CYBERBULLYING AS ACTIONABLE TORT*

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ABSTRACT

Bullying has always been a problem. But with the advent of cyberspace and the concomitant rise of "cancel culture," its already harmful effects have since increased exponentially in the form of cyberbullying. Now, anyone and everyone can fall victim to hateful words online. While bullying has been glossed over by society for the longest time, the 21st century's renewed emphasis on mental health necessitates a careful examination of this phenomenon and its legal consequences for both the victim and the perpetrator. In line with that, this Article posits that cyberbullying constitutes an actionable tort under the Civil Code from which aggrieved persons can seek relief. This Article also provides an argumentative framework for litigating tortious cyberbullying actions before the courts.

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INTRODUCTION

Stick and stones may break my bones, but words will never hurt me.

That saying is an adage as old as time. Over the years, it has been chanted by schoolchildren as a sort of collective defense mechanism to showcase their resiliency in the face of psychological abuse and verbal bullying. And for the longest time, it worked. People—men especially—were expected to brush off the impact of hurtful words and comments lest they risk being branded as soft and whiny. As long as there were no wounds, there was no problem.

However, as with all developments, the perceptions of people change. In legal circles, the dangers once only reserved for actual bodily injury have been extended to encompass the instilling of fear of such injury.[1] Regard for human emotions expanded the scope of personal immunity beyond merely the body of the individual.[2] Thoughts, emotions, and sensations began to demand recognition in law.[3] Along with this came the acknowledgement that bullying is no longer just a rite of passage that everyone must experience over the course of their lives.[4] As the number of suicides in young people continues to rise, bullying can no longer be dismissed as just "kids being kids."[5] The problem is also not just prevalent among kids—it can be very widespread among adults, especially with the rise of "call-out culture"[6] online.

In September 2019, for instance, a prominent student leader from the University of the Philippines (UP) College of Mass Communication was subjected to a "social media lynch mob"[7] after an anonymous Twitter account had leaked photos online that allegedly implicated him in acts of misogyny

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[1] Samuel Warren & Louis Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 193–94 (1890).

[2] *Id.*

[3] *Id.* at 195.

[4] Jessica Brookshire, *Civil Liability for Bullying: How Federal Statutes and State Tort Law Can Protect Our Children*, 45 CUMB. L. REV. 351, 351 (2014).

[5] *Id.*

[6] *See* David Brooks, *The Cruelty of Call-Out Culture*, N.Y. TIMES, Jan 14. 2019, *at* https://www.nytimes.com/2019/01/14/opinion/call-out-social-justice.html. "Even the quest for justice can turn into barbarism if it is not infused with a quality of mercy, an awareness of human frailty and a path to redemption."

[7] Michael L. Tan, *Social media lynch mobs*, INQUIRER.NET, Oct. 2, 2019, *at* https://opinion.inquirer.net/124346/social-media-lynch-mobs.

and violence.[8] Not only was he ridiculed online with vitriolic remarks, but he also became the subject of widespread jokes and memes, further shaming and making fun of him. A few days later, he died by suicide.[9]

That story is just among thousands, if not tens of thousands, of how cyberbullying inflicts serious mental and psychological damage on a person. Fortunately, although cyberbullying is still very much a developing area of law, our current legislative framework on civil liabilities allows them to seek justice against such wrongdoings in the form of damages. This is what this Article will ultimately attempt to shed light on.

Part I will first define what exactly constitutes cyberbullying and why it is of the utmost importance to recognize its harms to society. Part II will then discuss the current laws regulating cyberbullying and why they fall short of providing an adequate remedy to the aggrieved party, thereby necessitating a resort to tort law. Afterward, Part III will argue why cyberbullying properly constitutes an actionable tort under the Civil Code from which aggrieved parties can seek relief. This chapter will also provide an argumentative framework that ties the concept of cyberbullying as a cause of action to other essential tort rules and doctrines, such as proximate cause, vicarious liability, and joint tortfeasors. Lastly, Part IV will tie everything together and summarize the arguments previously set forth.

I. CYBERBULLYING AND THE NEED TO TALK ABOUT IT

A. What is Cyberbullying?

Before cyberbullying can be properly defined, it must first be settled what exactly constitutes bullying in the general sense. Different scholars have different interpretations as to its specific elements. One legal scholar defines it as "a persistent pattern of intimidation and harassment directed at a particular student in order to humiliate, frighten, or isolate the child."[10] This was certainly the view taken by the Anti-Bullying Act of 2013, which adopts a similar definition of the term, that is:

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[8] *See* Jaia Yap, *U.P. community condemns frat-related violence, impunity over leaked chat,* RAPPLER, Sept. 27, 2019, *at* https://www.rappler.com/moveph/241208-up-community-condemns-fraternity-related-violence-impunity-leaked-chat/.

[9] *See* Tan, *supra* note 7.

[10] Daniel B. Weddle, *Bullying in Schools: The Disconnect Between Empirical Research and Constitutional, Statutory, and Tort Duties to Supervise*, 77 TEMP. L. REV. 641, 645 (2004), *citing* ANNE G. GARRETT, BULLYING IN AMERICAN SCHOOLS 9–11 (2003).

> [A]ny severe or *repeated* use by one or more students of a written, verbal or electronic expression, or a physical act or gesture, or any combination thereof, *directed at another student* that has the effect of actually causing or placing the latter in *reasonable fear of physical or emotional harm* or damage to his property; *creating a hostile environment* at school for the other student.[11]

However, the problem with this type of definition is that it severely limits bullying to a school setting. Although there is no doubt that bullying is all the more festered in campus and in the schoolyard, adopting such a restrictive definition has the unwanted effect of disregarding, if not ignoring, acts of bullying that occur between grown adults—a prime example of which is workplace bullying.[12] Likewise, such a definition unnecessarily boxes the general concept of bullying into what is only supposed to be a specific subclass of the same. It effectively disregards acts of bullying that occur just because. Imagine the absurdity of a situation where a young person is still consistently tormented by a former classmate years after graduating from high school. If the abovementioned description of bullying is to be taken definitively, then said person can no longer claim being bullied, despite the continued infliction of mental and psychological distress upon them, simply because they are technically no longer a student.

Alternatively, bullying should not be defined so extensively as "to encompass both appalling violence or harassment and a few mean words."[13] To do so would only serve to overuse the word and ultimately prevent a just resolution of the problem. Such a misdiagnosis of the actual ills of bullying would render the real problem seemingly impossible to solve.[14] For example, it would be a stretch to say that the mere posting of a YouTube video detailing one's unpleasant experience with a certain doctor in a provincial hospital during a vacation should in itself be considered bullying, despite the possible defamatory and injurious nature of such an act.[15] Instead of broadly invoking and applying the term to every seemingly hostile act or confrontation, it is important to provide a comprehensive definition that is both expansive

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[11] Rep. Act. No. 10627 (2013), § 2. Anti-Bullying Act of 2013. (Emphasis supplied.)

[12] *See* Mark Murphy, *Five Ways to Shut Down Workplace Bullying*, FORBES, Oct. 21, 2018, *available at* https://www.forbes.com/sites/markmurphy/2018/10/21/five-ways-to-shut-down-workplace-bullying/#54b014bee711.

[13] Emily Bazelon, *Defining Bullying Down*, N.Y. TIMES, Mar. 11, 2013, *at* https://www.nytimes.com/2013/03/12/opinion/defining-bullying-down.html.

[14] *Id.*

[15] *See* Hannah Mallorca, *Yeng Constantino called out for 'doctor-shaming,' but praises Siargao local gov't for addressing husband's accident*, INQUIRER.NET, July 21, 2019, *at* https://entertainment.inquirer.net/339086/yeng-constantino-called-out-for-doctor-shaming-but-praises-siargao-local-govt-for-addressing-husbands-accident.

enough to cover the actual harms posed, yet also concise enough to avoid the misuse of the term.

For these reasons, bullying, for the purposes of this Article, shall be defined as the intentional or deliberate infliction of severe emotional, mental, or psychological distress upon any person,[16] whether through physical acts or gestures, or written or verbal expression.

