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DEFICIENCIES OF THE PHILIPPINE LAW ON THE SUBJECT OF DAMAGES

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CHAPTER I

PRELIMINARY OBSERVATIONS

SOURCES OF THE LAW OF DAMAGES IN GENERAL.—The earliest written laws on the subject of damages may be found in the old Roman statutes. In Gaius and Justinian we have a main division of obligations by the occasions from which they arise: *ex delicto* and *ex contractu*, to which two heads are added by Justinian from Gaius' *res quotidianae* namely, the ones of quasi-contractual and quasi-delictal obligations.

In Roman law the infringement of a right *in rem* was called a delict, which, therefore, bound the offender to the person wronged by the same *juris vinculum* as that to which a contract gave rise, viz., an obligation, but the obligation was not to perform an agreement, it was to make satisfaction for an unlawful act. Among the delicts of Rome were: *damnum injuria datum* or damage to property, and *injuria* or wrong to person. The former rested on the *Lex Aquilia*, and the latter on the Twelve Tables. The remedies given by the Twelve Tables for acts amounting to *injuria* were evidently a cummulation of the vindictive satisfaction known as *talio*—an eye for an eye and a tooth for a tooth.

Later on the praetor introduced the *actio injuriarum*, under which the plaintiff was allowed to fix his own damages, the judge having power to reduce them if he thought them excessive, and this continued to be the practice in the time of Justinian, the damages being calculated after considering the nature of the *injuria*, the character of the person injured and the surrounding circumstances. A sort of exemplary damages were recoverable under the praetorian actions inasmuch as the compensation awarded was much greater than the material loss or detriment sustained by the plaintiff. And consequential damages were recoverable under the law of Aquilia, for it provided that whoever caused a damage thru his fault or imprudence, was obliged to repair the same. In order, however, for a *damnum*, or loss, to be recoverable, it had to be accompanied by *in-*

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juria, for a loss without a wrongful act (*damnum sine injuria*) created no legal consequences. *Injuria* implied that the loss (*damnum*) was caused either wilfully (*dolus*) or by negligence (*culpa*). (Leage on Roman Private Law; Clark, Roman Private Law, Vol. 2). The same principles were embodied almost wholly in the present Spa ish Civil and Penal Codes, with the exception of that part relating to exemplary damage, if such damage was ever recoverable under the Roman Law.

Blackstone tells us that the law of damages in England probably had its origin in those times when a private pecuniary satisfaction, called a weregild, was constantly paid to the party injured, or his relatives, to expiate enormous crimes—a custom derived by the British ancestors, in common with other nations, from the ancient Germans.

Needless it is for me to dwell at length upon the other sources of the unwritten law. Suffice it to say that in countries where the Anglo-Saxon law prevails, there has developed another kind of damages unknown to Civil law, known as, exemplary damages. Aside from this, compensation, as understood in Anglo-American law, is not merely that awarded for injuries to material substance but also includes those awarded for injuries to the spiritual and mental part of the human nature. Such is one of the greatest contributions of the Anglo-American jurisprudence to the vast field of legal science.

PHILIPPINE LAW ON THE SUBJECT OF DAMAGES.—The main source of the Philippine law on the subject of damages is the Civil law. Our legislature has passed several special laws containing provisions relating to damages, but, except in cases where damages are liquidated, the measure of damages is generally based upon the Civil law.

At present there are, however, a least two important laws in our statute books of American origin, in the application of which our Supreme Court has necessarily been guided by American authorities; they are the Libel law and the Empoyers' Liability Act. So far, only under these two laws has the Supreme Court awarded damages for physical pain and for injured feelings and reputation.

THE THEORY OF DAMAGES.—Whenever the law recognizes a right, it also gives a remedy for its violation. "*Ubi jus, ibi remedium.*" There is no wrong without a remedy. (U. S. vs. Heery, 25 Phil. 600). The theory upon which the law allows damages for the violation of a civil right is based upon the doctrine that where a civil injury has been sustained the law

provides a remedy that should be commensurate to the injury done. (13 Cyc. 12). Thus, whether the action be *ex contractu* or *ex delicto*, the end in view is the same—the plaintiff be made whole.

It is an inherent right of man living in a civilized community to live peacefully, unmolested, undisturbed. Except for public protection, no person has a right to take the life, harm the body, nay, injure th good name of another. Natural justice demands that he, who in consequence of his wrongful or negligent act, causes injury to another should be made to repair, as nearly as possible, the damage sustained thereby. Tru it is, that no amount of money is adequate to compensate the plaintiff for the loss of any of the principal parts of his body, much less for the loss of the life of one dearest to his heart; but, under such circumstances, money award is the only redress the law can offer.

CLASSIFICATION OF DAMAGES.—With respect to their object, damages may be divided into: Compensatory damages which are given as an equivalent for the injury done; and exemplary damages, which are imposed by way of punishment in addition to the compensation for a loss sustained.

With respect to proof, damages may be divided into: General damages which the law implies and presumes to have occured from the wrong complained of; and special damages, which are not implied by law and must, therefore, be proven.

With respect to their estimation, damages may be divided into: Pecuniary damages, which can be accurately estimated, such as loss of wages, medical expenses, etc., and nonpecuniary damages, which cannot be determined by any rule, but depend upon the underlying judgment of an impartial court or jury, such as damages for pain, suffering, loss of reputation, etc. (See 17 C. J. 711 et seq.)

CHAPTER II

COMPENSATORY DAMAGES

DEFINITION AND GENERAL PRINCIPLES.—Compensatory or actual damages are damages in satisfaction of or in recompense for the loss or injury sustained. (8 R. C. L. 428). And as indicated by the word employed to characterize them, compensatory damages simply make good or replace the loss caused by the wrong. They proceed from a sense of natural justice, and designed to repair that of which one has been deprived by the wrong of another. (Reid vs. Terwilliger, 116 N. Y. 530).

Both under the Spanish Civil Code and the American Law of damages, they import and embrace direct pecuniary loss, such, for example, as damages to property, medical expenses, the value of time lost, injury to business or profession, and the like. Unlike the Civil law, the Anglo-American law is not restricted to actual loss in time or money, for they also include such as may be awarded for bodily pain and suffering, wounded feelings and mental anguish, permanent disfigurement, disabilities, and for injury to reputation and character.

