PRECEDENCE AND PRE-EMPTION IN ADJUDICATION: THE DOCTRINE OF "PREJUDICIAL QUESTION"*

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I. THE DOCTRINE OF "PREJUDICIAL QUESTION"

The same or similar issue, factual or legal or mixed, may be raised in a pending civil litigation and in a pending criminal prosecution. Each court which has jurisdiction over the civil case and/or the criminal action is competent to adjudicate this issue. The problem however is not one of competence but one of precedence or pre-emption. If both courts are allowed to adjudicate the same common issue, there is a real possibility of conflicting rulings. The mere possibility however of contradictory rulings may not necessarily be an unacceptable result as each ruling may serve a different purpose. Actually, the impetus towards consistency of rulings may not even have any rational basis.

Illustrations of this spectacle of a common issue in a civil and a criminal action are usually found in bigamy cases where the validity of one of the marriages is challenged in a civil action. In the same manner, prosecutions for estafa or for violation of the Bouncing Checks Law are also commonly met with motions to suspend on the ground of the pendency of a civil action where the underlying contract made the basis of the alleged criminal fraud is being questioned. In all of these cases, the court in the criminal case is priorly confronted with the need to resolve whether it has to defer to the civil court or decide the issue for itself.

Despite the fact that the doctrine of "prejudicial question" has been codified in our jurisdiction, the judicial gloss and the case law applying this doctrine

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have not clearly defined the concept of prejudiciality so that a clear and objective standard of determining when a question is prejudicial or not can be said to have been established. There has been a plethora of epithets such as "determinative," "pre-emptive," "decisive," "intimately related," "similar," used to describe the issue which has to be resolved first by the civil court before the criminal action may proceed. But these epithets do not spell out the basic criteria for distinguishing when a case is prejudicial and when it is not. There is a need to clarify the case law by way of extracting a workable and instructive delineation.[1]

A clear and workable delineation is of practical importance. For one, civil and criminal litigation are grossly dissimilar proceedings even though the same courts in our jurisdiction try both criminal and civil cases. The rules of evidence differ for each kind of litigation and the rules for the conduct of trial and of appeal from final judgments are also distinct. Most importantly, however, the stakes are different in each kind of litigation. In civil cases, what is involved is money or property, whereas in criminal cases it is life, liberty as well as money or property. For the criminally accused, the stakes are higher because his very life or liberty may be put on balance. As a consequence, it is not uncommon for the accused to use all devices or strategies to delay, deflect or defeat the criminal prosecution. Prominent in the arsenal of the accused's defensive maneuvers is the rule on "prejudicial question."

The benefits to the accused of a suspension of the criminal action are self-evident. The prosecution is stopped dead on its tracks and its attack is thereby slowed down as to then possibly lose momentum. Meanwhile, the accused can litigate a critical and decisive issue in the civil case where he may have the advantage of an offensive posture aided by possibly more advantageous evidentiary rules.

The doctrine of "prejudicial question" is of Spanish origin.[2] It seems to have been derived from the Spanish judicial system where the courts were divided according to their jurisdiction, some courts exclusively for civil jurisdiction and others for criminal jurisdiction.[3] The doctrine has been carried over to the Philippines although we do not have the same bifurcation of courts as that then existing in Spain.[4] It would appear that the doctrine was insinuated in the Spanish Law of Procedure of 1882.

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[1] The case law on "prejudicial question" has been incessantly collated. See the following annotations: 19 SCRA 507 (1967), 44 SCRA 208 (1972), 100 SCRA 131 (1980) and 133 SCRA 608 (1984).

[2] *Merced vs. Diez*, 109 Phil. 155 (1960).

[3] *Ibid.*

[4] *Berbari vs. Concepcion*, 40 Phil. 837 at 841 (1920).

The elements of a "prejudicial question" and its effects and when it may be raised are all now statutorily defined. Sections 6 and 7 of Rule 111 of the Rules of Court are the governing codal provisions:

> "SEC. 6. *Suspension by reason of prejudicial question.* – A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests. (6a)
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> SEC. 7. *Elements of prejudicial question.* – The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed..."

II. WHERE ONE CASE PRE-EMPTIVE OF THE OTHER

What is to be suspended because of a prejudicial question is a pending criminal action. The suspension must be on the ground that there exists a prejudicial question and this prejudicial question can only be presented in a civil action. It is not uncommon for the courts to say that the doctrine "comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed."[5] The doctrine therefore does not apply where both actions are civil as no prejudicial question is said to be able to arise from the existence of such two civil actions.[6]

This result was well illustrated in *Carlos vs. Court of Appeals*.[7] In *Carlos*, the lessee filed an action in the RTC for the enforcement of his right of first refusal against his lessor. During the pendency of this case, the lessor sued the lessee for ejectment in the MTC on the ground of nonpayment of rentals and violation of the lease agreement. The lessee's motion to dismiss the ejectment case on the ground that his complaint in the RTC was a prejudicial question was dismissed out of hand precisely on the ground that there can be no prejudicial question where the two actions are both civil. Interestingly, however, this case may imply that a civil case could nonetheless pose a prejudicial question to another civil action.

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[5] *Manalo v. Court of Appeals*, G.R. No. 141297, Oct. 8; 2001, 366 SCRA 752 (1st Div., 2001) at 765.

[6] *Id.*

[7] G.R. 109887, February 10, 1997; 268 SCRA 25 (2nd Div., 1997).

This observation may also be deduced from *Brito Sy vs. Malate Taxicab & Garage, Inc.*.[8] In that case, plaintiff hired a taxicab to take him to his place of business. The taxi collided with an army wagon driven by Sgt. Dequito. So, plaintiff filed an action for damages based on a contract of carriage against the taxi company which in turn filed a third-party complaint against Dequito. Dequito could not be served with summons on the third-party complaint and so the case proceeded to trial against the taxi company only and, the company having been declared in default, judgment was rendered against it for some of the damages claimed by the plaintiff. On appeal, defendant taxi company claimed that the third-party complaint involves a prejudicial question and that therefore the main complaint cannot be decided until the third-party complaint is decided. The court rejected this contention by reasoning:

> "The third-party complaint is not a prejudicial question, as the issue in the main action is not entirely dependent upon those in the third-party complaint; on the contrary, it is the third-party complaint that is dependent upon the main case at least in the amount of damages which defendant-appellant seeks to be reimbursed in its third-party complaint. Furthermore, the complaint is based on a contractual obligation of transportation of passenger which defendant-appellant failed to carry out, and the action is entirely different and independent from that in the third-party complaint which is based on alleged tortious act committed by the third-party defendant Sgt. Dequito. The main case, therefore, is entirely severable and may be litigated independently. Moreover, whatever the outcome of the third-party complaint might be would not in any way affect or alter the contractual liability of the appellant to plaintiff. If the collision was due to the negligence of the third-party defendant, as alleged, then defendant-appellant may file a separate civil action for damages based on *tort ex-delicto* or upon *quasi-delict*, as the case may be."[9]

In the same manner, neither is the doctrine applicable where the other case is administrative. Thus, in *Flordelis vs. Castillo*,[10] the pendency of an administrative complaint was held not to pose a prejudicial question to a pending perjury charge. The accused there was charged of perjury precisely for having filed an administrative complaint which was allegedly false against a school principal for tax evasion. Rejecting the claim of prejudicial question, the Supreme Court said:

> "In the case at bar, no civil action pends, nor has any been instituted. The complaint is merely an administrative one. Moreover, neither success nor failure of the private respondents to prove their tax evasion charge against the petitioner in the administrative case can attain the

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[8] 102 Phil. 483 (1957).