This definition noticeably drops the express restriction of the term to students and children. In so doing, it eliminates the iron wall previously separating students and adults, and now allows more people to seek redress for injurious acts regardless of their identity. Moreover, this definition omits repetition as an essential element. This is certainly not to discredit the effect of repetitive conduct. On the contrary, the reason behind this change is to acknowledge that repeated actions are not an end in itself in bullying. To put it simply, it is not the element of repetition as is that draws the fine line between playful banter and bullying—rather, it is the severity of the distress inflicted that serves as the actual measure. At most, repetitive conduct is only indicative of severity, but never an element in itself. In any case, repetition is not totally disregarded, but only subsumed under the more general umbrella of severity.

Finally, this definition notably requires that the infliction be intentional or deliberate. The logic for this is simple: An examination of bullying as a phenomenon will show that such acts are almost always conducted knowingly, with the goal of making the subject feel shame or disgrace. This is especially true within the context of "call-out culture." Any charge of bullying that lacks this element will fail.

Placing that definition within the context of cyberspace results in what is known as cyberbullying, which, for the purposes of this Article, is defined as the intentional or deliberate infliction of severe emotional, mental, or psychological distress upon any person, through *electronic expression.* The term "electronic expression" is not to be construed strictly within the context of the internet or social media. Rather, it includes acts of bullying committed

[16] The distress referred to herein relates to the outcome of the specific act or expression done. Note that such acts or expression need not necessarily be directed against the aggrieved party at the start. It suffices that such act or expression, even if done through a third person or an object, was ultimately designed to inflict distress upon the aggrieved party. An example of this would be the constant vandalization of a person's real property for the purposes of annoying or infuriating them.

even via emails or offline text messages.[17] Otherwise, if "electronic expression" were to be confined only to internet exchanges, then a great chunk of cyberbullying cases would remain unchecked and unregulated.

Now that cyberbullying has been properly defined, the next step is to understand why there is such a need to tackle the issue to begin with.

B. The Need to Talk About Cyberbullying

1. Cyberbullying as Unprotected Speech

The dangers brought by physical bullying are readily apparent to anyone who enjoys the gift of sight—bones are cracked, bruises are aplenty, and cuts are littered all over. Victims are physically scarred by the experience, if not outright put in fatal condition. Cyberbullying, on the other hand, is much harder to detect. While there are digital traces of the cyberbullies' acts in the form of screenshots and timestamps, the effects thereof are not as easily detectable as those of its physical counterpart. There are no bruises or gashes to stand as evidence of the distress inflicted upon the victim. In more serious cases, the family and friends of the victim never even come to know of the bullying until after the victim has taken their life.[18]

Some legal scholars believe, though, that perhaps due to its non-physical nature, cyberbullying is generally considered protected speech.[19] I beg to disagree. Although the freedom of speech enjoys strict protection under the Constitution, it is not absolute; jurisprudence has already carved out several exceptions where certain forms of speech may legally be curtailed. Admittedly, neither our own Supreme Court nor the US Supreme Court has had the opportunity to rule on the matter of cyberbullying as protected (or unprotected) speech. But there is no need to do so regardless. The harsh and threatening words of bullies already fall under the category of fighting words,[20]

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[17] Sandra Marie Olaso-Coronel, *Cyberbullying in the Context of Balancing of Rights*, 93 PHIL. L.J. 328, 329 (2020).

[18] *See* Darcy K. Lane, *Taking the Lead on Cyberbullying: Why Schools Can and Should Protect Students Online*, 96 IOWA L. REV. 1791, 1793 (2011), *citing* RYAN'S STORY, http://www.ryanpatrickhalligan.org (last checked Aug. 14, 2020).

[19] Olaso-Coronel, *supra* note 17, at 336.

[20] *See* Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942). Fighting words are "those which, by their very utterance, inflict injury or tend to incite an immediate breach of peace." *See also* Lane, *supra* note 18, at 1800–01.

which is an established example of unprotected speech. The most clear-cut illustration of this concept is the story of Casey Heynes.[21]

Heynes was a student at a Western Sydney high school.[22] For several years, he endured the torment of being bullied by fellow students.[23] However, in 2011, in a moment caught on video, Heynes decided that he had had enough of his bully and fought back by picking the latter up and body slamming him onto the floor.[24] In that situation, Heynes was forced to fight back given the incendiary nature of his bully's remarks. Yet the truth remains that some, if not most, victims of bullying do not fight back like Heynes. Even then, that the victim did not choose to retaliate does not remove such utterances from the scope of fighting words. The mere fact that enough agitational remarks were thrown to give the victim valid grounds to respond is enough. Bullying is a dangerous problem with tragic effects; it forms "no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."[25]

2. Cyberbullying as a Health Issue

According to a 2018 survey by the Program for International Student Assessment, out of more than seven thousand 15-year-old Filipino students, some 65% have "reported being bullied at least a few times a month."[26] To put it into context, that figure is nearly three times the 23% average among 36 developed nations, such as the United States, Japan, China, and several European countries.[27] Over the past several years, experts have shifted their analysis of bullying from a sociological lens to a public health lens.[28] Research shows that both the perpetrators and the victims complain of "headaches and

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[21] *Bullying victim: Why I fought back*, N.Z. HERALD, Mar. 21, 2011, *at* https://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10713885.

[22] *Id.*

[23] *Id.*

[24] Emily Crane, *'A 40 second viral video changed my life': Three years on, brave boy who hit back at high school bully reveals how he went from tormented teenager to 'legend'*, DAILY MAIL, June 30, 2014, *at* https://www.dailymail.co.uk/news/article-2674834/How-40-second-video-clip-changed-life-Teenager-hit-high-school-bully-trying-deal-long-lasting-fame.html.

[25] *Chaplinsky*, 315 U.S. at 572, *citing* ZECHARIAH CHAFEE, FREE SPEECH IN THE UNITED STATES 150 (1941).

[26] Katrina Domingo, *6 in 10 Pinoy teens bullied in school: study*, ABS-CBN NEWS, Dec. 14, 2019, *at* https://news.abs-cbn.com/news/12/14/19/6-in-10-pinoy-teens-bullied-in-school-study.

[27] *Id.*

[28] *See* Michael Dhar, *Bullying Increasingly Seen as a Public Health Issue*, HUFFPOST, Nov. 8, 2013, *at* https://www.huffpost.com/entry/bullying-public-health-issue_n_4241468.

stomachaches, have difficulty falling asleep, and fall victim to psychological symptoms, most notably depression and 'very significant anxiety'" as a result.[29] As to the victims specifically, bullying has been shown to negatively impact academic performance, not only in terms of grade point averages and standardized test scores, but also in terms of overall school participation—they are more likely to miss, skip, or even drop out of school altogether.[30] As to the perpetrators, they are more likely to carry over their violent tendencies into adulthood, manifesting in symptoms such as alcohol and drug abuse, domestic violence, and criminal convictions.[31] Perpetrators are also found to likely drop out of school.[32]

These other consequences aside, perhaps the most commonly publicized effect of bullying is suicide.[33] It is certainly not difficult to connect suicidal behavior to bullying.[34] In a study conducted by the Yale School of Medicine, 37 other studies from different countries throughout the world, on the correlation of bullying and suicide, were examined.[35] The results showed that "[a]lmost all of the studies found connections between being bullied and suicidal thoughts among children."[36] Five of those 37 studies "reported that bullying victims were two to nine times more likely to report suicidal thoughts than other children."[37]

Given this increasingly health-based focus on bullying, one might ask: why the need to resort to legal means to combat it? Should all efforts not be placed on funding more in-depth medical research if bullying is indeed a public health issue? For one, the two are not mutually exclusive; one can seek legal advice on the matter while still recognizing the need for a medical solution that can more speedily reduce, if not outrightly eliminate, the harms of bullying. More important, however, a medical approach to bullying, while extremely helpful, is for the most part concerned with a systemic problem and may take longer than desired to produce concrete benefits. A legal approach

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[29] *Id.*

[30] U.S. Dep't of Health & Human Servs., *Effects of Bullying*, STOPBULLYING.GOV, *at* https://www.stopbullying.gov/bullying/effects.

[31] *Id.*

[32] *Id.*

[33] Brookshire, *supra* note 4, at 354.

