

CARPIO'S "INTENTIONAL TORTS IN PHILIPPINE LAW": A COMMENTARY*

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I. INTRODUCTION

This is a brief commentary on the paper *Intentional Torts in Philippine Law* written by now Senior Associate Justice Carpio when he was still a student in the University of the Philippines College of Law. The paper is a seminal work which deserves a far more comprehensive and in depth analysis. This commentary is merely an attempt to possibly initiate steps in that direction.

This commentary is also by no means an exhaustive discussion of Justice Carpio's views on intentional torts but is limited merely to the examination of the contents of his paper as written in 1972. We imagine that Justice Carpio, in the course of his long and illustrious career as lawyer and magistrate, has spoken on and written about the subject on numerous other occasions. Hence, throughout this commentary, we would be examining the arguments made by "the paper" in deference to Justice Carpio's views written or spoken of elsewhere.

II. OVERVIEW

Senior Associate Justice Carpio's 1972 paper entitled *Intentional Torts in Philippine Law* argues against what is perceived as an unwarranted focus on quasi-delicts in jurisprudence, which results in torts being neglected. This neglect is attributed to the lack of understanding of tort provisions in the Civil Code and the tendency of the Supreme Court to inject American tort principles into the concept of quasi-delict. In fact, the argument is made that actions based on quasi-delict have pre-empted the area of tort law reserved for intentional torts.

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To a large extent, this observation still holds true as the number of cases involving quasi-delicts far outstrips the number that mentions the term “intentional tort.” At the time this commentary was written, only 11 Philippine cases mention the term “intentional tort” or its plural. In two of these cases, the term “intentional tort” appears to be subsumed within the concept of quasi-delict or *culpa aquiliana*.¹ In two other cases,² the term is not even discussed in the majority opinion. In another case, the term only appears in a footnote.³ In six cases,⁴ the Court mentioned that intentional torts were examples of independent civil liabilities, but nothing more. In most of these cases, Articles 32 and 34 of the Civil Code are explicitly identified as intentional torts. But none of these cases were decided on the basis of intentional torts. Thus, no Philippine case contains a full-blown discussion on the concept. At best, the only substantial discussion has been the identification of Article 32 and 34 as intentional torts.

In essence, the paper attempts to remedy the neglect of the concept of intentional tort through an inquiry into the nature, origin and scope Articles 20, 21 and 26 of the Civil Code.⁵ The main theory expounded is that, if people are made more aware how these articles can be used, people will resort to using these articles more often.

III. PHILIPPINE TORT LAW AND INTENTIONAL TORTS

Before launching into a detailed discussion of the three articles, the paper proposes a division of Philippine tort law as follows:

¹ “In *culpa aquiliana*, or quasi-delict, (a) when an act or omission causes physical injuries, or (b) where the defendant is guilty of intentional tort, moral damages may aptly be recovered.” *B.F. Metal v. Lomotan*, G.R. No. 170813, Apr. 16, 2008; *Expertravel & Tours, Inc. v. Court of Appeals*, G.R. No. 130030, 309 SCRA 141, 146, June 25, 1999.

² *MVRS Publications, Inc. v. Islamic Da’wah Council of the Philippines, Inc.*, G.R. No. 135306, Jan. 28, 2003; *Li v. Sps. Soliman*, G.R. No. 165279, June 7, 2011.

³ “In *culpa aquiliana*, moral damages may be recovered when the act or omission complained of causes physical injuries or where the defendant is guilty of intentional tort.” *Far East Bank and Trust Co. v. Court of Appeals*, G.R. No. 108164, Feb. 23, 1995.