[9] *Id.* at 486.

[10] G.R. No. 36703, July 31, 1974; 58 SCRA 301 (1st Div., 1974) at 305.

> charge against the petitioner in the administrative case can attain the character of a final determination binding and conclusive upon the court in the criminal action so as to foreclose the issue of guilt or innocence of the private respondents upon the perjury indictment."[11]

The applicability of the doctrine is however not settled where one case is administrative and the other is civil. In an early case, *Fortich-Celdran vs. Celdran*[12] where the genuineness of the signature on an extra-judicial partition was an issue in the civil case, this issue was held to be a prejudicial question to an administrative case in the Supreme Court. In contrast, in *Quiambao vs. Osorio*[13] what was ordered suspended was the civil case during the pendency of the administrative case. In ruling that the civil case should be suspended, the Supreme Court said:

> "The actions involved in the case at bar being respectively civil and administrative in character, it is obvious that technically, there is no prejudicial question to speak of. Equally apparent, however, is the intimate correlation between said two [2] proceedings, stemming from the fact that the right of private respondents to eject petitioner from the disputed portion depends primarily on the resolution of the pending administrative case. For while it may be true that private respondents had prior possession of the lot in question, at the time of the institution of the ejectment case, such right of possession had been terminated, or at the very least, suspended by the cancellation by the Land Authority of the Agreement to Sell executed in their favor. Whether or not private respondents can continue to exercise their right of possession is but a necessary, logical consequence of the issue involved in the pending administrative case assailing the validity of the cancellation of the Agreement to Sell and the subsequent award of the disputed portion to petitioner. If the cancellation of the Agreement to Sell and the subsequent award to petitioner are voided, then private respondents would have every right to eject petitioner from the disputed area. Otherwise, private respondent's right of possession is lost and so would their right to eject petitioner from said portion."[14]

Interestingly, the Court in *Quiambao* invoked the rule on abatement of actions under American law where every court is said to have the general power to stay an action to abide the outcome of another action pending in another court. But the more recent case of *Te vs. Court of Appeals*[15] breaks away from these precedents. In *Te*, a motion to suspend the administrative proceedings in the Professional Regulation Commission for revocation of defendant's engineering license on the ground that he has a pending civil action to annul his marriage and

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[11] *Id.*

[12] G.R. No. 22677, Feb. 28, 1967; 19 SCRA 502 (1967).

[13] G.R. No. 48157, March 16, 1988; 158 SCRA 674 (3rd Div., 1988).

[14] *Id.* at 678.

[15] G.R. No. 126746, November 29, 2000; 346 SCRA 327 (2000)

that therefore there is no bigamy, was denied. The Court there refused to recognize any prejudicial question posed by the civil action for annulment of marriage to the administrative case for revocation of a professional license.

There is a further twist to these rulings on what question in what case may pose a prejudicial question to another pending case. In *Ocampo vs. Buenaventura*,[16] an administrative case was held to pose a prejudicial question to a civil case. In that case a complaint was filed against certain policemen with the Police Commission ("POLCOM") for serious misconduct and abuse of authority. While this administrative complaint was pending, the policemen filed a complaint for damages against the complainant in the administrative case. The *Ocampo* Court held that although there is no prejudicial question, the civil case should be held in abeyance pending the determination of the administrative complaint before the POLCOM.

> "There is no prejudicial question here since there is no criminal prosecution involved, the petitioner's case before the POLCOM being administrative in nature and the respondents' case before the Court of First Instance of Cebu is a simple civil suit for damages not based on a crime but on alleged harassment by the petitioner in charging them administratively before the City Mayor and before the POLCOM. A careful consideration of the record discloses that the principal issue in the complaint for damages is the alleged malicious filing of the administrative cases by the petitioner against the policemen respondents. The determination of this question is primarily dependent on the outcome of the administrative case before the POLCOM. The respondents' complaint for damages is based on their claim that the administrative case filed against them before the POLCOM is malicious, unfounded and aimed to harass them. The veracity of this allegation is not for us to determine, for if We rule and allow the civil case for damages to proceed on that ground, there is the possibility that the court *a quo* in deciding said case might declare the respondents victims of harassment and thereby indirectly interfere with the proceedings before the POLCOM. The respondent's case for damages before the lower court is, therefore, premature as it was filed during the pendency of the administrative case against the respondents before the POLCOM. The possibility cannot be overlooked that the POLCOM may hand down a decision adverse to the respondents, in which case the damage suit will become unfounded and baseless for wanting in cause of action. Of persuasive force is the ruling in *William H. Brown vs. Bank of the Philippine Islands* and *Santiago Freixas*, 101 Phil. 309, 312."[17]

The final twist is presented by *Isip vs. Gonzales*,[18] which ruled that an election case can not pose a prejudicial question to a criminal case. In that case, the

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[16] G.R. No. 32293, January 24, 1974; 55 SCRA 267 (1974).
[17] *Id.* at 271, 272.
[18] G.R. No. 27277, May 31, 1971; 39 SCRA 255 (1971).

accused was charged with violation of the Revised Election Code for having used carbon paper for the purpose of identifying their votes. There was a motion to suspend the criminal case on the ground of a pending election protest where one of the grounds of such protest was the use of carbon paper for the purpose of identifying votes. The court held that there was no prejudicial question:

> "Now, on the issue of whether or not the electoral protest of private respondent or any issue therein constitutes a prejudicial question to the criminal action involved in this proceding, We agree with private respondent that there is no such prejudicial question. To begin with, there is here no showing that the specific incident involving petitioner Estela Isip is involved in the protest before the Electoral Tribunal of the House of Representatives referred to by petitioners. It is true that in said electoral protest, the Electoral Tribunal must necessarily resolve the question of whether or not protestee therein and his leaders or followers used carbon paper for the purpose of identifying certain votes cast in the elections concerned, but as pointed out by private respondent – and this is not denied by petitioners – the carbon paper allegedly used by petitioner Estela Isip, which is the basis of the criminal complaint against petitioners, is not among the hundreds of such white carbon paper devices already marked as exhibits in said electoral protest, and, according to private respondent, the carbon paper allegedly used by petitioner Estela Isip is still in his possession; it follows then, that even if the Electoral Tribunal should find that there really had been extensive use of such carbon paper device by other voters, such finding would not necessarily be determinative of the guilt or innocence of petitioners under the criminal complaint filed against them in this case."[19]