[34] *See* Perry A. Zirkel, *Public School Student Bullying and Suicidal Behaviors: A Fatal Combination?*, 42 J.L. & EDUC. 633, 634 (2013). *But see* U.S. Dep't of Health & Human Servs., *supra* note 30.

[35] Karen N. Peart, *Bullying-Suicide Link Explored by Researchers at Yale*, YALE NEWS, July 16, 2008, *at* http://news.yale.edu/2008/07/16/bullying-suicide-link-explored-new-study-researchers-yale.

[36] *Id.*

[37] *Id.*

to this issue, on the other hand, provides for quicker relief for the aggrieved parties in the form of judicial recourse. Not only will these parties be properly compensated for whatever damages the perpetrators have caused, but in seeking recourse before the courts, they could also instill a sense of fear in the perpetrator, preventing any repeat actions and ultimately quelling any future attempts at the same.

That being said, the current Philippine legal framework on bullying is not totally silent on the matter. There have definitely been commendable efforts that have been passed to try and address this issue. But unfortunately, as I will discuss later on, they remain insufficient in providing the right level of protection that the issue so properly demands.

II. THE CURRENT LEGAL FRAMEWORK ON CYBERBULLYING

A. Anti-Bullying Act of 2013

Perhaps the most prominent piece of current legislation designed to combat bullying is the Anti-Bullying Act of 2013. The law acknowledges the frequency and seriousness of bullying that has constantly festered in schools in recent years.[38] "Because both the child and the parents may feel (and may be) powerless to change the situation, the school may be the only entity able to intervene effectively to stop the bullying and remedy its effects."[39] One of the most effective things a school can do then is to "establish clearly that bullying in school, in any form, will not be tolerated and, indeed, will be dealt with firmly."[40] The school must likewise ensure that there is little opportunity for children to fall victim to bullying.[41] This is precisely the reason behind the Anti-Bullying Act.

The law is, for all intents and purposes, a regulatory measure imposed upon schools—both public and private. This is extremely clear under Section 3 thereof, which mandates all kindergarten, elementary, and secondary schools[42] to adopt their respective anti-bullying policies.[43]

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[38] *See* Weddle, *supra* note 10, at 650.

[39] *Id.* at 651, *citing* VALERIE E. BESAG, BULLIES AND VICTIMS IN SCHOOLS: A GUIDE TO UNDERSTANDING AND MANAGEMENT 99 (1989).

[40] *Id.* at 652, *citing* BESAG, *supra* note 39, at 103.

[41] *Id.*, *citing* BESAG, *supra* note 39, at 100.

[42] Dep't of Educ. (DEPED) Dep't Order No. 55 (2013), § 2. Implementing Rules and Regulations (IRR) of Rep. Act (RA) No. 10627 Otherwise Known as the *Anti-Bullying Act of 2013*.

[43] Rep. Act. No. 10627 (2013), § 3.

In the sense that this law attempts to curb bullying by nipping the culture in the bud points to it being a piece of progressive legislation. It even tasks the school principal, or anyone with a comparable role, with the responsibility of enforcing and implementing said policies[44] to ensure that they are not ignored and maintain coercive weight within the campus. It also empowers other people, whether it be a member of the school administration, a student, a parent, a teacher, or a volunteer to "immediately report any instance of bullying or act of retaliation witnessed, or that has come to one's attention" to either the school principal or the relevant officer-in-charge.[45] If it be determined by the principal or the officer-in-charge that there was indeed an act of bullying or retaliation that transpired, they shall:

> (a) Notify the law enforcement agency if the school principal or designee believes that criminal charges under the Revised Penal Code may be pursued against the perpetrator;
>
> (b) Take appropriate disciplinary administrative action;
>
> (c) Notify the parents or guardians of the perpetrator; and
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> (d) Notify the parents or guardians of the victim regarding the action taken to prevent any further acts of bullying or retaliation.[46]

Any school that is found to be noncompliant with these requirements will face the respective sanctions under the implementing rules and regulations (IRR). For public schools, the responsible school personnel who failed to comply with the aforementioned requirements shall be subjected to administrative disciplinary proceedings in accordance with the Civil Service Rules and the relevant issuances of the Department of Education (DepEd).[47] As for private schools, the responsible school personnel shall be sanctioned in accordance with the disciplinary rules of the private school.[48] The school will also be given 30 days from notice of such failure to comply with the requirements set forth, with a possible extension of not more than one month to be granted in certain meritorious cases.[49] After this period, if the school still does not comply with the requirements of the law, the DepEd secretary,

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[44] § 4, ¶ 1.
[45] § 4, ¶ 2.
[46] § 4, ¶ 2.
[47] DEPED Dep't Order No. 55 (2013), § 14(1).
[48] § 14(2).
[49] § 14(2).

through the regional director, may suspend or revoke the permit or recognition of the private school.[50]

Even a cursory reading of the law would readily show that it is designed to serve as a preventive measure against bullying. Not only is such a concept morally commendable, but it is also in line with current legal theory, namely, the substitute parental authority of the school and its personnel over students while in their custody.[51] But to be clear, the law does not go any farther than being just that—a regulatory measure. Although it imposes the threat of disciplinary sanction and even permit suspension or revocation for noncompliant schools, this does not change the fact that, at most, the DepEd only exercises purely supervisory powers over said schools. The law ultimately allows schools to deal with bullying as they see fit, provided that they fulfill the minimum requirements under Section 3 thereof. This poses a big problem with respect to more conservative schools, which may tend to be more lenient on their outlook on the matter. For example, some schools may be more tolerant of certain acts of bullying and simply dismiss such acts as "kids being kids." In short, the law places too much trust in the schools as to how they should deal with the issue. Considering the view that bullying has worsened into a public health problem, this *laissez-faire* approach seems ineffective. Pair this with the glaring lack of compensatory provisions and it appears all the more that this law, at best, constitutes soft law. Certainly, the statistics support this theory, as recent cases of bullying throughout the country remain significantly high.[52]

Another problem with the law at present is its singular focus on regulating student-to-student acts of bullying. Perhaps this was to be expected since the stereotypical image of schoolyard bullying is that of a bigger, tougher student picking on a smaller, weaker student. But when one realizes that what is actually at stake is the well-being of a living, breathing human being, such oversights cannot be condoned. To note, student-to-student bullying, although greatly rampant, is not the only type of bullying that festers within schools; teacher-to-student bullying is also a common issue. Unfortunately, the law as is does not contain any provisions mandating the regulation of teacher-to-student acts of bullying. The lack of regulations on this specific variation of bullying only serves to reverse any positive advancements that any

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[50] § 14(2).

[51] FAM. CODE, art. 218. "The school, its administrators and teachers, or the individual, entity or institution engaged in child care shall have special parental authority and responsibility over the minor child while under their supervision, instruction or custody.

Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school, entity or institution."

[52] Domingo, *supra* note 26.

student-to-student bullying policies may have made. Thankfully, one of the principal authors of the Anti-Bullying Act, Senator Juan Edgardo Angara,[53] was mindful of these developments and wrote Senate Bill No. 2793 as a result.

The bill seeks to expand the scope of Section 2 of the law to cover bullying committed by school employees, which shall include both teaching and non-teaching personnel.[54] On top of that, Section 6 of the law is sought to be amended to include stiffer penalties of imprisonment and fines on top of the existing disciplinary sanctions. Any school employee found to have committed an act of bullying shall be punished by a fine of not less than PHP 50,000 but not more than PHP 100,000 and/or imprisonment of six months but not more than one year.[55] If the bullying resulted in a suicide attempt, the penalty is increased to a fine of PHP 100,000 but not more than PHP 500,000 and/or imprisonment of one year but not more than three years.[56] On the other hand, if the suicide attempt results in the death of the victim, the penalty is further increased to a fine of PHP 500,000 but not more than PHP 1,000,000 and/or imprisonment of three years but not more than six years.[57] As of writing, the bill was pending before the Senate Committee on Education, Arts, and Culture.