⁴ *Sps. Santos v. Pizarro*, G.R. No. 151452, July 29, 2005; *Cancio v. Isip*, G.R. No. 133978, Nov. 12, 2002; *L.G. Foods Corp. v. Pagapong-Agraviador*, G.R. No. 158995 Sept. 26, 2006; *Lim v. Kou Co Ping*, G.R. No. 175256, Aug. 23, 2012; *Safeguard Security Agency, Inc. v. Tangco*, G.R. No. 165732, Dec. 14, 2006; *Rafael Reyes Trucking Corp. v. People*, G.R. No. 129029, Apr. 3, 2000.

⁵ However, the treatment given to Article 21 is not as extensive as the treatment given to Articles 20 and 26.

(a) Intentional torts, which may be broken down into two: those which were adopted from American jurisprudence, and those which were taken from the codes of civil law jurisdictions; (b) Negligent torts, which may also be divided into two: those which are covered by Article 2176 and those which are not; [and] (c) Strict liability tort, such as the Workmen's Compensation Act, Articles 1711, 2183 and 2187 of the Civil Code.⁶

To date, this tripartite division is the best model to explain the scope and the relationship among the divisions of Philippine tort law. While court decisions still conflate the concepts of tort and quasi-delict and confuse the latter with what is clearly strict liability provisions of the Civil Code, the paper clearly distinguishes the three classifications. If Philippine jurisprudence would only adhere to this model, there would be less confusing cases.

Noticeably, however, the paper does not define the concept of intentional tort nor enumerate all the different types of intentional torts. It only identifies its two sources: those which were adopted from American jurisprudence, and those which were taken from the codes of civil law jurisdictions. Considering the context of the paper, it may be assumed that all the intentional torts the author was referring to are found only in the Civil Code. Although the paper refers to "tort actions found in the chapter on Human Relations of the New Civil Code," it is not clear whether it considers all of these provisions as intentional torts provisions.⁷

A. Article 20: Breach of Statutory Duty

The paper notes that although Article 20 is a "fertile source of tort actions," it "has never been delved upon by our commentators, and the Supreme Court has not had the occasion to interpret it."⁸ True enough, the 1972 paper far outstrips the discussion in modern law books on Article 20 or the tort on the breach of statutory duty.⁹ While most modern commentaries do not discuss Article 20, the paper explores the vast contours of the legal provision.

⁶ Antonio Carpio, Note, *Intentional Torts in Philippine Law*, 47 PHIL. L.J. 649, 650 (1972).

⁷ *Id.* at 649.

⁸ *Id.* at 651.

⁹ Two writers discuss Articles 19 and 20, but only De Leon offers a brief discussion on Article 20. See J. CEZAR SANGCO, *PHILIPPINE LAW ON TORTS AND DAMAGES* (1994); TIMOTEO AQUINO, *TORTS AND DAMAGES* (2005); HECTOR DE LEON & HECTOR DE LEON, JR., *COMMENTS AND CASES ON TORTS AND DAMAGES* (2012).

There have been several Supreme Court cases which employ Article 20.¹⁰ In some of these cases, it only seems that Article 20 is applied because the provision was invoked. However, a closer inspection of the Court rulings raises doubts on whether Article 20 is used at all. For instance, in some cases,¹¹ there is no mention of a statute or law that was violated. In others,¹² while Article 20 is mentioned, it is not clear whether the provision was in fact the basis of the Court's ruling. Therefore, while there have been several cases which mention Article 20, there is negligible improvement in the body of jurisprudence on this neglected tort.

Article 20 states:

ARTICLE 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

Though the paper notes that "this provision appears to be so pervasive that it is extremely difficult to locate its boundary lines,"¹³ it is able to effectively explain the legal contours of this tort by going beyond Philippine jurisprudence. It embarks on a comparative law approach, drawing from statutes of other jurisdictions. Because of this approach, the paper is able to describe the requisites for a proper invocation of the tort. It also anticipates possible conflicts and provides a way to reconcile seemingly inconsistent or overlapping provisions.¹⁴ The paper's discussion on Article 20 is quite impressive. The magnitude of the research required to craft this discussion would be better appreciated if the reader remembers that this was done before the age of the Internet.