PHYSICAL PAIN AND SUFFERING.—*Element of Damages in Anglo-American Law.*—Physical pain and suffering, if they are the proximate and certain result of the wrong, are always an element of compensatory damages in the Anglo-American law. (Goodhart vs. Penn. R. Co., 177 Pa. 1). Future suffering may be taken into consideration in estimating the amount to be awarded if such suffering is a reasonably certain result of the injury. (Union Pac. R. Co., vs. Jones, 49 Fed. 343).

No recovery can, therefore, be had for physical injury resulting from fright caused by another person's danger. (Sanderson vs. Northern Pac. R. Co., 88 Minn. 162). The injury must be physical and not purely imaginary. It must be something that produces real discomfort or annoyance thru the medium of the senses, not from delicacy of taste or refined fancy. (Westcott vs. Middleton, 43 N. J. Eq. 478, 486). Inasmuch as no exact pecuniary valuation can be awarded for pain and suffering, the jury in Anglo-American jurisdictions have a large discretion in the assessment of damages to be awarded to the injured party. The circumstances of each particular case are always taken into consideration.

Elements of Damages Under Act No. 1874.—Act No. 1874 (the Employers' Liability Act) is of American origin. It is a copy of the Massachusetts law of 1902, which was in turn copied verbatim, with some variations of detail, from an English statute. This Act was discussed by our Supreme Court in the case of Tamayo vs. Gsell (35 Phil. 953). In that case the plaintiff's ward, a young, ignorant boy, was employed by the defendant to do ordinary work in the performance of which he did not come into contact with the machinery, and was without any previous warning or instructions and over the objections of the ward, ordered to assist in cleaning a dangerous machine where his fingers were caught in the machine severing the ring finger at the first joint. On trial the defendant was found guilty of negligence. The plaintiff, however, proved no pecuniary dam-

ages sustained thereby. The sole question was, can he recover damages other than pecuniary or actual damages? The Supreme Court answered this in the affirmative.

In the body of the opinion, the Court said: "Act No. 1874, does not attempt to define generally the rights of master and servants, and is not a codification of the law. Reference must be made to some other law to define who are masters, who are servants, what is the scope of the employment, and whether the injury was the approximate result of the negligence; the negligence itself must be determined by that other law and not by the Act. (Section 1 of Act No. 2473, however, has made a presumption of the negligence of the employer.) The Act does not impose any obligation on the master to employ competent servants nor to instruct or warn his servants about their work or the dangers of it. These obligations, if they exist, must be found elsewhere. Neither does the Act define the word 'damage' by setting forth the element thereof, nor does it fix any general rules for determining the measure of damages in personal injury cases brought under it. It does provide, however, that in those cases where damages are awarded for death of an employee the same shall be assessed with reference to the degree of culpability of the employer or of the person for whose negligence the employer is liable. The Act also fixes the minimum and maximum amounts which may be awarded if death results from the injuries, and the maximum amount of damages for personal injuries not resulting in the death of the employee."

Our Supreme Court expressly stated, that under the Civil Code, the plaintiff would not be entitled to recover damages for pain, suffering and mental anguish; and that therefore, he could not maintain that action as he could prove no damages apart from those arising from pain and suffering. But, inasmuch as the action was brought under the Employer's Liability Act, the measure of damages recoverable thereunder is that of the Anglo-American common law, which includes damages for pecuniary loss, pain and suffering and permanent injuries. The award, therefore, of the lower court of the sum of ₱400.00 was held not excessive.

With the exception then of these actions brought under the Employer's Liability Act, the highest tribunal of these Islands has again and again held that under the laws of the Philippine Islands pain and suffering are not an element of damages in cases of *lesiones* or physical injuries. (Marcelo vs. Velasco, 11 Phil. 287; Algara vs. Sandejas, 27 Phil. 284). Let us examine some cases of physical injury.

In the case of U. S. vs. Bugarin, (15 Phil. 189) where a portion of the index and middle fingers of one of the hands of the complaining witness were cut, the court awarded to the latter the sum of ₱20.00 as indemnity. And in the case of U. S.

vs. Punsalan (23 Phil. 375), where the offended party lost the use of the three fingers of his left hand as a result of the injuries inflicted upon him by the defendant, the court required the defendant to indemnify the offended party with the sum of ₱13.00. While in the case of U. S. vs. Maisa (8 Phil. 597), the injured party lost an eye nd received the amount of ₱50.00 as indemnity.

In the three cases cited above, the offended parties received indemnities not because they were injured, but simply because they had spent the sum indemnified for medical attendance and for medicine. Not a single cent did they receive for damages sustained for pain and suffering. What a contrast to the well known Tamayo case! In that case the offended party lost a small part of his ring finger and yet recovered for pain and suffering the sum of ₱400.00. Why? Merely because the offended party was an employee of the defendant. Why make such a discrimination? Why should a person who had his finger cut off thru the negligence of his employer be entitled to recover damages for pain and suffering, while his brother, who had lost the use of one of his eyes is not entitled to recover like damages?

MENTAL SUFFERING AND ANGUISH.—*Elements of damages in Anglo-American Law.*—Mental suffering means distress or serious pain as distinguished from annoyance, regret or vexation. Mental anguish is intense mental suffering. (Hancock vs. Western Union Tel. Co. 137 N. C. 497).

In Anglo-American law mental suffering and anguish are elements of damages in so far as they are attendant on the injury, and inseparably connected with it, or a natural result of it. (McDermott vs. Severe, 202 U. S. 600). Mental suffering alone, as a general rule, is not a distinct cause of action or element of damage. (Connell vs. Western Union Tel. Co. 116 No. 34).

Mental suffering must be real, founded on adequate cause, and not a product of a too sensitive mind or a morbid imagination. (Western Union Tel. Co. vs. Archie, 92 Ark. 59). In Gerock vs. Western Union Tel. Co. (147 N. C. 1), the Court said that for mere inconveniences, such as annoyance, loss of temper, or vexation, disappointment without real physical inconvenience resulting, the plaintiff cannot recover damages for mental suffering, for that was purely sentimental.

In cases of physical injuries, compensation is oftentimes not confined to the present mental anguish, but may include an

allowance for such future mental suffering as is reasonably certain to follow. (Matterson vs. New York Cent. R. Co., 62 Barb. N. Y. 364) In all cases, however, the mental suffering must be directly connected with the injury. (Bahr vs. Northern Pac. Ry Co., 101 Minn. 314).