B. The Silence of Criminal Legislation

As argued in the previous section, one of the biggest challenges in combating bullying in our current legal framework is the lack of an express statutory basis to hold the perpetrators responsible for their actions. While there is an abundance of laws available to hold perpetrators of physical bullying responsible,[58] there is not so much to work with when it comes to cyberbullying. Some practitioners suggest that the provisions of the Revised Penal Code on libel, slander, and intriguing against honor may be used in this

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[53] Marvin Sy & Helen Flores, *Anti-Bullying Law enacted*, PHILSTAR.COM, Sept. 19, 2013, *at* https://www.philstar.com/other-sections/education-and-home/2013/09/19/1226601/anti-bullying-law-enacted#:~:text=Senator%20Juan%20Edgardo%20Angara%20welcomed,the%20earliest%20forms%20of%20violence.&text=According%20to%20Angara%2C%20the%20issue,also%20a%20victim%20of%20bullying.

[54] S. No. 2793, 16th Cong., 2nd Sess., § 1 (2015). An Act Expanding the Coverage of Rep. Act No. 10627, Otherwise Known as the *Anti-Bullying Act of 2013*.

[55] § 2.

[56] § 2.

[57] § 2.

[58] *See* REV. PEN. CODE, art. 263, 265–66. *See also* CIVIL CODE, art. 33.

regard,[59] with the Cybercrime Prevention Act of 2012 acting in supplementary capacity with respect to the imposition of a higher penalty upon the perpetrator.[60]

However, the problem with this train of thought is that these criminal provisions are only tangentially related to bullying. Libel and slander, for example, are acts of defamation that revolve around the reputational damage suffered by the victim as a result of the false and malicious statements by the accused.[61] Thus, the reason for punishing such acts is because "[t]he enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty, or property."[62] Bullying, on the other hand, when stripped down to its simplest form, is concerned with the intentional or deliberate infliction of severe emotional, mental, or psychological distress on the victim. To apply then the crimes of defamation to bullying would be the same as filling an oval-shaped hole with a circular peg. It would also unnecessarily burden the bullying victim by imposing upon them the additional requirement of proving the public nature of such statement or act and the defamatory character of the same—both of which may be absent in some, if not most, cases of bullying.

The easily identifiable remedy for this is to enact a special penal law directly addressing the ills of cyberbullying. There have certainly been serious efforts to this end. During his term, former House Representative Rolando Andaya, Jr. authored House Bill No. 5718, or the Anti-Cyberbullying Act of 2015, to ensure that "people are encouraged to become responsible netizens and make them accountable for their cyber-actions."[63] The bill seeks to impose a penalty of a fine ranging from PHP 50,000 to PHP 100,000 and/or imprisonment between six months to six years upon any person convicted under its provisions.[64] Unfortunately, the bill remained pending before Congress.

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[59] *See* Cyndy P. dela Cruz, *Cyber bullying in the Philippines*, IN-HOUSE COMMUNITY, Mar. 14, 2017, *available at* https://www.inhousecommunity.com/article/cyber-bullying-philippines/.

[60] Rep. Act. No. 10175 (2012), § 6. Cybercrime Prevention Act of 2012.

[61] LUIS B. REYES, REVISED PENAL CODE BOOK 2 1024 (2017), *citing* MVRS Publ'n, Inc. v. Islamic Da'wah Council of the Phil., Inc., 444 Phil. 230, 241 (2003).

[62] *Id.* at 1025, *citing* Worcester v. Ocampo, 22 Phil. 42 (1912).

[63] DJ Yap, *Cyber-bullying via social media seen as crime*, INQUIRER.NET, May 25, 2015, *at* https://technology.inquirer.net/42356/cyber-bullying-via-social-media-seen-as-crime.

[64] *Id.*

Therefore, in the absence of any solid penal foundation upon which the cyberbullied victim may rely, resort can be had to the express provisions of the Civil Code, specifically those relating to Human Relations.

III. A POTENT CAUSE OF ACTION

A. Intentional Torts

Arguably one of the most important new features[65] introduced by the Civil Code is its chapter on Human Relations. With the inclusion of these provisions, "the scope of our law on civil wrongs has been very greatly broadened; it has become much more supple and adaptable than the Anglo-American law on torts. It is now difficult to conceive of any malevolent exercise of a right which could not be checked by the application of these articles."[66] The provisions are undoubtedly versatile enough to provide an "adequate legal remedy for that untold number of moral wrongs which it is impossible for human foresight to provide for specifically in the statutes."[67] That moral wrong in this case would be cyberbullying. The Code Commission could not have possibly foreseen at the time the advent of cyberbullying as a prevalent social ill. Theoretically, its provisions were crafted specifically to address these types of wrongs. Unfortunately, in practice, the provisions on Human Relations remain underutilized by the Supreme Court.

Retired Senior Associate Justice Antonio Carpio pointed this problem out in his seminal 1972 article *Intentional Torts in Philippine Law*.[68] He argued:

> Though the Philippine law of torts has made vast strides in the last two decades, its progress has tended to be somewhat lopsided – with undue concentration being focused on only one, albeit crucial, area of local tort law, namely, quasi-delicts [...] the almost inexhaustible mine of newly-created tort actions found in the chapter on Human Relations of the New Civil Code has not yet been fully assayed and up to the present has remained virtually untapped.[69]

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[65] ARTURO TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES VOLUME I 59 (1990 ed.).

[66] *Id.* at 70.

[67] *Id.*

[68] Antonio T. Carpio, *Intentional Torts in Philippine Law*, 47 PHIL. L. J. 649 (1972).

[69] *Id.* at 649.

Professor Rommel Casis echoed Justice Carpio's observations in 2014, noting that the same was still true more than 30 years later. He observed:

> [O]nly 11 Philippine cases mentioned 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.* In two other cases, the term is not even discussed in the majority opinion. In another case, the term only appears in a footnote. In six cases, 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.[70]

Eight years have passed since Casis wrote his commentary in 2014, yet the landscape of Philippine tort law remains unchanged. Since that time, there have been four new cases which have mentioned "intentional tort" or its plural.[71] But these additions are additions only in name, not in substance—two cases simply mentioned "intentional torts" in passing in relation to Articles 32 and 34 of the Civil Code; in another, it was only mentioned in the footnotes to provide context to an otherwise inconsequential procedural fact; and in the last case, it was only included as part of a block quote citation of another pre-2014 case mentioning the term.

This continued reluctance, if not aversion, of the Supreme Court (and lawyers) in utilizing the full potential of the Human Relations provisions is certainly a great shame. By providing for their inclusion in the Civil Code, the Code Commission, along with the Legislature, carved a path for Philippine jurisprudence to avoid the same webs and pitfalls that US tort jurisprudence constantly finds itself in. Yet, quite ironically, Philippine jurisprudence found itself down the same path it was groomed not to follow. The Court has consistently used the two distinct concepts of "intentional tort" and "quasi-delict" interchangeably, without much reason offered in doing so.[72] Much of the case literature on the matter could have been substantially reduced by mere deference to the codal. Fortunately, level of use does not affect the legal

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[70] Rommel Casis, Review, *Carpio's Intentional Torts in Philippine Law: A Commentary,* 88 PHIL. L.J. 579, 580 (2014) (Emphasis in the original.)

[71] Bernardo v. People, G.R. No. 182210, 772 SCRA 1, 12, Oct. 5, 2015; Chiquita Brands, Inc. v. Omelio, G.R. No. 189102, 826 SCRA 223, 229 n.6, June 7, 2017; Supreme Transp. Liner, Inc. v. San Andres, G.R. No. 200444, 877 SCRA 405, 421, Aug. 15, 2018.