However, we do have points of disagreement.

¹⁰ Although none of these cases refer to Article 20 as a tort arising from breach of statutory duty.

¹¹ *Petrophil Corp. v. Court of Appeals*, G.R. No. 122796, Dec. 10, 2001; *Bautista v. Mangaldan Rural Bank, Inc.*, G.R. No. 100755, Feb. 10, 1994.

¹² *Globe Mackay Cable and Radio Corp. v. Court of Appeals*, G.R. No. 81262, Aug. 25, 1989; *Garcia v. Salvador*, G.R. No. 168512, Mar. 20, 2007. In the first case, the Court lumps together Article 19, 20, and 21 and gives the reader the option to decide which of the equally valid options serves as the basis of its decision. In the second case, the Court mentions Article 20 but it also certain elements of actionable conduct, making it unclear as to what was the actual basis of its decision.

¹³ Carpio, *supra* note 6, at 652

¹⁴ *Id.* at 659.

The paper points out that “[u]nder the German Code, one may be vicariously liable for breach of statutory duty committed by persons for whom one is responsible.”¹⁵ It further argues that “[t]he principle underlying Article 2180 of our Code may be extended to breach of statutory duty without in any way straining the rules of statutory construction.”¹⁶ It justifies this by pointing out that “the Supreme Court has deemed it proper and desirable to apply the principle of vicarious liability to cases involving intentional wrongdoing,” citing the cases of *Salen v. Balce*¹⁷ and *Fuellas v. Cadano*.¹⁸

This is a point we must respectfully disagree with. First, the language of Article 2180 is clear—rules on vicarious liability of certain persons responsible for particular actors are limited to cases falling under the scope of Article 2176.¹⁹ It may be possible for a negligent act, which satisfies the elements of Article 2176, to also constitute a breach of statutory duty under Article 20. But if a plaintiff is trying to hold a defendant vicariously liable for the negligent act of another, his claim should be based on quasi-delict under Article 2176 and not breach of statutory duty under Article 20.

The reason is simple. First, the text of Article 2180 suggests that the provision was intended to limit vicarious liability to actions constituting a quasi-delict. If the intention were to allow vicarious liability for all tort actions or for Article 20, the Civil Code would have expressly provided for such a rule. Furthermore, to allow the rules explicitly applicable to quasi-delicts to apply to torts would blur the distinction between torts and quasi-delicts. This is something the paper argues against. Second, the cases cited do not provide adequate basis for applying Article 2180 to actions based on Article 20.

Salen v. Balce involved the defendant's minor child shooting and killing the plaintiffs' child. The defendant's child was convicted of homicide and the plaintiffs sought to recover damages from the father in a civil action for damages. The issue was whether the father was liable despite the absence of a provision in the Revised Penal Code making him subsidiary liable for his son, who was above 15 years old and found to have acted with discernment. The Court ruled that the applicable rule was Article 2180. It added:

¹⁵ *Id.* at 661.

¹⁶ *Id.*

¹⁷ *Salen v. Balce*, G.R. No. 14414, 57 O.G. No. 37, 6603, Apr. 27, 1960.

¹⁸ *Fuellas v. Cadano*, G.R. No. 14409, Oct. 31, 1961.

¹⁹ The first sentence states: “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.” CIVIL CODE, art. 2180, ¶ 1.

To hold that this provision does not apply to the instant case because it only covers obligations which arise from quasi-delicts and not obligations which arise from criminal offenses, would result in the absurdity that while for an act where mere negligence intervenes the father or mother may stand subsidiarily liable for the damage caused by his or her son, no liability would attach if the damage is caused with criminal intent. Verily, the void that apparently exists in the Revised Penal Code is subserved by this particular provision of our Civil Code, as may be gleaned from some recent decisions of this Court which cover equal or identical cases.²⁰

In *Fuellas v. Cadano*,²¹ the issue was the civil liability of a father under Article 2180 for an act done by his son, which injured his classmate. It was contended that the act complained of was deliberate and did not fall under Articles 2176 and 2180. In upholding the decision of the lower court, the Supreme Court cited the ruling in *Salen v. Balce*.