Of course, mental suffering and anguish cannot be measured accurately in terms of money valuation by outstanding manifestation, "for there may be a show of great distress when little or none is felt; and great distress may be concealed and borne in silence with an apparently quiet mind," nevertheless, compensation should be awarded within the bounds of human powers.

Elements of Damages Under Acts Nos. 277 and 1874.— Act No. 277 (the Libel Law) is another Philippine law of American origin. It must be borne in mind that this law was enacted by an American commission, the majority of whose members were American lawyers, and that its provisions were borrowed almost verbatim from the statutes of one or the other of the States of the American Union. (Montinola vs. Montalvo, 34 Phil. 662, 666). As expressly provided, damages for injuries to wounded feelings and reputation are recoverable under the law. Section 11 of said law provides as follows: "In addition to the criminal action hereby prescribed, a right to civil action is also hereby given to any person libeled as herein before set forth against the person libeling him for damages sustained by such libel, and the person so libeled shall be entitled to recover in such civil action not only the actual pecuniary damages sustained by him but also damages for injury to his feelings and reputation, and in addition such punitive damages as the court may think will be a just punishment to the libeler and an example to others..."

Thus, "the law recognizes the value of reputation, and constantly strives to give redress for its injury. It imposes upon him who attacks it by... libelous publication, a liability to make full compensation for the damage to the reputation, for the shame... and for the injury to the feelings of the owner, which are caused by the... libel."

"The enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty, or property. It is one of those rights necessary to human society that underlie the whole scheme of human civilization."

"The respect and esteem of his fellows are among the highest regards of a well-spent life vouchsafed to man in this exist-

ence. The hope of it is the inspiration of youth, and their possession the solace of later years. A man of affairs, a business man, who has been seen and known of his fellowmen in the active pursuits of life for many years, and who has developed a great character and an unblemished reputation, has secured a possession more useful, and more valuable than lands, or houses, or silver, or gold. A good name is rather to be chosen than great riches and loving favor rather than silver or gold." (Quoted in the case of Worcester vs. Ocampo, 22 Phil. 42, 73).

The person injured by a libel may maintain an action for damages independent of any criminal action which the state might deem advisable to maintain. (Macleod vs. Henkins, 14 Phil. 681). In the criminal action provided for under the Act certain defenses, such as the truth of the publication and the purposes of the publication, are given to the defendant. Under section 11 of said Act it is expressly provided that "the presumptions, rules of evidence, and special defenses herein provided for criminal prosecutions shall be equally applicable in civil actions under this section." This provision clearly indicates that the civil actions for damages resulting from the libel is a separate and distinct action, from the criminal action provided for. The fact, therefore, that the evidence in the criminal prosecution was insufficient to show that the defendant was guilty of a crime does not bar the right of the offended party to maintain a civil action for damages. (Worcester vs. Ocampo, *supra*).

In estimating the damages to be allowed for injury to feelings and reputation, the publicity given to the publication, the extent it tends to expose the plaintiff's reputation to public hatred, contempt and ridicule, the social and business standing of the plaintiff, and whether the particular method of publication tends to add ignominy to the natural effects thereof and thereby increase the plaintiff's mental suffering, are elements to be considered. (Jimenez vs. Reyes, 27 Phil. 52). So that in the Worcester case the plaintiff, then a member of the Philippine Commission, recovered damages in the sum of ₱15,000.00 for the injury to his good name and reputation. So far, this is the highest amount of damages ever awarded by our Supreme Court to an offended party for injury to feelings and reputation.

Damages for mental suffering and anguish, as already discussed above, are also recoverable under the Employer's Liability Act (Act No. 1874).

In libel cases when at least a third person would have understood the description of the person referred to in the defama-

tory publication as relating to the plaintiff, general damages could be recovered. (Funkle vs. Cablenews American & Lyons, 42 Phil. 757); but in cases of calumny or insults even if hundreds of persons heard the heinous crimes or the ignominious words imputed, the offended party could never recover damages for injuries to his feelings and reputation; "inasmuch as the value of honor is a thing that cannot be appraised and it is not possible to fix the amount of damages, nor can the payment of an indemnity be imposed upon the offender under article 18 of the Code (Article 17 in our Penal Code) by way of civil liability arising out of a criminal act." (Dec. of the Supreme Court of Spain, December 6, 1882; 27 Jurisprudencia Criminal 414). But, is the mind not a part of the offended party's person as his body is? Are the sufferings of the former not oftentimes more acute, more lasting, than those of the latter? If justice is really the prime object of the law, the punishment inflicted by the State for calumny and insults is inadequate. The wounded feeling and injured reputation, the loss of peace of mind and, perhaps, happiness, and the sense of indignity suffered by the offended party should be compensated.

PAIN AND SUFFERING NOT ELEMENTS OF DAMAGES UNDER ANY OTHER PHILIPPINE STATUTES.—*Under the Civil Code.*—As to the provisions applicable in each particular case, inquiry should be made whether the negligence is incident to the performance of a contractual obligation, *culpa contractual*, or a negligence as an independent source of liability in the absence of special relations (*culpa Aquiliana*). According to the cases of De Guia vs. Manila etc. Co. (40 Phil. 706) and Manila etc. Co. vs. Cia. Trasatlantica (38 Phil. 875), *culpa contractual* is governed by articles 1101 et seq. of the Civil Code; and *culpa aquiliana* by articles 1902-1904 of the same Code.

Article 1902 of the Civil Code reads as follows: "Any person who, by an act or omission, causes damage to another by his fault or negligence shall be liable for the damage so done." And articles 1092 and 1093 of the same Code provide for the enforcement of civil liability according to its origin. Thus, article 1092 provided that civil obligations arising from crimes and misdemeanors shall be governed by the provisions of the Penal Code. On the other hand, article 1093 provides that "those arising from acts or omissions, in which fault or negligence, not punished by law occurs, shall be subject to the provisions of chapter second of title sixteen of this book." If, therefore, the civil liability springs as a consequence of a crime or

misdemeanor, the provisions of the Penal Code are the ones applicable (Almeida and Lete vs. Abaroa, 40 Phil. 1056; 218 U. S. 476).