III. THE CONDITION OF SAMENESS OF THE ISSUE

The Rules require that the issue presented in the previously instituted civil action be determinative of "whether or not the criminal action may proceed." Most of the cases re-phrase this requirement by stating that the issue in the civil case must be preemptively decisive on the issue of guilt or innocence. The existence of the condition of pre-emptive decisiveness is not always easy to discern or determine. To begin with, the mere fact that the civil and criminal cases involve the same issues does not make the civil case prejudicial to the criminal case. *Benitez vs. Concepcion*[20] confirms this where the signature of a mortgagor on a real estate mortgage was disputed in a civil case. While this civil case was pending, the mortgagor filed a criminal charge against the accused for falsifying his signature on the deed of mortgage. The fact that the issue of falsification was ventilated as well in the civil

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[19] *Id.* at 261-264. *See Jimenez vs. Averia*, L-22759, March 29, 1968, 22 SCRA 1380

[20] G.R. No. 14646, May 30, 1961; 2 SCRA 178 (1961).

case did not make the resolution of that issue pre-emptive of the resolution of the same issue of falsification in the criminal case.

> "In Civil Case No. 33251, for annulment of the deed of mortgage, the issue is that the signatures of Ong Ho appearing therein are forged. In the criminal case, O.S. No. 15190, the issue is likewise the falsification of the deeds in question. It appearing that the principal issues in both cases are the same, and/or arise from the same facts, it stands to reason that it is not necessary that the civil case be determined first before taking up the criminal case be determined first before taking up the criminal case. This being the case, the proposition is simply reduced to a matter of preferences."[21]

From the foregoing reasoning, the court in the civil case and the court in the criminal case are seen to be equally competent to determine in the respective case before them the issue of whether the mortgagor's signature was false. The implicit suggestion is that there is no need or reason for the court in one case to defer to the court in the other. Yet, this kind of thinking seems to collide with the oft-stated rationale for the principle of prejudicial question which is to avoid two conflicting decisions.[22]

The concern over possible conflicting rulings arising from the commonality of issues does not seem to be far-reaching. It would appear that the preponderant concern is that the civil action may be used as a mere ploy to deflect or delay the criminal action. Thus, where the civil action was filed three years after the institution of the criminal cases, it was observed that the filing of the civil case "was a ploy to delay the resolution of the criminal cases."[23] A similar observation was made in a bigamy prosecution where the civil action for declaration of nullity of the first marriage was found to have been resorted to "for the purpose of frustrating or delaying his criminal prosecution [for bigamy].[24] Reflective of this nagging bias against the filing of a belated civil case as a tactical ploy is the insertion in the 2000 amendments to the Rule of the phrase "previously instituted civil action" so as to minimize possible abuses by the subsequent filing of a civil action as an after-thought for the purpose of suspending the criminal action.[25]

That the mere sameness of issue would not automatically make the civil case as presenting a prejudicial question to the criminal case was affirmed in *Pisalbon*

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[21] *Id.* at 181.

[22] *Manalo v. Court of Appeals*, G.R. No. 141297, October 8, 2001; 366 SCRA 752 (2001) at 765.

[23] *Sabandal v. Tongco*, G.R. No. 124498, October 5, 2001; 366 SCRA 567 (2001) at 572.

[24] *Marbella-Bobis v. Bobis*, G.R. No. 138509, July 31, 2000; 336 SCRA 747 (2000) at 755.

[25] HERRERA, TREATISE ON HISTORICAL DEVELOPMENT AND HIGHLIGHTS OF AMENDMENTS OF RULES OF CRIMINAL PROCEDURE, 50 (2001).

vs. Tesoro.[26] In that case, a party, who challenged as a forgery a purported affidavit of hers in the cadastral records in which it was made to appear that she renounced all her rights and interests in a certain lot, charged the notary public with falsification of public document. The criminal case could proceed even without awaiting the resolution of the cadastral case in which the affidavit was presented because to whomsoever the land may be awarded in the cadastral case will not affect the alleged crime committed by the notary public.

Generally, if the criminal action can proceed independently of the civil action, there can be no occasion for suspension on the ground of a prejudicial question notwithstanding the existence of a common issue on both cases. Again this result may be deduced from the fact that there is nothing to be decided in the civil action which is determinative of the issue of guilt in the criminal case. Thus, in *Ocampo vs. Tancinco*[27] the criminal charge for violation of the Copyright Law was held not to be suspendible on the ground of the pendency of an action brought by the accused for the cancellation of the copyright issued and granted to the complainant on the ground that the same was obtained through fraud, deceit and misrepresentation.

While the rules on prejudicial question do not express or so state, the case law is uniform in framing the proposition that the supposed prejudicial question is exclusively resolvable by the court having jurisdiction over the civil action. This concept of jurisdiction of the civil court exclusive of the criminal court to adjudicate on the common issue is not well delineated. It is not well explained for instance why the criminal court is not as equally competent to resolve the issue as the civil court. While the objective of avoiding conflicting rulings on the same issue may be an ideal which may be devoutly wished, it is unclear what untoward or injurious consequences may ensue from conflicting rulings. It may well be sufficient to explain that one ruling is good for a civil case and another but contradictory ruling for the criminal case.

It is therefore possible for one and the same court to try both the civil and the criminal cases and still the doctrine of prejudicial question will apply because in that case the court, when it is exercising its jurisdiction over the civil action is considered as a court distinct and different from itself when trying the criminal action.[28]

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[26] 92 Phil. 931 (1953).

[27] 96 Phil. 459 (1955).

[28] *Falgui, Jr. v. Provincial Fiscal of Batangas*, G.R. No. 27523, February 25, 1975; 62 SCRA 462 (1975) at p. 468 citing *Merced v. Diez*, 109 Phil. 155 (1960).

IV. AVAILABILITY OF CIVIL ISSUE AS A DEFENSE IN THE CRIMINAL ACTION

The existence of a common issue involved in both the civil and criminal cases is no assurance that deference will be given to the civil court. The criminal court may proceed to adjudicate the issue where it may be raised as a defense in the criminal action so that there is no need to await or defer to the civil court.