What these cases establish is a rule allowing for the application of Article 2180 to criminal acts. These cases did not explicitly discuss the applicability of Article 2180 on actions based on Article 20. While the paper admittedly only uses these cases to highlight that the principle of vicarious liability may be applicable to intentional wrongdoing, it may be inappropriate to apply Article 2180 to all forms of intentional wrongdoing based on these two cases alone. One must remember that the Court applied Article 2180 in the two cases only because the lacuna in the Revised Penal Code would have left the plaintiff without a legal remedy.

Another point of disagreement is the applicable rule when an act constitutes both a quasi-delict under Article 2176 and a breach of statutory duty under Article 20. The paper argues:

It is submitted that a breach of statutory duty, although it may coincidentally constitute a quasi-delict, should be regulated by Article 20, this being the provision which specifically governs such type of torts.²²

The invocation of *lex specialis* may not resolve the issue because *lex specialis* can also be used to justify the primacy of Article 2176 as the special rule applicable to acts committed *via* negligence and Article 20 as the general rule

²⁰ *Salen v. Balce*, G.R. No. 14414, Apr. 27, 1960.

²¹ *Fuellas v. Cadano*, G.R. No. 14409, Oct. 31, 1961.

²² *Carpio*, *supra* note 6, at 662.

applicable to intentional and negligent acts. Any primacy given to Article 20 over Article 2176 would also suggest a hierarchy among tort actions, which is not supported by the Civil Code.

B. Article 21: Willful Acts Contrary to Morals, Good Customs, or Public Policy

Article 21 states:

ARTICLE 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

The paper observes that "more than any article in the Civil Code, Article 21 comes closest to prescribing moral norms as a legal standard of conduct." It adds:

It will not be far-fetched to speculate that the courts can utilize Article 21 to build up a whole system of case law, moderating if not completely negating, the rigidity of the Civil Code. The wide swath cut by this provision may furnish a *catch-all sanction to every conceivable unreasonable conduct*.²³

This prophecy has been fulfilled as Article 21 has been used in broad spectrum of cases, many involving moral seduction, public humiliation, malicious prosecution and oppressive dismissal.²⁴

The paper also warns that "its scope can also be very easily stretched to the breaking point" and that "among all the causes of action recognized by the Code, the most susceptible to abuse."²⁵ But the paper identifies a word in Article 21 "that could either make it a veritable tool of oppression or a laudable source of relief for justly aggrieved persons."²⁶ That word is "willful."

As the paper explains:

It is significant that the Code uses the motive-laden word "willfully" rather than the comparatively weaker word "intentionally." An act

²³ *Id.* at 662-63. (Emphasis supplied.)

²⁴ See ROMMEL CASIS, ANALYSIS OF LAW AND JURISPRUDENCE ON QUASI-DELICTS 541-593 (2012).

²⁵ Carpio, *supra* note 6, at 663.

²⁶ *Id.* at 664.

which is “willful” connotes an evil or malicious motive, while an act which is merely intentional has ordinarily no such implication.²⁷

Thus, the paper argues that the “willful act under Article 21 requires malice or deceit as an essential element.”²⁸ True enough, the Court included the element of an act done with intent to injure in its enumeration of the elements of actions based on Article 21.²⁹

C. Article 26: Violation of Personal Rights

The paper devotes an extended discussion on various types of actions that may fall under the scope of Article 26³⁰ as violations of the “principal rights covered by the protective mantle of this provision.”³¹ It identifies the following personal rights:

1. The right to personal dignity;
2. The right to personal security;
3. The right to family relations;
4. The right to social intercourse;
5. The right to privacy; and
6. The right to peace of mind.³²

The paper notes:

²⁷ *Id.* at 664.