[72] Carpio, *supra* note 68, at 691–93, *citing* Air France v. Carrascoso, G.R. No. 21438, 18 SCRA 155, Sept. 28, 1966; Palisoc v. Brillantes, G.R. No. 29025, 41 SCRA 548, Oct. 4, 1971; Zulueta v. Pan Am World Airways, Inc., G.R. No. 28589, 43 SCRA 397, Feb. 29, 1972.

value of any law whatsoever. Therefore, intentional tort provisions are still just as ripe for invocation as a cause of action as quasi-delicts are.[73]

B. Article 21

Among the various provisions on intentional torts, Article 21 stands out as possibly having the most potent foundation to hold a person civilly liable for damages brought about by cyberbullying. Article 21 states in full that "[a]ny person who willfully 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."[74] Liability under this provision may arise from acts that are in themselves legal or not prohibited, provided that such acts are contrary to morals, good customs, public order, or public policy.[75] This article was formulated on the same abuse-of-rights principle contained in Article 19 that "a person, even in the exercise of a formal right, cannot with impunity intentionally cause damage to another in a manner contrary to good morals or public policy."[76]

The most obvious allure of this provision as a means to combat cyberbullying is its focus on wrongs of a moral nature rather than a legal one. Whether cyberbullying constitutes a moral wrong is certainly a question deserving of scant consideration due to its obvious answer. One would have to look very hard in even the most sinister corners of society to find one willing to justify, if not outright disregard, the well-documented harms of cyberbullying. The legislature has certainly echoed this sentiment with the passage of the Anti-Bullying Act of 2013, which is first and foremost a regulatory law designed to instill in students the thinking that all acts of bullying are morally reprehensible. Traces of this collective belief are likewise present in the Safe Spaces Act and the aptly named Anti-Cyberbullying Bill. It is not surprising to see this general sentiment seep into our legislative framework given that the Constitution itself "entrenches practices that are clearly motivated by god-belief."[77] And in this instance, what can be more reminiscent of Judeo-Christian teachings than kindness and pacifism?

Another critical element in Article 21 is the express inclusion of the term "willfully causes." Tolentino opines that the element of willfulness herein is fulfilled as long as the complained act "is done with knowledge of its

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[73] CIVIL CODE, art. 2176.

[74] CIVIL CODE, art. 21.

[75] TOLENTINO, *supra* note 65, at 69.

[76] *Id.* at 69–70.

[77] Florin Hilbay, *The Establishment Clause: An Anti-Establishment View*, 82 PHIL. L. J. 24, 27 (2008).

injurious effect; it is not required that the act be done purposely to produce the injury."[78] Following this definition, mere knowledge of the effect of cyberbullying already triggers the application of the provision. The cyberbully's act need not be drenched in malice before a cause of action may arise in favor of the victim.

The adoption of this more relaxed standard is crucial in the context of cyberbullying because, if the more stringent requirement is adopted—that the term "willfully" refers to the presence of malice or deceit—then droves of cyberbullies can avoid liability simply by raising as a defense that their actions were not particularly ill-motivated. This is especially relevant nowadays, where the lines between social justice and cyberbullying become increasingly blurred. For instance, in 2017, adult film star August Ames ended her life in a public park after she had been lambasted online for supposedly being homophobic due to her refusal to work with a gay male actor.[79]

Under the willful-as-malice framework, the cyberbully (or bullies, as the case may be) can easily invoke a palatable and even noble justification for their actions, thereby dispelling any possible notions of malice and ultimately avoiding the attachment of civil liability. Compare this now to Tolentino's less restrictive standard. With that, the crux of the action shifts from the Sisyphean task of determining whether there was malice involved to the more reasonable issue of whether the alleged cyberbully acted deliberately; in short, whether in performing the act in question, one knew of the possible consequences of their actions. This does not mean, however, that the alleged cyberbully is left without recourse for absolution under the provision.

First, since Article 21 requires the element of willfulness or intention,[80] the alleged cyberbully can avoid liability by raising the argument that there was no intent on their part to inflict injury upon the victim. A good example of this is a person who shares a post or retweets a tweet that bashes another individual. In that scenario, the person who shared or retweeted the same can be freed from any liability upon showing that, unlike the original author of the subject post or tweet, there was no intention on their part to cause harm to the victim.[81]

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[78] TOLENTINO, *supra* note 65, at 71. *But see* Carpio, *supra* note 68, at 664.

[79] Jenny Valentish, *Last Days of August: A porn star's suicide reveals a dark truth*, ABC NEWS, Feb. 5, 2019, *at* https://www.abc.net.au/news/2019-02-05/last-days-of-august-jon-ronson-august-ames-suicide-/10778176.

[80] HECTOR S. DE LEON, COMMENTS AND CASES ON TORTS AND DAMAGES 72 (2004).

[81] *See* Disini v. Sec'y of Just., G.R. No. 203335, 716 SCRA 237, 325, Feb. 18, 2014. "Except for the original author of the assailed statement, the rest (those who pressed Like,

Second, Article 21 presupposes losses or injuries that one may suffer as a result of the violation.[82] Therefore, a complaint that alleges cyberbullying, but merely seeks a judicial declaration that the defendant indeed cyberbullied the complainant, shall be dismissed in the absence of any showing of damages incurred.[83]

Third, the alleged cyberbully may mount a defense on the basis of the "clean hands" doctrine, provided that they can prove that the supposed victim was not necessarily innocent. As held in *Garciano v. Court of Appeals*,[84] "the right to recover [moral damages] under Article 21 is based on equity, and he who comes to court to demand equity, must come with clean hands. Article 21 should be construed as granting the right to recover damages to injured persons who are not themselves at fault."[85] Thus, if the complained act of cyberbullying is found to have only arisen out of self-defense—such as when the alleged cyberbully only responded to the provocation of the complainant—then the action will not prosper.

The discussion in the previous three paragraphs is necessary to allay any worries that Article 21 will be "very easily stretched to [its] breaking point"[86] as being "the most susceptible to abuse."[87] The wording of the provision as is and the applicable jurisprudence surrounding it ensure that it will not be weaponized as a means for harassment. Couple this with the naturally wide scope covered by the provision, and all signs point to it being the strongest legal tool available to address cyberbullying, in the current absence of any positive law to that end.

As mentioned above, the underutilization of Article 21 is reflected in the dearth of Supreme Court cases decided under it. The few cases decided under it so far show little to no similarity to the exceptionally concerning phenomenon of cyberbullying.[88] Regardless, this fact should not deter victims

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Comment and Share) are essentially knee-jerk sentiments of readers who may think little or haphazardly of their response to the original posting."

[82] DE LEON, *supra* note 80.

[83] *Id.*

[84] G.R. No. 96126, 212 SCRA 436, Aug. 10, 1992.

[85] *Id.* at 440.

[86] Carpio, *supra* note 68, at 663.

[87] *Id.*

[88] Arguably the two most prominent cases decided by the Supreme Court using Article 21, Wassmer v. Velez, G.R. No. 20089, 12 SCRA 648, Dec. 26, 1964 and Baksh v. CA, G.R. No. 97336, 219 SCRA 115, Feb. 19, 1993, revolved around the issue of a breach of promise to marry. The closest case that came to foreshadowing the threat of cyberbullying—or bullying in general, for that matter—is Globe Mackay v. CA, G.R. No. 81262, 176 SCRA

of cyberbullying from invoking the provision before the courts, since it was precisely for this reason that the provision was introduced to begin with.[89] Because while judicial decisions form part of the law of the land,[90] they are still easily susceptible to being overturned by more recent pronouncements; on the other hand, the same susceptibility cannot be said for actual statutory provisions.

C. Article 26

Another fertile source of relief for cyberbullying victims among the intentional tort provisions is Article 26, which states:

> ARTICLE 26. 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:
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> (1) Prying into the privacy of another's residence;
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> (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.[91]

Whereas Article 21 was founded upon principles of natural law—that all laws are necessarily intertwined with the concept of morality—Article 26 was founded upon the exaltation of human personality. As the Code Commission expressed:

> The sacredness of human personality is a concomitant of every plan for human amelioration. The touchstone of every system of laws, of the culture and civilization of every country, is how far it

778, Aug. 25, 1989. Although that case primarily dealt with the malicious prosecution of the private respondent, it nevertheless detailed how the petitioner's scornful and racist remarks against the private respondent constituted tortious conduct under Article 21, which in turn gave rise to a valid cause of action.

[89] *See* TOLENTINO, *supra* note 65, at 70.

[90] CIVIL CODE, art. 8.

[91] CIVIL CODE, art. 26.