Thus, in *Sabandal vs. Tongco*[29] where the accused was charged with B.P. 22 violation, the Court held that his civil case (wherein he allegedly over-paid the supposed bounced checks) can be used as a defense in the criminal case. The reasoning in *Sabandal* went as follows:

> "In this case, the issue in the criminal cases for violation of Batas Pambansa Blg. 22 is whether the accused knowingly issued worthless checks. The issue in the civil action for specific performance, overpayment, and damages is whether complainant Sabandal overpaid his obligations to Philippines Today, Inc.. If, after trial in the civil case, petitioner is shown to have overpaid respondent, it does not follow that he cannot be held liable for the bouncing checks he issued, for the mere issuance of worthless checks with knowledge of the insufficiency of funds to support the checks is itself an offense."[30]

A similar result was reached in *Dichaves vs. Apalit*.[31] In that case, the Supreme Court disciplined an MTC judge for suspending a B.P. 22 case on the ground of a supposed prejudicial question in the civil case. The civil case posits issue that the checks subject of the B.P. 22 cases were issued only to guarantee another person's obligation. The civil case was held to be non-determinative of any issue in the criminal case. The Court reasoned:

> "In the case at bar, even if Navarro prevailed in the civil case filed by him against Uyboco and GCDC, this result would not be determinative of his guilt in the criminal prosecution for violation of B.P. Blg. 22 for it is now settled that the mere issuance of worthless checks is punishable under B.P. Blg. 22, and it is immaterial whether the checks have been issued merely to guarantee another person's obligation."[32]

Availability of the civil issue as a defense in the criminal case was critical in *First Producers Holdings Corporation vs. Luis Co.*[33] In this case, a criminal case for estafa

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[29] G.R. No. 124498, October 5, 2001; 366 SCRA 567 (2001).
[30] *Id.* at 572.
[31] A.M. No. MTJ-00:1274, June 8, 2000.
[32] *Id.* at 57.
[33] G.R. No. 139655, July 27, 2000; 336 SCRA 551 (2000).

was filed on 13 March 1997 and the civil case was filed on 18 November 1997. In the estafa case, accused was charged with having misappropriated a proprietary membership share in the Manila Polo Club and in the civil case he claims to be the owner of the share. The Court said that the civil case did not present a prejudicial question for three (3) reasons:

> 1. The civil case was clearly dilatory because it was filed only eight (8) months after the criminal case was filed so that it appeared as an afterthought merely and intended to delay the criminal case.[34]
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> 2. Accused could have raised the issue of ownership in the criminal case. On this point, the Court said:
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> > "This argument is bereft of merit. We find no sufficient reason why the trial court hearing the criminal case cannot resolve the question of ownership. Significantly, the civil action for recovery of civil liability is impliedly instituted with the filing of the criminal action. Hence, respondent may invoke all defenses pertaining to his civil liability in the criminal action. In fact, there is no law or rule prohibiting him from airing exhaustively the question of ownership. After all, the trial court has jurisdiction to hear the said defense. The rules of evidence and procedure for the recovery of civil liabilities are the same in both criminal and civil cases."[35]
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> 3. Ownership is not necessarily an element of estafa.[36]

The court in *First Producers* seems to imply that the civil action was not preferential as it was impliedly instituted with the criminal action. This is an odd excuse because the same court can resolve the issue but it must resolve this civil issue first before it adjudicates the issue of guilt or it may opt to resolve the issue of guilt without addressing the civil issue separately.

Contrastingly, in *Librodo vs. Coscolluela*[37] the fact that the same question may be resolved in the criminal case moved the court to rule that there was no need to defer to the civil court. In this case, the criminal case was for theft instituted by a lessee of sugarlands against the accused for allegedly having stolen and carried away

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[34] *Id.* at 557.
[35] *Id.* at 559.
[36] *Id.* at 560.
[37] G.R. No. 56995, August 30, 1982; 116 SCRA 303 (2nd Div., 1982).

sugarcane planted by the lessee on these lands. There were three (3) cases which were contended to have presented a prejudicial question, one was a damage suit by the lessee against the accused for the sugarcane which was allegedly stolen, second an intestate proceeding where the right of the accused to the sugarlands was disputed, and third an ejectment case instituted by the lessor against one of the accused.

> "Stated differently, the issues raised in the civil cases do not involve the pivotal question of who planted the sugar cane and, therefore, are not determinative *juris et de jure* of guilt or innocence in the Criminal Action. If as the Guanteros contend, they were the ones who did the planting, that is a matter of defense that may be interposed by them in the Criminal Action. It is not an issue that must be preemptively resolved in the civil cases before proceedings in the Criminal Action may be undertaken."[38]

None of the civil cases was held to present a prejudicial question. The Supreme Court squarely ruled that the matter of who planted the sugarcane may well be raised as a defense in the criminal case and there is no reason why it should be pre-emptively resolved in the civil cases. Again there is here the unmistakable implication that there is nothing special or peculiar about the civil court's jurisdiction which qualifies it to exclusively adjudicate the issue of who planted the sugarcane.

V. THE CONCEPT OF DETERMINATIVENESS

The Supreme Court held that an estafa case cannot be suspended on the ground of pending civil case where the underlying contract made the basis of this estafa charge was sought to be annulled or rescinded. This is the case of *Umali vs. Intermediate Appellate Court*[39] where the accused issued four (4) checks in payment of installments on their purchase of a parcel of land. When the checks bounced, the vendors filed a criminal complaint against the vendees for estafa. But before they could be arraigned, the accused filed a civil complaint for the annulment/rescission of the contract of sale. The Supreme Court refused to suspend the criminal action by saying:

> "More specifically, what private respondents complained of in CR No. 1423-I is that the checks issued by petitioners in their favor were dishonored for lack of funds upon due presentment to the drawee bank. Undeniably, at the time of said dishonor, petitioners' obligation to pay

[38] *Ibid.* at 310, 311.

[39] G.R. No. 63198, June 21, 1990; 186 SCRA 680 (2nd Div., 1990).