²⁸ *Id.* at 665.

²⁹ *Albenson Enterprises Corp. v. Court of Appeals*, G.R. No. 88694, Jan. 11, 1993; *ABS-CBN Broadcasting Corp. v. Court of Appeals*, G.R. No. 128690, Jan. 21, 1999.

³⁰ CIVIL CODE, art. 26. The provision reads:

Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

- (1) Prying into the privacy of another's residence;
- (2) Meddling with or disturbing the private life or family relations of another;
- (3) Intriguing to cause another to be alienated from his friends;
- (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

³¹ Carpio, *supra* note 6, at 670. Thus, it seems proper under the circumstances to label an Article 26 violation as a violation of personal rights.

³² *Id.* at 670. (Citations omitted.)

Although up to the present it has remained sorely neglected, perhaps one of the most fertile sources of tort action in the Civil Code is Article 26, which practically incorporates a large portion of American tort law.³³

1. *Violation of the Right to Personal Dignity*

The paper explains that the violation of the right to personal dignity is “analogous to the American law concept of defamation, made up of the twin torts of libel and slander.”³⁴ If this were true, there would be an overlap with Article 33, which provides:

ARTICLE 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, and shall require only a preponderance of evidence.³⁵

Perhaps the overlap can be rectified by limiting the application of Article 26 to cases where the alleged defamation does not constitute a crime but is nonetheless defamatory in the common sense of the term. The Court has ruled that actions based on Article 33 are *ex delicto*,³⁶ or an obligation arising out of a crime.³⁷ It has also used the elements of the crime of libel in determining whether an action based on Article 33 would prosper.³⁸ Therefore, Article 26 may be used for cases in which there were defamatory remarks but the jurisprudential requirements of Article 33 were not complied with.

2. *Violation of the Right to Personal Security*

The paper explains that the violation of the right to personal security is identical to the American intentional tort of battery and assault. If this were the case, there would be an overlap with Article 33, which includes “physical injuries.” The Court previously held that this civil action for physical injuries is “similar to the civil action for assault and battery in American Law.”³⁹ However, the solution offered for defamation can also be used here. In other words, if all

³³ *Id.* at 669.

³⁴ *Id.* at 672.

³⁵ CIVIL CODE, art. 33.

³⁶ *Madeja v. Caro*, G.R. No. 51183, Dec. 21, 1983.

³⁷ *People v. Garcia*, G.R. No. 45280, June 11, 1981.

³⁸ *Yuchengco v. Manila Chronicle Publishing Corp.*, G.R. No. 184315, Nov. 25, 2009.

³⁹ *Carandang v. Santiago*, G.R. No. 8238, May 25, 1955.

jurisprudential requirements for Article 33 are not complied with, the Court may resort to Article 26.

3. *Violation of the Right to Social Relations*

The paper explains:

The right to social relations embodied in Article 26 imposes liability for “intriguing to cause another to be alienated *from his friends*.” The cause of action created by this provision is quite unique and seems to have no exact parallel in American law.⁴⁰

While the word “intrigue” may imply malice or ill will the paper argues that the right to social relations can be violated without malicious acts. It adds:

[S]imple intentional acts are sufficient where the violation does not assume the form of an intrigue, as when a person is unreasonably barred from joining a social club although he possesses the necessary qualifications.⁴¹

Though the argument may seem reasonable, it departs from the plain language of Article 26 and offers no justification for this departure.

4. *Violation of the Right to Family Relations*

The paper explains that the right to family relations in Article 26 may be a source of tort actions between husband and wife. It also argues that “the right to family relations includes the right to consortium and to recover damages in case of breach thereof.”⁴² The right to consortium was precisely one of the issues in *Kierulf v. Court of Appeals*,⁴³ where both claimant and *ponente* could have used Article 26 to determine whether the right to consortium existed. However, seemingly unaware of Article 26, the Court relied on a California case as basis of its decision.