> dignifies man. If in legislation, inadequate regard is observed for human life and safety; if the laws do not sufficiently forestall human suffering or do no try effectively to curb those factors or influences that wound the noblest sentiments; if the statutes insufficiently protect persons from being unjustly humiliated, in short, if human personality is not properly exalted — then the laws are indeed defective.[92]

Counterintuitive as it may seem, the enumeration contained in the four numbered paragraphs of the provision is merely illustrative, and does not limit the scope of the entire article.[93] As Tolentino puts it, "[t]he principle rule is expressed in general terms in the first sentence; and the cases mentioned in the numbered paragraphs are merely instances falling within the terms of the general rule."[94] This view has also been adopted by other legal scholars and Supreme Court justices, who have collectively agreed to interpret the principal rights protected under the provision as follows: (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.[95] Not all of these rights, though, are relevant to the issue of cyberbullying. Only the rights to personal dignity and peace of mind are of use to the topic at hand.

1. Right to Personal Dignity

The general rule in American tort law is that a cause of action may not be predicated upon mere rudeness or lack of consideration of one person toward another.[96] With Article 26, however, Philippine law has gone a little farther than its American counterpart as it directly imposes respect for such dignity.[97] The Civil Code, therefore, follows the thread of exceptional American cases which have allowed actions for damages on the grounds of profane, insulting, humiliating, scandalous, or abusive language.[98] One such case held that a street railway company, while having the right to exclude whomever it chooses from the privilege of parking automobiles in a free

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[92] DE LEON, *supra* note 80, at 79 *citing* NAPOLEON MALOLOS & TEODORICO MARTIN, REPORT OF THE CODE COMMISSION ON THE PROPOSED CIVIL CODE OF THE PHILIPPINES 32 (1951).

[93] TOLENTINO, *supra* note 65, at 92.

[94] *Id.*

[95] Carpio, *supra* note 65, at 670; DE LEON, *supra* note 80, at 79; Casis, *supra* note 70, at 586; Gregorio v. CA [hereinafter "*Gregorio*"], G.R. No. 179799, 599 SCRA 594, 606, Sept. 11, 2009.

[96] CARMELO SISON, TORTS AND DAMAGES 163 (2013).

[97] *Id.*

[98] TOLENTINO, *supra* note 65, at 93.

parking space adjacent to an amusement park, is liable for damages to a woman it stopped in an offensive and insulting manner, in the presence of her friends and bystanders, when she was attempting to drive into the park without any knowledge as to why she was not entitled to the privilege accorded to others.[99]

Applying that framework within the context of cyberbullying resolves the issue concerning the *external* element of the act, that being the outward actions of the cyberbully as manifested mainly in exchange of words or photos via electronic means. Going back to this Article's definition of cyberbullying as "the intentional or deliberate infliction of severe emotional, mental, or psychological distress upon any person, through electronic expression[,]"[100] the *external* element is shown through the words "intentional or deliberate infliction [...] through electronic expression."

There is certainly no question that patently hostile messages or remarks filled with hate and ridicule—sometimes fueled further by lynch mob mentality—fall within the purview of acts damaging to the personal dignity of a person. This stands as an objective observation. Openly deriding a person, or worse, wishing injury or death upon him or her, is deviant behavior in a civilized society. That is why even the right to freedom of speech and expression under the Constitution has been universally accepted by the Supreme Court as not absolute;[101] one such exception is fighting words, which, as established earlier, encompasses acts of cyberbullying.

2. Right to Peace of Mind

As alluded to in the preceding paragraph, the presence of an *external* act in cyberbullying implies the correlative presence of an *internal* act. The *internal* act in this scenario is seen through the inclusion of the phrase "severe emotional, mental, or psychological distress[.]" It is internal insofar as its presence is not easily noticeable by other parties, unlike *external* acts, such as messages, tweets, or posts, which are perceptible even to disinterested third parties.

Having created an actionable right to peace of mind, Article 26 imposes a twin duty to respect the "peace of mind" of one's neighbors and of other persons (positive), and to refrain from committing any act which may

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[99] *Id.*, *citing* Malczewski v. New Orleans Ry. & Light Co., 156 La. 830, 101 So. 213.

[100] *See supra* p. 609.

[101] Gonzales v. COMELEC, G.R. No. L-27833, 27 SCRA 835, 858, Apr. 18, 1969; Chavez v. Gonzales, G.R. No. 168338, 545 SCRA 441, 486, Feb. 15, 2008.

impair the same (negative). While the former sets out an ideal mantra that every citizen should observe, it is the latter that gives rise to a cause of action that could be the subject of proper litigation.

Stripped of legalese, reference to one's peace of mind essentially connotes the absence of mental or emotional distress.[102] Thus, when friends or acquaintances engage in pranks and playground banter online, even if intentional, as long as the target of the jokes does not suffer any severe internal distress, then such exchanges cannot be classified as cyberbullying. However, when the situation worsens to the point that the subject person becomes severely troubled or depressed,[103] then the exchanges are aggravated to cyberbullying, which triggers the application of this actionable right under Article 26. Bear in mind, though, that the level of distress required is severe distress. If the alleged cyberbullying victim "merely becomes unhappy, humiliated, or mildly despondent for a short time, he cannot recover."[104] According to Professor Carmelo Sison, the anguish experienced must be great and preferably prolonged.[105]

As Tolentino notes, a good example of the use of this principle can be gleaned from an old Saskatchewanian case.[106] In that case, a certain person originated and circulated a false rumor that a certain member of the community had died by hanging himself.[107] This report was later repeated by others, and was finally told to the mother of the supposed deceased person, who, believing the report to be true, eventually suffered a violent shock, which resulted in her becoming ill.[108] The court held that the person who originated the false rumor was liable for the damages caused to the mother.[109]

The circumstances of that case are not that far off from the realities of cyberbullying. The malicious spreading of rumors is also a very prevalent method of cyberbullying.[110] But apart from that, the overall sentiment that ought to be taken from the aforementioned case is that if the mere spreading

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[102] TOLENTINO, *supra* note 65, at 111.

[103] "Depressed" herein is used in the general sense of the term, not with respect to its medical and scientific definition.

[104] SISON, *supra* note 96, at 179.

[105] *Id.*

[106] TOLENTINO, *supra* note 65, at 111, *citing* Bielitzki v. Obadisk, 15 Sask, L.R. 23 A.L.R. 351.

[107] *Id.*

[108] *Id.*

[109] *Id.*

[110] *See* David Pogue, *Q&A: Rumors, Cyberbullying and Anonymity*, N.Y. TIMES, July 22, 2010, *at* https://www.nytimes.com/2010/07/22/technology/personaltech/22pogue-email.html.

of rumors already gives rise to a valid cause of action for impairing the right to peace of mind under Article 26, what more outright vile threats and messages directly addressed to the injured person?

Tolentino, however, cautions the use of this cause of action against defendants who had no knowledge of the injured person's "peculiar susceptibility to such disturbance."[111] In the modern context of cyberbullying, he is essentially arguing that cyberbullies should not be held liable for damages if they did not know that the victim was suffering from medical conditions such as clinical depression, among many others. He argues that "[t]he tendency of the law is to secure an interest in mental comfort only to the extent of the ordinary sensibilities of ordinary men."[112]

With all due respect to the famed statesman and jurist, such argument is grossly out of touch with the sensibilities of modern times. The knowledge (or lack thereof) of the cyberbully as to the emotional, mental, and psychological predicament of the victim should be irrelevant. Most important, it should not serve as blanket defense from which one can evade liability. Common sense dictates that hurling malice-laden remarks against another person will naturally inflict upon the latter a certain level of internal harm; in cases of victims already suffering from clinically diagnosed conditions, that level of harm increases exponentially. To say then that "[t]he general conduct of business and of the ordinary affairs of life must be done on the assumption that the persons who are likely to be affected thereby are not peculiarly sensitive but are of ordinary physical and mental strength"[113] is to imply that obnoxious behavior is an intrinsic element of a robust society rather than a repulsive aberration. In today's society, where even instances of adulthood bullying are prevalent,[114] this view should not even be considered for application, let alone adopted.

D. Proximate Cause

Finding a valid cause of action is one thing, but imputing liability to the defendant is another matter altogether. To this end, Philippine jurisprudence borrowed the concept of proximate cause from American law. The classic case of *Bataclan v. Medina*[115] defines proximate cause as:

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[111] TOLENTINO, *supra* note 65, at 111.