The provisions of the Civil Code are very indefinite in the minds of Civil law judges and jurists. If these provisions, however, were embodied in American statutes and the courts were called upon to interpret them, no doubt they would be clear enough to include pain and suffering as elements of damages recoverable. But our Supreme Court often follows the decisions of the Supreme Court of Spain in the interpretation of the provisions of the Civil and Penal Codes.

The jurisprudence established by the Supreme Court of Spain might therefore be briefly stated thus: That in order to give rise to the obligation imposed in article 1908 of the Civil Code, the coincidence of two distinct requisites is necessary, viz.: (1) That there exist an injury or damage not originating in acts or omissions of the prejudiced person himself, and its existence be duly proved by the person demanding indemnification therefor; (2) That said injury or damage be caused by the fault or negligence of a person other than the sufferer. (12 Manresa, Comentarios al Código Civil, 504). And of whatever nature the damage may be, and from whatever cause it may proceed, the damage may be, and from whatever cause it may proceed, the person who has done the injury ought to repair it by an indemnity proportionate to his fault and to the loss caused thereby. (1 Cushing, Domat's Civil Law, 741).

The obligation to indemnify for damages caused by negligence under article 1902 of the Civil Code includes the two kinds of damages specified in article 1106 of the same Code, to wit, damages for the loss actually sustained and for the profit not realized. (Borromeo vs. Manila etc. Co., 44 Phil. 165); but pain and suffering, whether physical or mental, are not elements of actual or compensatory damages in this jurisdiction. (Algarra vs. Sandejas, 27 Phil. 285). The evidence of damages must rest upon satisfactory proof of the existence in reality of the damages alleged to have been suffered. (Sanz vs. Lavin Bros., 6 Phil. 299; Rubiso vs. Rivera, 41 Phil. 39).

Let us now turn to the laws and jurisprudence of Porto Rico. Section 1803 of the Revised Code of Porto Rico reads as follows: "A person who by an act or omission causes damages to another when there is fault or negligence shall be obliged to repair the damage so done." This section is exactly the same as article 1902 of our Civil Code. It is because the Porto Rican Civil Code, like our Civil Code, is derived from the Spanish Civil Code.

This section was interpreted by the Supreme Court of Porto Rico in the case of Diaz vs. San Juan Light and Transit Co. (17 P.R.R. 64), in the following words; "Altho section 1803 of the Revised Civil Code is the same as article 1902 of the Spanish Civil Code, by reason of the political change brought about in the Island and the establishment of the new penal system, the provision thereof had and still has a wider range of application and afford a basis for the exercise of civil action for quasi-criminal fault or negligence, and the exercise of actions resulting from criminal fault and negligence... and in order to allow compensation it is not necessary that the complainant should prove his loss in terms of dollars and cents, it being sufficient, in cases of this nature, to prove that the plaintiff, thru the fault or negligence of the defendant and not thru his own fault and negligence, had sustained a real damage, consisting of physical pain, loss of work, confinement in a hospital, mental suffering, etc." Physical pain and mental suffering are elements of damages in a Civil law country! It seems improbable. But such is the case in the progressive country of Porto Rico, which at one time was fettered by the harsh rule of the Civil law. Shall the Philippines lag behind? Is not the example set by Porto Rico an act worthy of emulation?

Under the Penal Code.—When a civil action arises out of a crime or misdemeanor, we must turn to the Penal Code. This is the plain inference that we can deduce from article 17 of the Penal Code, which provides as follows: "Every person liable for a crime or misdemeanor, is also civilly liable."

In order, however, that civil liability may be ascertained, is it necessary to bring an action distinct and separate from the criminal action?

By article 112 of the Code of Criminal Procedure of Spain, the civil action is held to be part of the criminal action, "unless the person prejudiced or injured renounces the same, or expressly reserves the right to institute it after the conclusion of the criminal action."

Unless, therefore, the injured party has expressly waived (article 23, par. 2 of the Penal Code), or has reserved the right to institute a separate civil action, the civil liability of the defendant will be determined in the criminal action. (U. S. vs. Mendoza, 21 Phil. 407). And on failure of the trial court to make any findings as to the civil liability, in accordance with the evidence, on appeal, the Supreme Court may remand the case to the lower court so that the proper findings may be made as

to the civil liability of the defendant. (U. S. vs. Heery, 25 Phil. 600). But when two actions have been instituted by reason of the commission of a criminal offense—one civil and another criminal—all the proceedings in the former will be suspended until the latter has been finally disposed of. (Almeida vs. Abaroa, 8 Phil. 178); excepting, of course, in libel cases as we have seen above.

In adultery cases, however, the Supreme Court in the case of U.S. vs. Noriega, (31 Phil. 310) held, that the prosecuting witness cannot recover any indemnity in the criminal action even when the defendant has been convicted; and that if any indemnity can be recovered at all, a separate civil action will be necessary. The reason of the Court in disallowing such indemnity in the criminal action is that there is no provision in the Penal Code which allows indemnity for adultery cases. From this we can infer that the court will not also grant indemnity in cases of calumny and insults as there are no provisions in the Penal Code allowing such indemnity. A separate civil action must, therefor be brot. In cases of rape, seduction, and abduction the offended party may recover indemnity either in the same criminal action or in a separate civil action. (Act. No. 1773, section 3.)

But what is the extent of the Civil liability for which the offender in all the cases mentioned above is liable? Paragraph 1 of article 499 of the Penal Code provides as follows: "Any person guilty of rape, seduction, or abduction shall also be condemned by way of indemnification, to endow the offended woman, if she be single or a widow." The Code does not specify the amount with which the aggrieved party shall be indemnified. Viada, however, commenting on this article says, that a girl who has been a victim of any of these crimes is branded by the crime with a stain which is difficult to erase and which incapacitates her almost forever to engage in a legitimate marriage. It is evident that the result of the crime upon her is a grave material injury, for which it is just that she be indemnified. The article does not say as to the amount with which the aggrieved party shall be indemnified. The Courts, for this reason, should regulate, according to their prudent discretion, taking into account the financial standing of the offender and also the intensity of the injury caused by the crime and the class and circumstances of the offended party. (3 Viada 159).

The conclusion that we have arrived at thru a careful examination of the cases decided by the Supreme Court of Spain as well as of the Philippines, is that the indemnity allowed is limited to pecuniary damages and never include nonpecuniary damages,

such as those sustained for mental suffering and anguish, wounded pride, sense of shame and humiliation and the like. In Anglo-American jurisdictions such damages are presumed by law in the cases mentioned above. True it is, that these elements of damages cannot be accurately appraised as the Supreme Court of Spain had said; but, that reason alone should not excuse the guilty party from repairing the injury caused by his criminal act. The Libel Law and the Employers' Liability Act recognize them as elements of damages in this jurisdiction. Do the crimes against chastity not produce at least the same, if not a greater, injury as that produced by the publication of a libel?

