action. In other words, the concept of fusion in its entirety will be abolished from the Philippine legal system.

In addition, the civil action should be allowed to proceed despite the pendency of the criminal action. The old rule providing for the suspension of the civil action while the criminal action is being prosecuted must be changed. This would allay any concerns on delayed justice for the private offended party arising from the suspension of the civil action due to the pendency of the criminal case. Furthermore, it accomplishes one of the purposes behind the creation of the independent civil actions under Articles 32, 33 and 34 of the New Civil Code.

Simply put, the Philippine model for the recovery of civil liability is just too complicated. Apparently, some of its facets, despite their good intentions, turned out to be the very reasons for the model's folly. Perhaps the best thing to do is to simplify the model. The recommended amendments address this need for simplicity. In the end, a simple model may turn out to be the best way of attaining the just, speedy, and inexpensive disposition of the civil cases arising from conduct constituting a crime.

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