> private respondents pursuant to the deed of sale, continued to subsist. And because petitioners' checks were dishonored for lack of funds, petitioners are answerable under the law for the consequences of their said acts. And even if CV No. 8769 were to be finally adjudged to the effect that the said deed of sale should be annulled, such declaration would be of no material importance in the determination of the guilt or innocence of petitioners-accused in CR No. 1423-I."[40]

There seems to be a decided reluctance on the part of the courts to suspend estafa cases on the ground of a supposed prejudicial question in a civil case questioning the contract made the basis of the supposed estafa charge. Usually, the way out of the "prejudicial question" hurdle is a reasoned finding that however the civil case is resolved will not determine any element of guilt of the accused. This is clearly shown in *Jimenez vs. Averia*[41] where the accused were charged of estafa in that they allegedly got from the complainant P20,000.00 with which to purchase for him a fishing boat with the obligation on their part to return the money should they fail to purchase the fishing boat but they allegedly misappropriated the aforesaid amount. The accused filed against complainant a civil case contesting the validity of a certain receipt signed by them wherein they acknowledged having received from the complainant the sum of P20,000.00 with which to purchase for him a fishing boat and its accessories. They alleged that they never received the said amount from complainant and that their signatures on the questioned receipt were secured by means of fraud, deceit and intimidation employed by complainant. The Court held that the civil case did not pose a prejudicial question:

> "[I]t will be readily seen that the alleged prejudicial question is not determinative of the guilt or innocence of the parties charged with *estafa*, because even on the assumption that the execution of the receipt whose annulment they sought in the civil case was vitiated by fraud, duress or intimidation, their guilt could still be established by other evidence showing, to the degree required by law, that they had actually received from the complainant the sum of P20,000.00 with which to buy for him a fishing boat, and that, instead of doing so, they misappropriated the money and refused or otherwise failed to return it to him upon demand. The contention of the private respondents herein would be tenable had they been charged with falsification of the same receipt involved in the civil action.
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> Were We to sanction the theory advanced by the respondents Tang and De la Cruz Olanday and adopted by the respondent judge, there would hardly be a case for *estafa* that could be prosecuted speedily, it being the easiest thing for the accused to block the proceedings by the simple expedient of filing an independent civil action against the complainant,

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[40] *Id.* at 686.

[41] G.R. No. 22759, March 29, 1968; 22 SCRA 1380 (1968).

> raising therein the issue that he had not received from the latter the amount alleged to have been misappropriated. A claim to this effect is properly a matter of defense to be interposed by the party charged in the criminal proceeding." [42]

A similar analysis was applied in *Balgos, Jr. vs. Sandiganbayan*[43] where the criminal case was for violation of the Anti-Graft and Corrupt Practices Act. In that case, the accused allegedly enforced a writ of execution against a car registered in the name of one Leticia Ang although she was not the judgment debtor. Subsequently, the judgment creditor filed a case for rescission of the sale of the car by the judgment debtor to Leticia Ang for being allegedly in fraud of creditors. This rescission case was held not to pose a prejudicial question to the anti-graft case. Even if the sale of the car to Leticia Ang was fraudulent, still the accused sheriff had to establish that he acted in good faith in executing on the car.

Where the culpability of the accused does not depend on any issue in the civil case, then the latter cannot possibly pose a prejudicial question to the criminal case. Thus, in *Rojas vs. People*[44] the criminal case was for violation of Article 319 of the Revised Penal Code by executing a new chattel mortgage of personal property in favor of another party without the consent of the previous mortgagee and duly noted in the record of the Register of Deeds. The civil case was for the termination of a management contract, one of the causes of action of which consisted of the accused having executed a chattel mortgage when a prior chattel mortgage was valid and existing, thus giving lie to his express manifestation that the property was free of all liens and encumbrances. The civil case was held not to pose a prejudicial question. The culpability of the accused did not depend on whether he violated the management contract or not.

But *Rojas* had made a troubling obiter or aside. It rationalized further that since the civil action was for fraud it may under Article 33 of the Civil Code proceed independently of the criminal action. [45] This rationalization is premised on a misapprehension of Article 33 of the Civil Code which determines when the civil action may proceed independently of a criminal action based on the same act as made the basis of the civil action as an exception to the general rule that the civil action must defer to the criminal action. The correctly applicable rule in *Rojas* is that relating to "prejudicial question" which mandates the deferment of the criminal, and not of the civil, action. A similar misapprehension was made in *People*

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[42] *Id.* at 1382, 1383.
[43] G.R. No. 85590, August 10, 1989; 176 SCRA 287 (En banc, 1989).
[44] G.R. No. 22237, May 31, 1974; 57 SCRA 243 (2nd Div., 1974).
[45] *Id.* at 246.

vs. Consing.[46] In *Consing*, two cases were claimed to pose a prejudicial question to a criminal case. The civil cases were for injunction and damages whereas the criminal case was for falsification of public document. The court held that there was no prejudicial question because however else the civil cases were resolved would not be determinative of the guilt of the accused. The court, faltering, added another reason, to wit, that there is no prejudicial question because the civil cases may proceed independently of the criminal cases, citing *Rojas*. This confusion of the rule on prejudicial question with the rule on suspension of the civil action pending prosecution of the criminal action is very serious and can only be attributed to lack of clarity in thinking and to insufficient analysis.

Another illustration of the concept of non-determinativeness is *De la Cruz vs. City Fiscal*[47] which involved two civil cases which were contended to pose a prejudicial question to a criminal case. The first civil case was by Carmelita against Apolinario to declare null and void the affidavit of adjudication executed by the latter wherein he declared that he was the only heir of Francisca and adjudicated unto himself a parcel of land left by her. Carmelita claimed that the parcel of land belonged to her, having been inherited by her from her father to whom it had been donated by Francisca. In his answer, Apolinario alleged that the affidavit of adjudication was valid and he cross-complained by alleging that the deed of donation invoked by Carmelita was fictitious and therefore null and void. Then Apolinario was charged with falsification of the affidavit of adjudication made by him. Neither of the two civil cases poses a prejudicial question:

> "As regards the annulment of the deed of donation sought by petitioner Apolinario in his cross-complaint before the Court of First Instance of Lingayen, Pangasinan, we agree with the trial court that it has no intimate relation to the criminal investigation being conducted by respondent Fiscal, Apolinario not even being a party to said deed of donation; consequently, it may by no means be regarded as a prejudicial question.
>
> Now, with respect to the annulment of the affidavit of adjudication sought by Carmelita, the execution by Apolinario of said affidavit with its narration of facts, is intimately related to his guilt or innocence of the charge of falsification being investigated by the Fiscal, it is true; however, resolution of the petition for annulment of the affidavit of adjudication, affirmative or otherwise, does not and will not determine criminal responsibility in the falsification case. Regardless of the outcome of the pending civil case for annulment of the affidavit of adjudication, determination of the charge of falsification would be based on the truth or falsity of the narration of facts in the affidavit of adjudication, specially with reference to the existence of heirs of Francisca besides Apolinario.

[46] G.R. No. 148193, January 16, 2003 (1st Div.).
[47] 106 Phil. 851 (1959).

> Therefore, the civil case aforementioned does not involve a prejudicial question."[48]

Again, in *Mendiola vs. Macadaeg*[49] it appears that the same issue of falsification was involved both in the civil and criminal cases and yet the civil case was held not to be determinative of any issue in the criminal case. The civil case there was for title over certain lands the validity of the transfer of which had been questioned. The criminal case was for falsification of documents involved in the mortgages of these lands. There it was held that even if the supposed transfer of titles over the lands were upheld, still such a ruling would not resolve the issue of falsification in the criminal case because the transfer may be valid and yet the transferees may not be innocent of the falsification that enabled them to obtain the title.