In this case, loss of marital consortium was defined as “loss of conjugal fellowship and sexual relations.”⁴⁴ Lucila Kierulf was badly disfigured as a result of a vehicular collision, which the defendant was liable for. The spouses Kierulf

⁴⁰ Carpio, *supra* note 6, at 675.

⁴¹ *Id.* at 675-76.

⁴² *Id.* at 677.

⁴³ *Kierulf v. Court of Appeals*, G.R. No. 99301, Mar. 13, 1997.

⁴⁴ *Id.*

alleged that "the disfigurement of Lucila's physical appearance cannot but affect their marital right to 'consortium' which would have remained normal were it not for the accident."⁴⁵ It would seem that "consortium" mainly, if not solely, consists of intimate acts expected of husband and wife. In contrast, the paper's concept of "consortium" is broader in scope, consisting of "a bundle of legal rights, namely: services, society, sexual intercourse, and conjugal affection."⁴⁶

The paper's discussion on violation of the right to family relations is more extensive than any other section. Drawing from American jurisprudence, it explores the various situations covered under this violation. In so doing, it also raises intriguing possibilities for tort actions under Article 26.

5. Violation of the Right to Privacy

Because Philippine jurisprudence on the right to privacy was barren, the paper argues that resort to American jurisprudence was inevitable. Thus, the paper seems to advocate the adoption of the common law rules on the right to privacy, which involves four distinct types of tort:

1. Intrusion upon the plaintiff's physical and mental solicitude;
2. Public disclosure of private facts;
3. Placing the plaintiff in false light in the public eye; and
4. The commercial appropriation of the plaintiff's name.

Whether or not these common law torts can properly be subsumed under Article 26 requires a more comprehensive discussion and would be beyond the scope of this commentary. Article 26 itself does not mention the right to privacy, nor does it specifically mention any of the four torts previously enumerated. However, it does say that every person shall respect the privacy of his neighbors and other persons. It also lists "prying into the privacy of another's residence" as one of the acts that can produce an action for damages.⁴⁷ But whether the current language of Article 26 is sufficient for Philippine courts to allow the four distinct torts is a question that must be threshed out elsewhere.

⁴⁵ *Id.*

⁴⁶ Carpio, *supra* note 6, at 677. Consortium is defined as "[a] spouse's interest in his relation with the other spouse."

⁴⁷ CIVIL CODE, art. 26(1).

6. *Violation of the Right to Peace of Mind*

The paper argues that “[v]iolation of the right to peace of mind under Article 26 is akin to the American tort of intentional infliction of mental distress, which is now recognized by American courts as a distinct tort.”⁴⁸ It adds that recovery may be granted even without physical illness resulting from the offensive words or acts under Article 26. The paper also points out:

Intentional infliction of mental distress has been impliedly recognized in this jurisdiction without being labelled as a tort, and where it was found to be a tort, there was doubt from what article of the code it draws life.⁴⁹

A perfect example for the application of this rule would be *Singapore Airlines v. Fernandez*.⁵⁰ In this case, acclaimed soprano Andion Fernandez was invited to sing before the King and Queen of Malaysia. Unfortunately, her flight was delayed and she missed her connecting flight. When she tried to explain her predicament to the employees of Singapore Airlines, they treated her rudely. The Court narrated:

As a result of this incident, the respondent's performance before the Royal Family of Malaysia was below par. Because of the rude and unkind treatment she received from the petitioner's personnel in Singapore, the respondent was engulfed with fear, anxiety, humiliation and embarrassment causing her to suffer mental fatigue and skin rashes.⁵¹

The courts treated the case as breach of contract as a result of which the courts had to determine if there was bad faith in order to entitle her to moral damages. Had this been decided on Article 26, such a finding would not have been necessary.

