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## PRESENT TENDENCY IN THE LAW OF MORAL DAMAGES IN THE PHILIPPINES

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*Damages In General.*—"Damages" may properly be defined as the pecuniary compensation, recompense, or satisfaction for an injury sustained, or, as otherwise expressed, the pecuniary consequences which the law imposes for the breach of some duty or the violation of some right. A synonym for damages, when applied to a person sustaining an injury, is loss. Loss includes more, however, since it is the generic term signifying both the act of losing and the thing lost. Damages (Latin *damnum*, from *demo*, to take away) is a species of loss, signifying the thing taken away—the lost thing which a party is entitled to have restored to him, so that he may be made whole again. When used to signify the money which a plaintiff ought to recover, "damage" is never, nor in any sense, synonymous with or collateral to the terms fine, penalty, revenge, discipline, or chastisement.

The words "damages" and "injury" are sometimes used synonymously, but there is a material difference between them. Injury is the wrongful act or tort which causes the loss or harm to another. Damages are allowed as an indemnity to the person who suffers the loss or harm from the injury. The word "injury" denotes the illegal act; the term "damages" means the sum recoverable as amends for the wrong. The one is the legal wrong to be redressed, the other the scale or measure of recovery. There may be damages without an injury, and an injury without damages. (8 R.C.L., 420-421.)

In Spanish law, *damnum* or *daño* is the detriment, injury or loss to person or property which is occasioned by the fault of another. (Escriche, 2 Diccionario de Legislacion y Jurisprudencia, 597.)

The law on damages is essentially an expression of the universal rule of compensation. There is perhaps no group of

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men living in some kind of society that does not have its own law of damages, however rudimentary. It is a necessary consequence of community life. Man from the very beginning of social organizations have been regulating his conduct and transacting his affairs in subordination to some rules of law, whether imposed from without or coming from within himself. Among these rules are those which have for their purpose the satisfaction of wrongs suffered by others from acts of fellow-members of the social group. This idea of satisfying wrongs, whether pecuniarily or in some other form, springs from the inherent and primeval sense of justice latent in the heart of every man.

The primary object, then, of an award of damages in a civil action, and the theory upon which it is based, is just compensation or indemnity for the loss or injury sustained by the complainant, although it is perhaps more accurate to speak of reparation than compensation where the injury is such that it does not admit of definite pecuniary measurement. In some cases, however, damages are designed not only as a satisfaction to the injured person, but as a punishment to the wrong doer, The right of the injured party to compensation must, however, be considered in connection with the right of the other party to pay only that which he should justly be compelled to pay. (7 C.J., 716.)

The law of damages seeks to compensate for loss, and not to enrich any party. Since one who has been injured by the breach of a contract or the commission of a tort is entitled to a just and adequate compensation for such injury and not more, it follows that his recovery must be limited to a fair compensation and indemnity for his injury and loss. In no case should the injured party be placed in a better position than he would be in had the wrong not been done, or the contract not been broken. (8 R.C.L. 434-435.)

That, in broad terms, is the purpose, as well as the basis of the law on damages. On this broad principle of compensation, courts have developed jurisprudence as to the measure of the damages that should be awarded the plaintiff in various cases.

The general rule with respect to damages for breach of contracts has been stated thus:

“Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as

may fairly and reasonably be considered either as arising naturally—i.e., according to the usual course of things, from such breach of contract itself—or such as any reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the possible result of the breach of it.

“Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract, which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated. But, on the other hand, if these special circumstances were wholly unknown to the party breaking the contract, he, at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by any special circumstances, from such a breach of contract. For, had the special circumstances been known, the parties might have specially provided for the breach of contract by special terms as to the damages in that case; and of this advantage it would be very unjust to deprive them.” (*Hadley vs. Baxendale*, 9 Exch. 341.)

The Supreme Court of the Philippines has evidently approved the measure of damages for breach of contract as set forth in the foregoing quotation from *Hadley vs. Baxendale*. It said:

“The discussion contained in the opinion of the court in that case leads to the conclusion that the damages recoverable in case of the breach of a contract are two sorts, namely, (1) the ordinary, natural, and in a sense necessary damage; and (2) special damages.