A review however of the cases where a prejudicial question was found to have been presented may illuminate this matter of why the civil court should have preferential or exclusive jurisdiction to adjudicate the common issue. *Tuanda vs. Sandiganbayan*[50] may drive home the point more instructively. The criminal case there was against municipal officers for violation of the Anti-Graft Law for refusing to pay salaries of persons claiming to have been duly designated as sectoral representatives to the Sangguniang Bayan. But since there was a pending civil case in which the validity of the designation of the complainants as sectoral representatives was questioned, this civil case was necessarily a prejudicial question in the criminal case. This is not difficult to understand. The accused cannot be possibly guilty of unlawfully refusing to pay the salaries of the complainants as sectoral representatives if their designation as sectoral representatives was not valid.

Tuanda however does not well explain why the issue of validity of the designation of complainants as sectoral representatives cannot be raised as a defense as well in the criminal case so that the criminal court can adjudicate this same issue in the Anti-Graft case. One may well wonder whether the matter of temporal precedence of the civil over the criminal case has any bearing on the resolution of the issue of which between the civil and the criminal court may pre-emptively or exclusively decide the issue of validity of the designation of the complainants as sectoral representatives. Here, the civil case questioning the validity of the designation was filed ahead of the anti-graft case.

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[48] *Id.* at pp. 854, 855.

[49] G.R. No. 16874, February 27, 1961; 1 SCRA 593 (1961).

[50] G.R. No. 110544, October 17, 1995; 249 SCRA 342 (1st Div., 1995).

Consistent with *Tuanda* is *Aleria vs. Mendoza*[51] where the civil case was for unpaid wages due to some laborers and the criminal case was against one of the employers for protracted delay in payment of wages. Obviously, the matter of whether any wages are due is a prejudicial question because there can be no delay in paying wages which are not due. This is an obvious case for allocating to the civil court the determination of whether any wages are due to begin with as it does seem inappropriate for a court in a criminal case to determine such an issue which seems to be peculiarly a labor law issue. Viewed in this light, it would appear that the matter of which the court seems more suited to adjudicate the common issue may be the key to the issue of prejudiciality. Only such analysis on the basis of apparent suitability or appropriateness of the forum adjudicating the common issue can explain a decision such as *Ras vs. Rasul*[52] where a criminal case of estafa for an alleged double sale was held to be suspendible pending the resolution of the issue of the validity of the second sale. According to the court, the accused's defense in the civil case that the prior deed of sale was a forgery and therefore null is necessarily determinative of his guilt or innocence as accused in the criminal case. But such a conclusion eludes the basic issue of why that defense cannot equally be raised in the criminal case and why the civil court should be allowed to pre-emptively resolve it.

A similar ruling was made in *Fortich-Celdran vs. Celdran*[53] where a criminal case for falsification of public document (a deed of extra-judicial partition) was suspended to await the resolution in a civil case of the issue of whether the signature of the complainant in that case was a forgery or not. Again the court there said that the resolution of this issue in the civil case "will in a sense be determinative of the guilt or innocence of the accused in the criminal suit pending in another tribunal."[54] This is a cryptic and puzzling statement. What did the court mean by "in a sense?" Was the resolution of the issue in the civil case determinative or not? If it is merely tangentially determinative, then it is not determinative at all.

Non-determinativeness of the civil issue was similarly found in *Ching vs. Court of Appeals*[55] where the criminal case was for violation of the Bouncing Checks Law and therefore for estafa and the civil case, which was filed a month later, was for the declaration of the nullity of the trust receipts. As in *Jimenez v. Averia*, the court ruled that there could be estafa even if there is no violation of the trust receipts agreement. Similarly, in *People vs. Court of Appeals*[56] it was held that there

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[51] 83 Phil. 427 (1949).
[52] G.R. No. 50441-42, September 18, 1980; 100 SCRA 125 (1st Div., 1980).
[53] *Supra* note 12.
[54] *Id.* at 505.
[55] G.R. No. 110844, April 27, 2000; 331 SCRA 16 (2nd Div., 2000).
[56] G.R. No. 57425-27, March 18, 1985; 135 SCRA 372 (2nd Div., 1985).

was no ground to suspend an anti-graft charge for giving certain parties unwarranted benefits causing injury to the Government on the ground of the pendency of civil cases questioning the scope of the accused's authority because the law punishes acts even if committed outside scope of their authority.

But where the accused was charged with violation of the Anti-Squatting Law for depriving the supposed owner of possession of a lot, it was held that the civil case for co-ownership did pose a prejudicial question. The reasoning was that the resolution of the issue of ownership could be determinative of the accused's criminal liability for squatting. [57]

VI. BIGAMY CASES

Bigamy cases present a special class of contrasting rulings on the matter of whether the pendency of a civil action challenging the validity of one of the marriages is a prejudicial question to a charge for bigamy for contracting a second marriage during the existence of a prior valid marriage.

Majority of the cases, including the more recent ones, find that the civil action does not pose a prejudicial question.[58] The latest bigamy case is *Marbella-Bobis vs. Bobis*.[59] Here, the accused contracted his first marriage in 1985 and a second marriage in 1996. Upon complaint by the first wife, accused was charged with bigamy. Thereafter, accused filed a civil action for the judicial declaration of absolute nullity of his first marriage on the ground that it was celebrated without a marriage license. He then filed a motion to suspend the proceedings in the criminal case for bigamy invoking the pending civil case for nullity of the first marriage as a prejudicial question to the criminal case. The trial court granted the motion to suspend, but the Supreme Court reversed. The Court explained that the mere absence of a marriage license will not entitle the accused to enter into a second marriage absent a declaration of the nullity of the first marriage and so the nullity case will not be determinative of the issue of bigamy:

> "In the light of Article 40 of the Family Code, respondent, without first having obtained the judicial declaration of nullity of the first marriage, can not be said to have validly entered into the second marriage. Per current jurisprudence, a marriage though void still needs a judicial declaration of such

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[57] *Apa vs. Fernandez*, G.R. No. 112381, March 20, 1995; 242 SCRA 509 (2nd Div., 1995).

[58] A similar ruling was made in a concubinage case, *Beltran v. People*, G.R. No. 137567, June 20, 2000; 334 SCRA 106 (2nd Div., 2000).

[59] G.R. No. 138509, July 31, 2000; 336 SCRA 747 (1st Div., 2000).