[112] *Id.* at 112.

[113] *Id.*

[114] David Framer, *Workplace Bullying: An Increasing Epidemic Creating Traumatic Experiences for Targets of Workplace Bullying*, 1 INTL. J. HUMAN. & SOC. SCI. 196 (2011).

[115] 102 Phil. 181 (1957).

> '[T]hat cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.' And more comprehensively, 'the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.'[116]

The concept of proximate cause, however, is closely tied to quasi-delict actions.[117] Intentional torts such as Articles 21 and 26 are a different story. Proximate cause seldom plays a role in cases of intentional tort.[118] This is because in intentional torts cases, "the defendant's wrongful conduct is closely linked—temporally and conceptually to the plaintiff's harm."[119] The very presence of the element of intent makes it clear that the defendant ought to be held accountable for their actions as is. Therefore, there is no longer a need to apply the proximate cause doctrine because the cause of the harm is very clearly identifiable. Applying the same framework to intentional torts will only serve to severely diminish the necessity and strength of the doctrine.[120]

The natural incompatibility of the proximate cause doctrine with intentional torts comes as a huge sigh of relief in the issue of cyberbullying. If traditional notions of proximate cause were to be applied, injured parties would find themselves in the difficult position of having to draw a causal link between the cyberbully's act and the harm caused. This becomes especially hard in cases of cyberbullying that result in suicide, due to many Filipinos' conservative stances on sociocultural issues. For instance, it is not rare to see suicidal tendencies get dismissed as mortal sins against God which would

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[116] *Id.* at 186.

[117] TIMOTEO B. AQUINO, TORTS AND DAMAGES 259 (2005).

[118] Sandra F. Sperino, *Statutory Proximate Cause*, 88 NOTRE DAME L. REV. 1199, 1206 (2013), *citing* RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM § 33 (2010). *But see* CIVIL CODE, art. 2202. "In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of." I refuse, however, to analogously apply that provision herein because (1) 2202 makes specific mention of crimes, and more importantly, (2) crimes are not the same as intentional torts.

[119] *Id.*, *citing* Jill E. Fisch, *Cause for Concern: Causation and Federal Securities Fraud,* 94 IOWA L. REV. 811, 832 (2009).

[120] *Id.*

condemn one to an afterlife of eternal damnation.[121] Attempting then to prove the causal link between several vile utterances online and a victim's unfortunate death can just as much be a challenge socially as it is legally.

E. Vicarious Liability

Matters of practicality dictate that not all perpetrators of cyberbullying are in the best financial position to shoulder the monetary compensation sought by would-be complainants. This is where the concept of vicarious liability steps in. In a nutshell, there is vicarious liability "where a person is not only liable for torts committed by himself, but also for torts committed by others with whom he has a certain relationship and for whom he is responsible."[122] This concept eventually crystallized into statutory law under Article 2180 of the Civil Code, which 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.
>
> The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.
>
> Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.
>
> The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.
>
> The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in article 2176 shall be applicable.

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[121] *See* Rissa Coronel, *There's Something Wrong with the Way Filipinos Talk About Suicide*, CNN PHILIPPINES LIFE, Feb. 26, 2019, *available at* https://cnnphilippines.com/life/culture/2019/02/26/suicide-discourse.html.

[122] Tamargo v. CA, G.R. No. 85044, 209 SCRA 518, 523, June 3, 1992.

> Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.
>
> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.[123]

Although the first paragraph of the provision specifically references Article 2176 on quasi-delicts, the concept is nonetheless applicable to intentional torts such as Articles 21 and 26.[124] This perspective is reflected in the cases of *Salen v. Balce*[125] and *Fuellas v. Cadano*.[126]

In *Salen*, the plaintiffs' son was killed by Gumersindo Balce, son of the defendant, Jose Balce. At the time, Gumersindo was a minor below 18 but over 15. However, since he acted with discernment at the time of the killing, he was not absolved of criminal liability and was eventually convicted of homicide. He was meted out with a penalty of imprisonment and a fine of PHP 2,000. Unfortunately, due to his tender age, Gumersindo was not able to pay the fine; thus, the plaintiffs sought that his father, Jose, pay the fine on his behalf. The trial court ruled in favor of Jose on the grounds that the provision invoked by the plaintiffs, Article 2180, relates only to obligations arising from quasi-delicts and is therefore not applicable to the case. The Supreme Court reversed the lower court's ruling and ruled in favor of the plaintiffs. It explained:

> 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.[127]

In *Fuellas*, Rico Fuellas, son of the petitioner Agapito Fuellas, initiated an altercation with his classmate, Pepito Cadano, son of respondent Elpidio Cadano. In so doing, Pepito fractured his right forearm. Both Rico and Pepito were only 13 years old at the time. Rico was eventually charged with and

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123 CIVIL CODE, art. 2180.

124 Carpio, *supra* note 65, at 661. *But see* Casis, *supra* note 70, at 583–85.

125 [Hereinafter "*Salen*"], G.R. No. 14414, 107 Phil. 748, Apr. 27, 1960.

126 G.R. No. 14409, 3 SCRA 361, Oct. 31, 1961.

127 *Salen*, 107 Phil. at 751.

convicted of serious physical injuries. However, a civil case was instituted separately against Agapito. The trial court and the Court of Appeals ruled in favor of the Cadanos. The Supreme Court affirmed the lower courts' rulings, citing the case of *Salen*, which, at the time, was decided only a year prior. It considered Rico's intentional infliction of injuries upon Pepito as falling within the purview of Article 2180 and thus held Agapito vicariously liable for his son's actions.

The doctrine embodied in *Salen* and *Fuellas* was likewise affirmed by the Court in later years in *Paleyan v. Bangkili*,[128] *Tamargo v. Court of Appeals*,[129] and *Libi v. Intermediate Appellate Court*.[130] The general reasoning behind this view is that if negligent acts of persons already warrant the corresponding liability of their legal supervisors, what more with intentional wrongdoings, which should all the more be indicative of the latter's lack of supervision? There is a compelling argument to be made that these cases were particularly concerned with the strict application of Article 2180 to criminal acts *per se*, and not necessarily intentional wrongdoings.[131] However, this perspective creates an absurd situation. Visualize a sort of spectrum of wrongdoings. Quasi-delicts are on the leftmost extreme and criminal acts are on the rightmost extreme; intentional torts are in the middle. To accept the view that vicarious liability attaches to quasi-delicts (by legislative fiat) and criminal acts (by judicial pronouncement) but not to intentional torts would create a gaping hole in the center of the spectrum. It hardly makes logical sense that criminal acts—which for the most part are deliberate and malicious—are covered by Article 2180, while its less serious cousin, intentional torts, are not. Besides, a closer scrutiny of *Salen* and *Fuellas* reveals that the crux of the jurisprudential breakthrough in both revolves around the element of intent rather than the statutory criminalization of Gumersindo's and Rico's acts.

The applicability of Article 2180 to actions based on Articles 21 and 26 is of vital importance to victims of cyberbullying, especially in cases where the perpetrators are young children and/or students due to their natural financial incapacity. Since the tangible fruit of justice in civil cases comes in the form of monetary compensation, it would ultimately be a futile exercise for cyberbullying victims and their families to pursue litigation against an insolvent defendant.

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[128] G.R. No. 22253, 40 SCRA 132, July 30, 1971.
[129] G.R. No. 85044, 209 SCRA 518, June 3, 1992.
[130] G.R. No. 70890, 214 SCRA 16, Sept. 18, 1992.
[131] Casis, *supra* note 61, at 584.