“Ordinary damage is found in all breaches of contract where there are no special circumstances to distinguish the case specially from other contracts. The consideration paid for an unperformed promise is an instance of this sort of damages. In all such cases the damages recoverable are such as naturally and generally would result from such a breach, ‘according to the usual course of things.’ In cases involving only ordinary damages no discussion is ever indulged in as to whether that damage was contemplated or not. This is conclusively presumed from the immediateness and inevitableness of the damage, and the recovery of such damage follows as a neces-

sary legal consequence of the breach. Ordinary damage, is assumed as a matter of law to be within the contemplation of the parties.

“Special damage on the other hand, is such as follow less directly from the breach than ordinary damages. It is found only in case where some external condition, apart from the actual terms of the contract exists or intervenes, as it were, to give a turn to affairs and to increase damage in a way that the promisor, without actual notice of that external condition, could not reasonably be expected to foresee. Concerning this sort of damage, *Hadley vs. Baxendale* lays down the definite and just rule that before such damage can be recovered the plaintiff must show that the particular condition which made the damages a possible and likely consequence of the breach was known to the defendant at the time the contract was made.” (*Daywalt vs. Corporacion*, 39 Phil. 587.)

Thus, in cases of breach of contract, the general rule is that only such damages can be recoverable as are actually sustained, or such as it is reasonable to conclude were within the contemplation of the parties at the time the contract was entered into. But this measure that obtains in contracts cannot be applied in actions on torts. There is a wide difference between the rights and remedies allowable in the one case and in the other. It is the wrongful act done, and the consequences that naturally result from it, that the law looks at and holds the wrongdoer responsible for. A person who commits a tort is liable for all the damages that naturally flow from, and are the result of the wrongful act, although he may not at the time have given any thought to or have anticipated that injurious consequences would follow. It is no excuse or defense for the wrongdoer that he did not mean to commit any wrong, or did not know that any injury or loss would ensue. (*Kentucky Heating Co. vs. Hood*, 733 Ky. 383, 118 S. W. 337.)

Under both the Spanish civil law and the American law of damages, actual damages for a negligent act or omission are confined to those which “were foreseen or might have been foreseen” or those which were “the natural and probable consequences” or “the direct and immediate consequences” of the act or omission. (*Algarra vs. Sandejas*, 27 Phil. 284.)

Having now in mind the idea of an award for damages and the measure of the award both in breach of contracts and in torts, we arrive at the immediate problem of this work: Is

moral damages included in the measures so laid down? Before proceeding to the discussion of the problem, it will be best to define what is meant by "moral damages."

*Meaning of Moral Damages.*—The term "damages" includes a variety of items, and it is among these items that the definition and scope of "moral damages" must be sought for.

In American decisions, it has been held that damages for a personal injury consist of three principal items: First, the expenses to which the injured party is subjected by reason of the injury complained of; second, the inconvenience and suffering naturally resulting from it; third, the loss of earning power, if any, and whether temporary or permanent, consequent upon the character of the injury. (*Owens vs. Railway Co.*, 155 Pa. 334, 26 Atl. 748.)

The Spanish commentator Planiol, cited by Clemente de Diego in his work "*Curso Elemental de Derecho Civil Español Común y Foral*," classifies damages into the following: (1) Material damages to things or property, (2) Pecuniary damages not resulting from loss or injuries to corporeal things but from breach of trust, incompetence, or abuse of confidence, (3) Attempts against the life and health of a person, and (4) Attempts against honor, affection, or feeling which are purely moral damages.

Drawing from these sources, it may be concluded that "moral damages" means those damages sustained by a person, which are not essentially pecuniary in nature, such as injury to the feelings, pain, whether physical or mental, injury to the reputation, and such like matters. This view is supported by the Spanish jurist Garba who, in his "*Questiones Practicas de Derecho Civil Moderno*, volume 2, page 241," classifies moral damages as follows:

(1) Damages to the body: Those which produce physical pain and suffering or sickness, and those which result in more or less permanent deformities.

(2) Damages to the liberty of a person, such as assault, abduction, or malicious arrest or detention.

(3) Damages destroying or diminishing the benefits which a person has a right to expect from another, by means of a damage to the patrimony.