Under Act No. 1773.—Does this Act affect in any way the law of the Islands respecting damages? Section 3 of Act No. 1773 provides as follows: "In all cases wherein a criminal prosecution for any of the offenses mentioned in section one of this Act *(adulterio, estupro, rapto, violacion, calumnia* and *injuria)* might be brought, the aggrieved person or such person's parents, grandparents, or guardian may also bring a civil action and recover therein civil damages from the guilty person. The remedy hereby given shall be deemed to be an additional remedy, apart from any other remedies which the existing law afford, and nothing herein contained shall be so construed as to revoke, repeal, or modify any other civil remedy which the existing law, in such cases, affords, nor shall anything contained in this Act be construed to modify or repeal any of the provisions of Act No. 277, the Libel Law."

In the case of Dharamdas vs. Haroomall (35 Phil. 183), our Supreme Court interpreted this section in the following words: "This as will be seen at a glance, simply confers the right to bring a civil action to obtain the relief which, formerly, could be secured only in a criminal action. No rule or measure of damages is laid down by the Act; and the statute having for its only purpose the giving of an 'additional remedy' and not revoking, repealing or modifying 'any other civil remedy which the existing law may afford,' affects in no way the law of the land relating to the rule or measure of damages in such cases. The statute really affects the method only. It does not interfere with the substantive law. The right always existed in all cases. The statute simply offers another method of making that right effective. The nature of the right and the results flowing therefrom, both criminally and civilly, are unaffected by the Act." No damages for pain and suffering are, therefore, recoverable under this Act. The Legislature might have intended otherwise.

If so, it should express itself more definitely so that justice might be administered alike in all cases and under the protection of law.

ACCOMPANYING BREACH OF CONTRACT.—According to the weight of American authority damages for mental suffering or anguish alone cannot be recovered for breach of contract. A great majority of contracts are made solely to secure something having a definite or recognized pecuniary value. In such cases mental suffering or anguish would be excluded as an element of damage, not only because not within the contemplation of the parties when the contract was made (Walsh vs. Chicago, etc. By Co., 42, Wis. 23), but also because not a natural or contemplated consequence of a breach. (Beasley vs. Western Union Tel. Co. 39, Fed. 181) Where other than pecuniary benefits are contracted for, other than pecuniary standards will be applied to the ascertainment of damages flowing from the breach. (Wadsworth vs. Western Union Tel. Co., 86 Tenn. 695). Thus, for breach of an undertaker's contract to keep safely the body of the plaintiffs' deceased child, it was held that damages could be recovered for mental anguish. (Tenihan vs. Wright, 125 Ind. 536). So, too, where there was a breach of contract to bury a child in a proper manner, damages for mental anguish were allowed. (Wright vs. Beardsley, 46 Wash. 16). Damages for mental anguish have also been allowed for breach of contract to transport a corpse. (Hale vs. Bonner, 82 Tex. 33). For breach of ordinary contract of carriage, however, the general rule is that in the absence of any elements of a tortious nature, damages for mental suffering and anguish will not be allowed. (Turner vs. Breat N. By 15 Wash. 213). American courts, in cases of breach of contract of marriage, and in cases of wrongs against personal security, character and reputation, or domestic relations, recognize mental suffering and anguish as the ordinary, natural and proximate consequence of the wrong done.

The old English rule that mental suffering and anguish resulting from mere negligence, and unaccompanied with injuries to the person, cannot be made the basis of an action for damages, admits now of another exception in many American jurisdictions. This is due to the progress of the United States in the field of electricity. The invention of the telegraph as a means of transporting intelligence has brought about another modification in the law of damages in many states of the American Union.

In the famous case of So Relle vs. Western Union Tel. Co., 55 Tex. 308), the Supreme Court of Texas announced the doctrine that the addressee of a telegram could recover as compen-

satory damages for mental anguish due to the failure of the telegraph company to deliver promptly a message announcing the death of his mother, by reason of which he was prevented from attending the funeral. Altho this doctrine was subsequently repudiated in the case of Gulf, etc. Co. vs. Levy (59 Tex. 563), the Supreme Court of Texas reaffirmed the rule in the case of Stuart vs. Western Union Tel. Co. (66 Tex. 580), and it is now well settled in many states in the Union that, where the nature of the message is such as to appraise the company that mental suffering will result from the delay or failure to transmit it, compensation for such suffering can be recovered tho not connected with any physical injury or pecuniary loss. (Todd vs. Western Union Tel. Co., 77 S. C. 522). The mental anguish must, however, be the natural and proximate result of the failure to deliver the telegram. (Western Union Tel. Co. vs. McMorris, 158 Ala. 563).

There is a presumption of mental anguish in case of delay or failure to deliver telegrams relating to sickness or death, where there is a very close relationship, either that of husband and wife or relationship of blood. (Western Union Tel. Co. vs. Blockmer, 82 Ark. 526). However, where the relationship is merely of affinity, mental suffering and anguish will not be presumed but must be proved. (Butler vs. Western Union Tel. Co., 77 S. C. 235).

In some states of the Union, the right of recovery has been expressly limited to cases where the message deals with social and personal relations, sickness and death; and denied in all cases in which messages of a more or less business character are involved. (Bowers vs. Western Union Tel. Co., 135 N. C. 504; Todd vs. Eastern Union Tel. Co., supra). Thus, except where the company had notice of special circumstance which might reasonably cause mental suffering, compensation cannot be allowed. (Western Union Tel. Co. vs. Simpson, 73 Tex. 422).

Incidents like those that happened in the American jurisdictions cited above also occur daily in the Philippines. We are subject to the same overwhelming emotions as are our white brothers beyond the seas. And still our law says that for our mental suffering and anguish we shall recover no damages therefor as they cannot be appraised. What an injustice!

BREACH OF MARRIAGE PROMISE.—In Anglo-American law, actions for breach of promise of marriage are peculiar in many respects. The action is nominally for a breach of contract, but the measure of damages is fixed by rules which do not apply to

other actions of contract. Damages are awarded upon principles more commonly applicable to actions of tort. (Sherman vs. Rawaon, 102 Mass. 395) Compensatory damages as well as exemplary damages are recoverable in cases of breach of promise of marriage.