With respect to young children, the second paragraph of Article 2180 must be read in conjunction with Article 221 of the Family Code. Under the former provision, vicarious liability is primarily attached to the father of the child, and in case of his death or incapacity, the mother.[132] The Family Code modified this by shifting the primary responsibility to the parents jointly,[133] thereby disregarding the patriarchal order of preference under the Civil Code. Another notable modification by Article 221 is its use of the term "unemancipated" rather than "minor" to qualify the phrase "children living in their company." This departure from the phraseology of Article 2180 effectively expanded the coverage of parental vicarious liability to children living in the company of their parents who are above the age of 18, but below the age of 21.[134]

As for students, Article 2180 imposes the obligation to observe "all the diligence of a good father of a family to prevent damage" over pupils and students or apprentices upon "teachers or heads of establishments of arts and trades."[135] The scope of this provision has been liberally interpreted by the Court to cover recess times[136] and even semestral breaks, provided that the student is still under the control and influence of the school.[137] Given that, there is no reason to think that the provision cannot apply to cases of cyberbullying among students, especially if the acts complained of are closely linked to the school setting. Moreover, the absence of any age qualifier in paragraph 7 of Article 2180 means that the vicarious liability in this case attaches even if the student involved has attained the age of majority.[138]

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[132] CIVIL CODE, art. 2180(2). "The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company."

[133] FAMILY CODE, art 221. "Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law."

[134] FAMILY CODE, art. 234. "Emancipation takes place by the attainment of majority. Unless otherwise provided, majority commences at the age of twenty-one years." This, though, is subject to certain exceptions—where a child having reached the age of 18 can nevertheless attain majority by either contracting marriage or recording an emancipation agreement in the Civil Register.

[135] CIVIL CODE, art. 2180(7). "Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody."

[136] Palisoc v. Brillantes, G.R. No. 29025, 41 SCRA 548, 556, Oct. 4, 1971.

[137] Amadora v. CA [hereinafter "*Amadora*"], G.R. No. 47745, 160 SCRA 315, 326, Apr. 15, 1988.

[138] DE LEON, *supra* note 80, at 340–41.

While the provision only imposes liability on individual teachers in cases of academic institutions, prospective plaintiffs can also hold the school liable based on its vicarious liability as employer of the teachers.[139] This theory of double vicarious liability is premised on the direct omission of the teacher over the student, thereby triggering the presumed negligence of the employer-school in that regard. This was echoed in *Amadora v. CA*,[140] where the Court held:

> [T]he defense of due diligence is available to it in case it is sought to be held answerable as principal for the acts or omission of its head or the teacher in its employ.
>
> The school can show that it exercised proper measures in selecting the head or its teachers and the appropriate supervision over them in the custody and instruction of the pupils pursuant to its rules and regulations for the maintenance of discipline among them.[141]

In any event, the school and its administrators may be held directly liable by statutory fiat under Article 218 of the Family Code on the grounds of their substitute parental authority.[142] However, this provision only applies to minors, who, under Article 234 of the same code, are those below the age of 21.

F. Joint Tortfeasors

In today's social media-amplified world, cyberbullying is almost inseparable from peer pressure and mob mentality.[143] In some cases, the

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[139] CIVIL CODE, art. 2180(5). "Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry."

[140] *Amadora*, 160 SCRA 315.

[141] *Id.* at 328.

[142] FAM. CODE, art. 218. "The school, its administrators and teachers, or the individual, entity or institution engaged in child care shall have special parental authority and responsibility over the minor child while under their supervision, instruction or custody.

Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school, entity or institution."

[143] *See* Kumaran Chanthrakumar, *We Need to Talk About Cyberbullying*, NATION, May 9, 2014, *at* https://www.thenation.com/article/archive/we-need-talk-about-cyberbullying/; Shannon Symonds, *Cyber Bullies and mob mentality: Are you a hero or just one of the pack?*, MIN. DAILY NEWS-TRIBUNE, Mar. 21, 2014, *at* https://www.newstribune.info/story/lifestyle/faith/2014/03/21/cyber-bullies-mob-mentality-are/37795387007/; Alexis Lounsbury, *Mob mentality fuels culture of bullying*, TAMPA

severity of the injury stems more from the multiplicity of hostile voices rather than the actual harm inflicted by individual cyberbullies. In these cases, all of the people involved in the virtual casting of stones are liable for intentional torts and must be deemed so in court as joint tortfeasors. The problem, though, is that Article 2194 of the Civil Code has expressly attached the concept of joint tortfeasors to quasi-delicts.[144] While that may be the case at face value, several Supreme Court decisions throughout the years have nevertheless applied Article 2194 to intentional acts. One such illustrative example is the case of *Malvar v. Kraft Food Philippines, Inc.*[145]

In *Malvar*, former Supreme Court Associate Justice Josue Bellosillo was hired by petitioner Czarina Malvar to serve as counsel for her illegal suspension and dismissal case against the respondents. Unbeknownst to Justice Bellosillo, who at the time had already prepared and filed a petition for review before the Court, Malvar suddenly entered into a compromise agreement with the respondents, thereby forgoing the pending legal action. As a result, Justice Bellosillo filed a motion for intervention praying that Malvar and the respondents be ordered to jointly and severally pay his stipulated contingent fees as counsel of the former. The Court, in deciding for Justice Bellosillo, ruled first that while a client has a right to terminate their relationship with the counsel, this must be done in conformity with Article 19 of the Civil Code, which mandates that "every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith"[146]—a standard that Malvar failed to observe in this case. More important, in ruling that the respondents were solidarily liable to pay the contingent fees of Justice Bellosillo, the Court expressly applied Article 2194 despite the absence of any quasi-delict actions present in the circumstances.

In a similar way, the Supreme Court has also applied Article 2194 to cases arising from contractual breaches[147] and independent civil actions.[148] The liberal approach by which the Court has interpreted Article 2194, in spite of its otherwise restrictive terminology, denotes an overall intention to apply

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BAY TIMES, Feb. 12, 2013, *at* https://www.tampabay.com/opinion/columns/mob-mentality-fuels-culture-of-bullying/1274757/.

[144] CIVIL CODE, art. 2194. "The responsibility of two or more persons who are liable for quasi-delict is solidary."

[145] G.R. No. 183952, 705 SCRA 242, Sept. 9, 2013.

[146] CIVIL CODE, art. 19.

[147] Philtranco Serv. Enter., Inc. v. Paras, G.R. No. 161909, 671 SCRA 24, Apr. 25, 2012.

[148] Filipinas Broad. Network, Inc. v. Ago Medical and Educ. Center-Bicol Christian Coll. of Med., 489 Phil. 380 (2005).

the concept of joint tortfeasors to actions for damages in general, regardless of its specific and technical nuances.

CONCLUSION

Cyberbullying is a pressing problem that society can no longer afford to chuck up as a triviality of the supposed "snowflake generation." Its effects are well documented; its victims, incalculable. Yet, despite the rapidly growing prevalence of these acts, the legal sector's response to the issue has remained stunted, as evidenced by the lack of any criminal legislation to such ends, and more obviously, the swathe of conservative views advanced by legal personalities both here and abroad.[149] In this regard, Civil Code provisions on intentional torts provide for a convenient mechanism to produce a cause of action against cyberbullying. Its codified nature means that, unlike American tort law, lawyers and judges alike would no longer have to go scrounging around for obscure precedents in determining whether complaints filed on the basis of cyberbullying are theoretically feasible.

While the Supreme Court has historically underutilized intentional torts provisions such as Articles 21 and 26, this fact should not serve as a barrier to future litigations given the black letter of the Civil Code and the abundance of erudite commentaries in support thereof. In any event, assuming that the judiciary maintains its aversion to intentional torts, jurisprudence is replete with cases treating intentional tortious acts as if they were quasi-delicts under Article 2176.[150]

Regardless of these conflicted technicalities, what is of the utmost importance is that focus not be lost on the ever-present and looming dangers of cyberbullying. Although the lives shattered and lost by reason of these ordeals can no longer be brought back, knowing that the problem is not irremediable can at least provide a glimmer of justice to the victims (or their families) otherwise engulfed in anguish and desolation.

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[149] *See* David L. Hudson Jr., *Is Cyberbullying Free Speech?*, ABA JOURNAL, Nov. 2016; Olaso-Coronel, *supra* note 17.

[150] Mercado v. CA, 108 Phil. 414, 418–19, May 30, 1960; Bank of the Phil. Islands v. Lifetime Mkt'g. Corp., G.R. 176434, 555 SCRA 373, 380, June 25, 2008; *Gregorio*, 599 SCRA, 594, 606.