> fact before any party can marry again; otherwise the second marriage will also be void. The reason is that, without a judicial declaration of its nullity, the first marriage is presumed to be subsisting. In the case at bar, respondent was for all legal intents and purposes regarded as a married man at the time he contracted his second marriage with petitioner. Against this legal backdrop, any decision in the civil action for nullity would not erase the fact that respondent entered into a second marriage during the subsistence of a first marriage. Thus, a decision in the civil case is not essential to the determination of the criminal charge. It is, therefore, not a prejudicial question. As stated above, respondent cannot be permitted to use his own malfeasance to defeat the criminal action against him."[60]

This was followed by another bigamy case, *Te vs. Court of Appeals*[61] where the same ruling was made that suspension of the bigamy case cannot be grounded on the pendency of an action for annulment of the first marriage since judicial declaration of nullity of that marriage is required. The courts are also influenced by the fact that it is not the accused but his spouse who brings the civil action for annulment of their marriage.[62]

There seems to be no logical nexus between who files the annulment or nullity action and the issue as to whether such annulment/nullity action should first be resolved before the bigamy charge can proceed. Perhaps some kind of a waiver or estoppel theory may be used to justify barring the accused from raising the pendency of the civil case which he did not file as a ground for suspending the criminal action. It has been held that since the suspension of a criminal case due to a prejudicial question is a procedural matter it is subject to waiver.[63] The same rationalization may well underlie the rule that the prosecution may not itself raise the issue of prejudicial question.[64]

Simple logic support the cases which hold that the civil action for annulment or nullity poses a prejudicial question to a bigamy charge. The common rationale for finding a prejudicial question is that a ruling of nullity may undercut one of the elements – as, say, a valid and subsisting first marriage or an otherwise valid second marriage - of the crime of bigamy. This is well illustrated by the case of *Merced v. Diez*.[65] In that case, accused was charged with bigamy in that he

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[60] *Id.* at 755, 756.

[61] *Supra* note 15.

[62] *Donato v. Luna*, G.R. No. 53642, April 15, 1988; 160 SCRA 441 (*en banc*, 1988). *See* also *Landicho v. Relova*, G.R. No. 22579, February 23, 1968; 22 SCRA 731 (1968).

[63] *Alano v. Court of Appeals*, G.R. No. 111244, December 15, 1997; 283 SCRA 269 at 274. See also *Yap v. Paras*, G.R. No. 101236, January 30, 1992; 205 SCRA 625, at 621. (1st Div., 1992) which says that suspension on the ground of prejudicial question may not be made by the court *motu proprio*.

[64] *People v. Villamor*, G.R. No. 13530, February 28, 1962; 4 SCRA 482 (1962).

[65] 109 Phil. 155 (1960).

married complainant Elizabeth while he was still married to Eufrocina. But prior to the filing of the bigamy charge, accused had filed a civil case for the annulment of his second marriage to Elizabeth on the ground that it was contracted through force, threats and intimidation. The Court said that the issue in the civil case as to the validity of the second marriage presented a prejudicial question to the bigamy case:

> "One of the essential elements of a valid marriage is that the consent thereto of the contracting parties must be freely and voluntarily given. Without the element of consent a marriage would be illegal and void. (Section 29, Act No. 3613, otherwise known as the Marriage Law.) But the question of invalidity cannot ordinarily be decided in the criminal action for bigamy but in a civil action for annulment. Since the validity of the second marriage, subject of the action for bigamy, cannot be determined in the criminal case and since prosecution for bigamy does not lie unless the elements of the second marriage appear to exist, it is necessary that a decision in a civil action to the effect that the second marriage contains all the essentials of a marriage must first be secured.
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> We have, therefore, in the case at bar, the issue of the validity of the second marriage, which must be determined before hand in the civil action, before the criminal action can proceed. We have a situation where the issue of the validity of the second marriage can be determined or must first be determined in the civil action before the criminal action for bigamy can be prosecuted. The question of the validity of the second marriage is, therefore, a prejudicial question, because determination of the validity of the second marriage is determinable in the civil action and must precede the criminal action for bigamy."[66]

The validity of the second marriage was put in issue in *Zapanta vs. Montesa*.[67] There the accused was charged with bigamy. In that case, the accused while still being married to Estrella contracted a second marriage with the complainant. Accused then filed an action for the annulment of his marriage to the complainant on the ground of duress, force and intimidation. There is a prejudicial question, said the Court:

> "Should the question for annulment of the second marriage pending in the Court of First Instance of Pampanga prosper on the ground that, according to the evidence, petitioner's consent thereto was obtained by means of duress, force and intimidation, it is obvious that his act was involuntary and can not be the basis of his conviction for the crime of bigamy with which he was charged in the Court of First Instance of Bulacan. Thus, the issue involved in the action for the annulment of the second

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[66] *Id.* at pp. 158, 159.

[67] G.R. No. 14534, February 28, 1962; 4 SCRA 510 (1962).

> marriage is determinative of petitioner's guilt or innocence of the crime of bigamy. On the other hand, there can be no question that the annulment of petitioner's marriage with respondent Yco on the grounds relied upon in the complaint filed in the Court of First Instance of Pampanga is within the jurisdiction of said court.
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> In the Aragon case already mentioned *(supra)* we held that if the defendant in a case for bigamy claims that the first marriage is void and the right to decide such validity is vested in another court, the civil action for annulment must first be decided before the action for bigamy can proceed. There is no reason not to apply the same rule when the contention of the accused is that the second marriage is void on the ground that he entered into it because of drugs, force and intimidation."[68]

Prado vs. People[69] also involved a previously questioned second marriage and the civil case was also held to pose a prejudicial question:

> "Should petitioner be able to establish that her consent to the second marriage was, indeed, obtained by means of force and intimidation, her act of entering into marriage with Julio Manalansang would be involuntary, and there can be no conviction for the crime of Bigamy.
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> And while it may be, as contended by the Solicitor General, that the mere filing of an Annulment Case does not automatically give rise to a prejudicial question as to bar trial of a Bigamy Case, considering the gravity of the charge, petitioner cannot be deprived of her right to prove her grounds for annulment, which could well be determinative of her guilt or innocence. The State is not thereby deprived from proceeding with the criminal case in the event that the Court decrees against petitioner in the Annulment Case."[70]

The force of the foregoing rulings is difficult to resist. In fact, there is a square ruling that a charge for bigamy should be dismissed where the second marriage was annulled during the pendency of the bigamy cases. The basis for such dismissal is obvious and unobjectionable because where there is no second marriage, there can be no bigamy. [71]

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[68] *Id.* at 511, 512.
[69] G.R. No. 37652, December 26, 1984; 133 SCRA 602 (2nd Div., 1984).
[70] *Id.* at 606.
[71] *Dela Cruz v. Ejercito*, G.R. No, 40895, November 6, 1975; 68 SCRA 1 (2nd Div., 1975).

VII. CONCLUDING OBSERVATIONS AND RECOMMENDATION

From the foregoing review and analysis jurisprudence on the matter of "prejudicial question," the following concluding observations may be gleaned:

I. The concept of prejudiciality involved in the doctrine of "prejudicial question" has not been clearly defined despite the fact that the doctrine itself has been codified.