As in other cases, compensation may be recovered for pecuniary losses proximately caused. The actual outlay in the preparation for the marriage may be recovered. (Goddard vs. Wescott, 82 Mich. 180, 188). Article 44 of the Civil Code provides as follows: "If the promise has been made in a public or private instrument by an adult, or by a minor in the presence of the person whose consent is necessary for the celebration of the marriage, or when the banns have been published, the one who without just cause refuses to marry shall be obliged to reimburse the other for the expenses which he or she may have incurred by reason of the promised marriage." Granting that this article is in force (ex-Justice Willard believes the contrary), still no damages are recoverable thereunder. According to Manresa said article means only a reimbursement of the fees for necessary documents, expenses for furniture for the conjugal home, for articles ordered, for those incurred for the ceremony, wedding presents, and all other similar expenses incurred by reason of the promised marriage. The law does not speak of damages, and for this reason it does not authorize the one wronged to recover damages. (1 Manresa, Com. al Codigo Civil, 246).

In Anglo-American law, nonpecuniary damages caused by the breach of promise of marriage are also recoverable, and they include damages for injury to reputation, wounded affections, mortification or distress of mind and the like. (Harrison vs. Swift, 13 Mass. 144; Parker vs. Forehand, 99 Ga. 743). Such damages are never awarded in the Philippines in case of breach of promise of marriage. The reciprocal and mutual promises are not considered sufficient considerations to make the man's promise obligatory and binding as an ordinary contract. And as a promise of marriage based upon carnal relations, is founded upon an unlawful consideration, no action can be maintained by the woman against the man therefor. An action for damages can not be maintained under article 1902 of the Civil Code where the party claiming such damage voluntarily consented thereto. (Batarra vs. Marcos, 7 Phil. 156; Tengco vs. Sanz, 11 Phil. 163; Inson vs. Belzonce, 32 Phil. 342).

In Garcia vs. Del Rosario (38 Phil. 189), the injured party at the time of the mutual promises to marry, was employed as a teacher in the public school and as such teacher was receiving

the sum of ₱30.00 per month; and by reason of the acts of the defendant, his failure to comply with his promise to marry, and by reason of the pregnancy of the plaintiff and because of shame and humiliation, she was obliged to give up her position as such teacher. No doubt that under such circumstances, American courts would award not only compensatory but also exemplary damages for such a breach of promise of marriage. Why? Evidently because of the position of the aggrieved party, the motive of the defendant, the injury to the feelings, the disappointment, mortification, the loss of chances to marry, the mental suffering of many kinds, the aggregate of which is not capable of pecuniary estimation. "A broken head is perceptible by sight and touch, but a broken heart is quite incomprehensible."

Confiding in a man's promise of marriage a girl usually becomes very intimate and confidential with the man she loves. She looks upon him as her trustee, her guardian, her confidential adviser. What a grave abuse of confidence, should he after depriving her of her most precious earthly possession—her honor—desert her! To leave her alone to pine, to suffer mortification, pain and suffering unknown to her ever since her childhood days! And worst of all, the unprincipled lover would leave her a social outcast, deprived of her former social standing, of her good name and reputation, and with nothing left but a beclouded future.

Our law, being still at the mercy of an antiquated Spanish system, cannot award damages for all of these consequences. Our Supreme Court, in such cases award only such damages as are actually proved. So that in the case of Garcia vs. Del Rosario, (supra) only the sum of ₱540.00 was awarded to the offended party, said sum being an equivalent to her salary as teacher for the period of one year and a half. Not a cent for her honor, not a cent for her sufferings!

CHAPTER III

EXEMPLARY DAMAGES

DEFINITION AND GENERAL PRINCIPLES.—The term exemplary, punitive and vindictive damages are used interchangeably, and generally speaking, refer to those damages which are given in enhancement merely of the ordinary damages, on account of the malicious or oppresive character of the acts complained of. (Fay vs. Parker, supra). According to more generally accepted doctrines, exemplary damages are awarded

by way of punishment to the offender, and as a warning to others, although by other authorities they are said to be awarded by way of example and not by way of punishment, a distinction being made between the terms.

The principle was also confused with that allowing compensation for mental suffe ings, the circumstances of aggravation which would naturally cause mental suffering. But damages for mental pain and suffering are actual, not punitive in nature; while exemplary damages are given because of the motive of the defendant.

A seemingly strong objection to the principle of exemplary damages by the penal or criminal laws, is that it is a double punishment and is therefore unconstitutional. It is a principle of the common law, and one which is embodied in many of the State constitutions and in our Organic law, that no person shall be twice punished for the same cause—*nemo bis vexari pro eadem causa*. Exemplary damages are, however, only awarded whenever elements of oppression or fraud or malice enter into the commission of the offense. In such cases the jury are not limited to actual compensation, nor are they required to scrutinize very closely the amount of the verdict, but blending together the rights of the injured party and the interests of the community, they may give such a verdict as will compensate for the injury and at the same time inflict some punishment upon the defendant for his wrongful act, protect society, and manifest the detestation in which the act is held by them. The damages allowed, then, in a civil case by way of punishment have no necessary relation to the penalty incurred for the wrong done to the public; but are called punitive damages by way of distinction from pecuniary damages, and to characterize them as a punishment for the wrong done to the individual. (Hendrickson vs. Kingsbury, 21 Iowa 379; Houser vs. Griffith, 102 Iowa 215). The satisfaction of the punishment imposed by law, is not, therefore, a satisfaction for the wrong done to the offended party.

In American jurisdictions exemplary damages are awarded as a punishment to the offender and as a warning to others, in such cases as those affecting liberty, character, reputation, personal security, and domestic relations of the injured party; as for example, assault, illegal arrest, malicious prosecution, false imprisonment, seduction, libel, slander, breach of contract of marriage, and injuries to the bodies of the dead. And in order that exemplary damages may be allowed there should either be malice, or such gross negligence, restlessness, wanton-

ness, oppression, brutality, insult or fraud equivalent to malice. (Cram vs. Hadley, 48 N. H. 191; Parkins vs. Towle, 43 N. H. 220). In the Philippines, however, they are recoverable only under the libel law when malice is present.