D. Intentional Torts and Quasi-Delicts

The paper argues that “there is a need to distinguish intentional torts from quasi-delicts for the simple reason that the principles applicable to one may not be relevant to the other.”⁵² We agree with the paper completely on this point

⁴⁸ Carpio, *supra* note 6, at 687-88.

⁴⁹ *Id.* at 688.

⁵⁰ *Singapore Airlines Ltd. v. Fernandez*, G.R. No. 142305, Dec. 10, 2003.

⁵¹ *Id.*

⁵² Carpio, *supra* note 6, at 690.

and its observation that the Court has taken to equating intentional torts with quasi-delicts. In a masterful display of analysis, the paper dissects several cases which display the Court's propensity to conflate quasi-delicts with intentional torts.

However, to be fair to the Court, there is one instance when it is justifiable to treat intentional torts as quasi-delicts. This is when the kind and amount of damages to be awarded in cases involving intentional torts must be determined. As Article 2195 of the Civil Code provides, the provisions of Title XVIII of the Civil Code on Damages is applicable to all obligations mentioned in Article 1157. On the other hand, the latter lists the following as sources of obligations:

1. Law
2. Contracts
3. Quasi-contracts
4. Acts or omissions punished by law
5. Quasi-delicts

The terms "intentional tort" or "torts" are noticeably absent from the list. The Court has resolved the problem of calculating damages by applying provisions pertaining to quasi-delicts to cases involving torts.⁵³ Therefore, with respect to the award of damages, torts are treated as quasi-delicts.

E. Quasi-Delicts and Pre-Existing Contractual Relationships

One of the most baffling aspects of the Philippine law on quasi-delicts is whether a quasi-delict can exist despite the existence of a pre-existing contractual relationship between the parties.⁵⁴ The paper squarely addresses this issue:

We are disposed to think that the second sentence did not add any requirement to those already recognized under the old law for the existence of a quasi-delict. The second sentence can best be explained as an attempt to distinguish an action based on quasi-delict from one founded on breach of contract, particularly in cases where a quasi-delict is coincident with a breach of contract. An action under Article 2176 may lie although the relation between the parties which gives rise to the quasi-delict emanates from a contract, as when the defendant

⁵³ *Globe Mackay Cable and Radio Corp. v. Court of Appeals*, G.R. No. 81262, Aug. 25 1989.

⁵⁴ *CASIS*, *supra* note 24, at 74-104.

through negligence violates a legal duty which arises when the contract is made *but which legal duty is not identical with the contract obligation*.⁵⁵

Thus, the paper argues that a quasi-delict can exist even if there is a pre-existing contractual relationship between the parties provided that the legal duty violated by the defendant through negligence is not identical with the legal duty under the contract. The rule forwarded by the paper is:

[I]f a *legal duty* exists between the parties, *separate and independent from that imposed by the contract*, a quasi-delict may lie for violation of such legal duty notwithstanding a concurrent breach of the contractual obligation.⁵⁶

While jurisprudence has not been consistent, there is a body of cases which reflect this rule.⁵⁷

IV. CONCLUSION

Intentional Torts in Philippine Law redraws the blurred line between intentional torts and quasi-delicts by charting the substantial content of Articles 20, 21, and 26. It does this in a seamless discussion of law, jurisprudence and policy, employing the comparative law approach when appropriate.

The paper promotes a better administration of justice by offering existing but oft-neglected remedies under the Civil Code. It does this by exploring the possibilities offered by intentional torts and by asking the difficult questions and providing sensible answers to them. Unfortunately, while the paper was written more than four decades ago, a cursory review of modern jurisprudence reveals that its recommendations have been largely ignored. Certainly, the fault does not lie in the paper as it suffers no infirmity as far as legal reasoning and extensive research is concerned.

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⁵⁵ Carpio, *supra* note 6, at 693-94. (Emphasis supplied.)

⁵⁶ *Id.* (Emphasis supplied.)

⁵⁷ See CASIS, *supra* note 24, at 74-104.