II. While the doctrine of "prejudicial question" has generally been held to apply only where one case is civil and the other criminal, its possible application in other situations where both cases are civil, or where one is criminal or civil and the other administrative has been insinuated and/or considered.

III. The mere fact that the civil and the criminal cases involve the same issue does not make the civil case prejudicial to the criminal case.

IV. No prejudicial question is generally held to be presented where the civil issue can be raised as a defense in the criminal case.

V. Suspension of the criminal action is usually justified where the court senses or finds that determination of the civil issue is determinative of the issue of guilt or innocence, but the concept of determinativeness is not well defined and it is not always clear why the criminal court cannot decide the issue for itself.

VI. There have been contradictory rulings in bigamy cases where the pendency of a civil action challenging the validity of either the first or the second marriage is claimed to be prejudicial to a bigamy charge as the twice-marrying accused.

The state of our law on prejudicial question may therefore be adjudged as confused. The Rules define what a prejudicial question is in such general terms such that it is not possible to predict with any certainty when an issue in a civil case should be considered prejudicial as to cause the suspension of a criminal action. The element of sameness or commonality of the issue to both the civil and the criminal case has not proved to be the right key to unlock the mystery of prejudiciality. Sometimes the courts are moved to say that the fact of sameness should cause the criminal court to sit back and let the civil court resolve the issue

first, but there are also cases that say that the same issue can be resolved in the criminal case especially where it can be raised as a defense in such action. Thus, in a bigamy case, the Supreme Court observed that the accused can raise the issue of the dissolution of the first marriage before he contracted the second marriage as a defense in the criminal case. [72]

The specter of conflicting rulings, which has often been raised, is not that fearsome or intimidating. In a bigamy or concubinage case, for instance, there is nothing wrong if the accused adduces evidence in the criminal case to establish the invalidity of one of the supposed marriages.[73] There is no special or cogent reason why such evidence may only be adduced and evaluated by a court sitting in a civil case or why the bigamy court cannot as competently adjudicate such issue.

On the other hand, there can be solid and valid reasons for disparate rulings on the same issue rendered by a civil court and a criminal court. Since the stakes are different in a civil case from those in a criminal action, the incentive to litigate the common issue may also differ. A different quantum and quality of evidence may be adduced in a civil case than that which may be adduced in the criminal case and this may well account for different rulings on the common issue.[74] Even the mere fact that different counsel may have represented the same party in the two cases may itself lead to a difference in results since the intensity and quality of presentation of a case may vary from lawyer to lawyer.

Much quibbling has been expended in respect to the issue of prejudiciality upon which issue, as the foregoing review of the cases shows, the courts may go either way. The litigation of this issue alone, which is ventilated through a motion to suspend the criminal action, may go all the way up to a higher court since the issue of prejudiciality is remediable not by appeal since the ruling is interlocutory but by certiorari for grave abuse of discretion.[75]

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[72] *Marbella-Bobis v. Bobis*, *supra* note 24.

[73] See *Beltran v. People*, *supra* note 58.

[74] For that matter, the issue, though common, may have been merely collaterally or remotely involved in the civil case. See *Bartlett v. Kansas City Public Service Co.*, 349 MO. 13, 160 S.W. 2d 740, 142 A.C.R. 666 (1942) (reported testimony in a prior civil case may not be admissible as an exception to the Hearsay Rule in a subsequent civil case involving the same issue). Cf. The Evergreens v. Nunan, 141 F2d 297 (2nd Cir. 1944) (Ruling that facts established in a first suit whether as "mediate data" or "ultimate data" can conclusively establish only "ultimate" data in a second suit: "The stake in the first suit may have been too small to justify great trouble and expense in its prosecution or defense; and the chance that a fact decided in it, even though necessary to its result, may later become important between the parties may have been extremely remote.").

[75] *Fortich-Celdran v. Celdran*, *supra* note 12; *Isip v. Gonzales*, *supra* note 18.

It is difficult to pinpoint the precise basis for giving the civil court the first and exclusive crack on a common issue except some vague notion of its suitability or appropriateness as a forum. There is no sound basis for maintaining this rule of precedence for the civil action over the criminal. As *Benitez vs. Concepcion*[76] suggests "the proposition is simply reduced to a matter of preferences." There may be no special expertise possessed by the civil court to adjudicate the common issue to the exclusion of the criminal court. The following observations made in *Isip vs. Gonzales*[77] respecting the possible special expertise of the House Electoral Tribunal on election matters is worthy of relevant consideration:

> We hold that there is neither law nor jurisprudence to the effect that the question of whether or not the alleged infraction of the election law by petitioner Isip by allegedly using white carbon paper in preparing her ballot is a matter that only the Electoral Tribunal may determine. Even logic alone suggests that if that matter is involved in a criminal charge against her, the criminal court should have ample authority to decide it regardless of its being also involved in an election protest.
>
> We see no reason for holding that the exclusive jurisdiction conferred upon the House Electoral Tribunal to be 'the sole judge of all contests relating to the election, returns and qualifications' of the members of the House of Representatives should deprive the courts of their jurisdiction to try and decide criminal charges related to contests filed with said tribunal, except perhaps in extreme instances where the question of who may be declared legally elected would depend exclusively on whether or not the criminal act imputed to the accused has been feloniously committed by the said accused, since then it might be absurd for the tribunal and the court to make separate contradictory or inconsistent findings. Such a remote hypothesis, however, is not, as already demonstrated, what obtains in the case at bar. In cases like the present, it is even the policy of the law that the criminal prosecution be initiated as early as possible.[78]

The doctrine of prejudicial question serves no useful purpose. The specter of conflicting rulings on the same issues is just that - a specter. There is nothing wrong with contradicting rulings which are supported by variant evidence or issued upon disparate presentations. On the other hand, the doctrine has resulted in much harm and unnecessary litigation over elusive and conceptually befuddling issues of sameness, determinativeness and precedence. No conceivable public policy supports the doctrine. The perception that the criminal accused usually invokes the doctrine for dilatory purposes only, is not without basis. What is more, the civil and criminal court may actually even be the same court exercising both civil and

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[76] *Supra* note 20, at 180.
[77] *Supra* note 18.
[78] *Id.* at 266, 267.

criminal jurisdiction (and this includes a situation where the civil action is instituted with the criminal action), in which case it becomes absurd for such court to play Alphonse and Gaston with itself.

It would be best therefore to do away altogether with the doctrine of prejudicial question. Let the criminal court decide the issue regardless of whether the same or a similar issue is contemporaneously being litigated in a civil action. There is no good reason for the criminal court, which may even be the same court, to defer to the civil court.

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