RECOVERABLE UNDER THE LIBEL LAW ONLY.—Exemplary damages for libel may be recovered in civil actions if the defendant or defendants were actuated by malice. Section 11 of Act 277 allows the court, in an action for libel to render judgment for punitive damages in an amount which the court thinks will be just punishment to the libeler and an example to others.

In an action for libel damages for injury to feelings and reputation may be recovered tho no actual damages are proven. (Macleod vs. Philippine Pub. Co. 12 Phil. 427). Where, therefore, no malice or evil motive is proved to have existed on the part of the offender towards the plaintiffs, no punitive, vindictive or exemplary damages will be awarded. (Matti vs. Bulletin Pub. Co. 37 Phil. 562, 568).

Exemplary damages may also be allowed when the defendant, upon being called to account for a libelous publication concerning the plaintiff, publishes a pretended disavowal, which in effect is a satirical comment on the plaintiff's reputation and is itself libelous. (Jimenez vs. Reyes, 37 Phil. 52). The Court also awarded punitive damages for publishing a third libelous article. (Montinola vs. Montalvo, 34 Phil. 662).

The malice implied by law in cases of libel *per se* is not sufficient to support an award of exemplary or punitive damages. There must be a showing of aggravating circumstances in order to justify the imposition of punitive damages. Such showing may be that the publication was made with special ill-will or bad intent or was made in reckless disregard for the rights of others. (Choa Tek Hee vs. Phil. Pub. Co. 34 Phil. 448).

And except in those cases where the law authorizes the imposition of punitive or exemplary damages, the party claiming damages must establish by competent evidence the amount of such damages, and courts cannot give judgment for a greater sum than those actually proven (Marker vs. Garcia, 5 Phil. 557), inasmuch as such damages are unknown to our Civil Code. (Algarra vs. Sandejas, 27 Phil. 284).

We see no reason why our law can give damages of this kind under the Libel Law and deny the same to the offended party in cases of crimes against chastity, in cases affecting liberty, personal security, domestic relations, reputation and character, as slander, insults, seduction, and the like.

CHAPTER IV

DAMAGES FOR DEATH BY WRONGFUL ACT

IN GENERAL.—At common law in conformity with the maxim *"Actio personalis moritur cum persona,"* no action could be maintained for wrongfully causing the death of a human being. And altho the rule has been criticized as being technical and without the support of sound principles, it is too firmly established to be any longer open to question. Except then in so far as the rule has been changed by statute it is still the law that actions or causes of action for personal injuries resulting in death do not survive.

In the Philippines a statutory right of action exists. (U. S. vs. Heery, 25 Phil. 600). The Civil Code, the Penal Code and Act No. 1874 contain provisions to that effect. But because of the civil origin of the law applicable in the Philippines, because we are not fettered by the harsh common law rule on the subject, because it is the modern and more equitable principle, and because reason and natural justice are eloquent advocates, we hold that an action for damages can be maintained in this jurisdiction for the death of a person by wrongful act. (Malcolm concurring in Manzanares vs. Moreta, 38 Phil. 821). Under our present statutes, however, an administrator cannot maintain an action for injuries causing the death of his intestate; for in jurisdictions where laws award damages for death to the family of the deceased, actions therefor must be prosecuted by the relatives personally and are not available to the executor or administrator, as the recovery forms no part of the descendant's estate. (To-Guioc-Co. vs. Del Rosario, 8 Phil. 546).

Unless the statute expressly so provides, nothing can be allowed to the plaintiff by way of damages, as a *solatium* to compensate him for his wounded feeling or for the mental anguish the death of his relatives may have caused him and proof of such mental suffering is not admissible on the question of damages (Slake vs. Midland, R. Co., 18 Q. B. 93); as damages must be founded on pecuniary loss, actual or expected.

In jurisdictions, however, where the legislature has provided that the jury shall assess such damages as they deem fair and just with reference to the inquiry resulting from the death, thus omitting to limit the damages to the pecuniary injury, it is held that the jury may consider the loss of society, and by way of solace and comfort for the sorrow, suffering and mental anguish occasioned by the death. Mr. Justice Malcolm once

said, "True, the feelings of a mother on seeing her little son torn and mangled—expiring—dead—could never be assuaged with money. True, all human treasure in nature's vaults could not begin to compensate a parent for the loss of a beloved child. Nevertheless, within the bounds of human powers, the negligent should make reparation for the loss." We, are therefore, proud to see that our law on the subject allows damages for death caused by wrongful act. But our main concern is the amount of the award of damages in such cases.

AMOUNT OF DAMAGES.—In some jurisdictions, statutes giving a right of action for wrongful death expressly provide that the recovery of damages shall not exceed a certain amount. Thus, the sum is limited to $5,000 in Colorado, Connecticut, Maine, and Wisconsin; to $10,000 in Illinois, Indiana, Kansas, Massachusetts, Missouri, Oklahoma, South Dakota, Virginia, West Virginia, and District of Columbia. With these exceptions, the other states of the American Union impose no limit to the amount recoverable. Thus, in California the sum of $17,000 was awarded as damages in a case of death by wrongful act (Cattin vs. Union Oil Co., 31 Cal. 597); and in Georgia the sum of $15,000 was awarded as damages for the death of the husband of the plaintiff. (Cemt. of Ga. R. Co. vs. Lorenson, 19 Ga. 413). In Spain the sum of $3,500 was awarded in a case of death. (Decision, Jan. 15, 1902). And in Porto Rico, $1,000 and $1,500 were allowed in respective cases for the death of a child.

In the Philippines, as a general rule, there is no statutory limitation as to the amount of damages recoverable in cases of death by wrongful act. Our Supreme Court used to award a greater amount of damages than ₱1,000. Thus, in U. S. vs. Yacat (1 Phil. 443), the sum of 1,500 Mexican pesos was allowed as indemnity to the heirs of the deceased; in the case of U. S. vs. Carioso (4 Phil. 261), ₱2,000; and in U. S. vs. Angeles (6 Phil. 480), ₱5,000. At present, however, the rule is to allow, in criminal cases, as a matter of course ₱1,000 as indemnity to the heirs of the deceased. (Manzanares vs. Moreta, 38 Phil. 821; People vs. Bustos, 22 Off. Gaz. 1). And where there are two or more defendants, they have to indemnify the heirs jointly and severally in the said sum of ₱1,000 (People vs. Marcellana, 44 Phil. 591; People vs. Tamayo, 44 Phil. 38).

The law presumes a pecuniary loss because of the death. The heirs need not, therefore, prove their loss in order to recover an indemnity of ₱1,000. But this amount of damages could be

enhanced in certain cases by proving the personal characteristics of the deceased, his occupation, his earning capacity and other facts to help the judge in fixing the amount to be allowed as indemnity. This rule, as laid down in the case of Manzanares, shows a more liberal tendency on the part of our courts in administering justice within the ken of human wisdom.

In actions brought under the Employer's Liability Act the rule is different. The said act expressly provides that the damages recoverable shall not be less than ₱500 nor more than ₱2,500 for both injuries and death. (Act No. 1874, sec. 3). Thus, in the case of Rosario vs. Manila R. Co. (22 Phil. 140) the maximum amount of ₱2,500 was awarded to the plaintiff for the death of her husband, who was an employee of the defendant company.

After a thorough examination of our laws on this subject, we come to the conclusion, that, all other things being equal, a greater amount is usually recoverable as damages for the death of an employee; and that so far none, after the Manzanares case, has ever recovered a sum greater than ₱1,000 in actions for damages in cases of death by wrongful act other than under the Employer's Liability Act. We hope, however, that the equitable Anglo-American precedents like that announced in the Manzanares case will in the future be resorted to in the assessment of damages to be awarded to the heirs of the deceased.

CHAPTER VI

CONTRIBUTORY AND COMPARATIVE NEGLIGENCE

At common law contributory negligence if proved defeats an action for damages. This is known as the contributory negligence rule. While a few of the American States have adopted to a greater or less extent the doctrine of comparative negligence, allowing a recovery by a plaintiff whose own act contributed to his injury, provided his negligence was slight as compared with that of the defendant, and some others have accepted the theory of proportional damages, reducing the award to a plaintiff in proportion to his responsibility for the accident, yet the overwhelming weight of adjudication establishes the principle in American jurisprudence that any negligence, however slight, on the part of the person injured which is one of the causes proximately contributing to his injury, bars his recovery. (American and English Encyclopedia of Law, titles "Comparative Negligence" and "Contributory Negligence"). That the defense of contributory negligence, as is understood in the United States, is recognized in Act No. 1874 with all its force and effect, is clear because the first section requires as an essential requisite

that the employee be "in the exercise of due care" at the time of the injury in order to hold the employer liable for damages. (Cerezo vs. Atlantic Gulf and Pac. Co., 33 Phil. 425).

Under the Civil Code if an accident is caused solely by the plaintiff's own negligence, there can be no recovery. But if the negligence of the injured person only contributed to his injury and is not the determining cause of the plaintiff's accident, the damages resulting thereby should be apportioned. Each party is chargeable with damages in proportion to his fault. (Rakes vs. Atlantic etc. Co., 7 Phil. 359; Eades vs. Atlantic etc. Co. 19 Phil. 561). This is known as the doctrine of comparative negligence.

The Employer's Liability Act does not, however, curtail the right an employee had under the pre-existing law. Its provisions may be resorted to or not as the injured party may see fit. (Cerezo vs. Atlantic etc. Co., 33 Phil. 425, 431). The employer is thus always placed at a great disadvantage. If contributory negligence on the part of the employee is present in the occurence of the accident, the employee or his heirs would surely bring an action under the Civil Code, in which no defense of contributory negligence is available. And in case no contributory negligence is present, the employee or his heirs would not surely bring an action under the Civil Code for thereunder but a small amount of damages is recoverable. An action would, therefore, be brought under the Employers' Liability Act where the measure of damages is that of the Anglo-American law, which includes damages for pain and suffering and for permanent injuries in cases of actions for *lesiones* or physical injuries.

Tho not advocating for the adoption of the doctrine of contributory negligence in these Islands, yet we cannot fail to see this evident inequality in our existing law on the subject of damages. This is mainly due to the applicability of both the civil law and the Anglo-American law on the subject. This can be easily remedied by enacting a uniform rule of measuring damages based upon the modern and more equitable Anglo-American law.

CHAPTER VI.

CONCLUSION

In the above discussion we have seen that there are many deficiencies in our law on the subject of damages. Let us now recapitulate.

As a general rule contributory negligence if proved is a complete defense in Anglo-American law; while it is merely a partial

defense in civil law. Since the enactment of the Employers' Liability Act, in cases of accident, the injured employee may bring an action under the Act, under which a greater amount of damages may be recovered; or under the Civil Code wherein contributory negligence is only a partial defense. Thus, the employer is placed at a great disadvantage. Why not make only one law applicable in all these cases brought under the Act?

In cases of death by wrongful act our Courts, as a matter of course, award ₱1,000 as an indemnity to the heirs of the deceased. Generally, however, under the Employers' Liability Act, a greater amount of damages is recoverable. Thus, all things being equal, an employee is worth more than his brother who is not an employee. Within the bounds of human powers, we should follow the modern and more equitable rule of awarding damages according to the real worth of the deceased.

Exemplary damages are recoverable under our Libel Law "as a just punishment to the libeler and an example to others." No such damages are allowed in cases of crimes against chastity, in cases of crimes against domestic relations, in cases of crimes against personal liberty and security. Neither are they allowed in cases of calumny or insults, which by the way are similar in nature to libel itself. Why make such unwise distinctions in awarding damages? Why not enact a law expressly making such damages recoverable in all those cases mentioned above?

Damages for pain and suffering, either physical or mental, are allowed by our law only in actions brought under the Libel Law and the Employers' Liability Act. Thus, employees may recover damages for pain and suffering in cases of physical injuries; while persons injured in an accident who do not happen to be employees of the guilty party, cannot recover damages for pain and suffering. According to our existing law it seems as tho the offended party does not suffer, either physical or mental pain and suffering, in cases of crimes against honor, against person, against chastity, and in crimes against liberty and security. As a matter of fact, they are a necessary consequence of the wrongful act of the guilty party. The mind is a part of the offended party's person as his body is. And the sufferings of the former are often more acute and lasting than that of the latter. Why should not our law then provide for compensation, within the ken of human powers, in all cases, without distinctions or discriminations as to classes of persons, where physical or mental pain and suffering will necessarily result? Any legislation which sweeps out these real inequalities is certainly most urgent and imperative.