(4) Moral afflictions or injuries to the feelings which may be caused by any kind of offense done directly to the person or to others related to him.

It is evident that "Moral damages" has reference to those damages suffered by a person which are not exactly pecuniary in character and which are not capable of being accurately measured in terms of pesos and centavos. They are damages which have "no market price", and their measure, it is ordinarily said, is not what it would cost to hire some one to undergo the pain or suffering or injury, but what, under all the circumstances, should be allowed as compensation. (*Baker vs. Pennsylvania Co.*, 142 Pa. 503, 21 Atl. 979.)

*Anglo-American Rule on Moral Damages.*—Damages under Anglo-Saxon jurisprudence finds its earliest monument in the 6th century of Ethelbert, King of Kent. In the earliest code, the attention of the lawgiver was confined almost entirely to wrongs, or to actions on torts and were known as "weregild", literally, a man's money. This was the earliest money award in Anglo-Saxon jurisprudence. Thus, King Alfred enacted that the seduction of the wife of an Earl was to be compensated by the payment of 120 shillings. (*Sedgwick on Damages.*)

We may infer from this legislation by King Alfred that even as early as his time monetary damages have been recognized as a form of award for a man's wrong, and moral damages were granted for the injury to an earl's feelings because of the seduction of his wife.

But the award of moral damages in Anglo-American jurisprudence has not been without serious objection. There are courts that have refused to allow such damages on the following grounds: (1) That such suffering is speculative and remote and therefore not a proper item for an award of damages. (2) That such damages are sentimental, are vague and shadowy, and that there is no standard by which such an injury can be justly compensated or approximately measured. (3) That a rule granting such damages opens up a vast and fruitful field for speculative litigation. (*Mentzer vs. Western Union*, 98 Iowa 752, 62 N. W. 1.)

However, the growing recognition that not only purely pecuniary or material loss, but also moral loss and injury, should be compensated, has firmly established in Anglo-American jurisprudence the rule that moral damages constitute an element of compensation. Hence, actual damages under American law include pecuniary compensation for pain and suffering, injured feelings, and the like. (*Algarra vs. Sandejas*, 27 Phil. 284.) As stated by a Pennsylvania Court, however, the

moral damages should not be estimated by a sentimental and fanciful standard, but in a reasonable manner, as it is wholly additional to a pecuniary compensation afforded under items that can be accurately measured in money. The damages must be reasonable in amount. The word "compensation" in the phrase "compensation for pain and suffering" is not to be understood as meaning price or value, but as describing an allowance looking towards recompense for or made because of the suffering consequent upon the injury. (*Goodhart vs. Pennsylvania Railway Co.*, 177 Pa. 1, 35 Atl. 191.)

Although mental pain and suffering has been recognized in Anglo-American jurisprudence as an element of damages, however, there are many courts which refuse to allow damages when mental pain and suffering is the sole cause of action; they require that pain and suffering be merely an additional cause of action based upon actual injury. "Damages will not be given for mere inconvenience and annoyance such as are felt at every disappointment of one's expectations, if there is no actual physical or mental injury." (*Turner vs. Great Northern Railway Co.*, 15 Wash. 213, 46 Pac. 243.) The reason underlying this rule is that mental tranquility has never been regarded as a right recognized and protected by the law. The law does not provide a remedy for every possible injury which a man may suffer. "It protects his person, his property, and his reputation; but his emotions act beyond the domains of rights protected by the law." (*Summerfield vs. Western Union*, 87 Wis. 1, 57 N. W. 973.) "The reason why an independent action for such damages cannot and ought not to be sustained is found in the remoteness of such damages, and in the metaphysical character of such an injury, considered apart from physical pain. Such injuries are generally more sentimental than substantial. Depending largely on physical and nervous conditions, the suffering of one under precisely the same circumstances would be no test of the suffering of another. Vague and shadowy, there is no possible standard by which such an injury can be justly compensated, or even approximately measured. Easily simulated and impossible to disprove, it fall within all of the objections to speculative damages, which are universally excluded because of their uncertain character." (*Wadsworth vs. Telegraph Co.*, 86 Tenn. 695, 8 S. W. 574.)

A study of the cases from which the foregoing words were quoted will reveal that the cause of action in each, and in other

cases in which damages for mental pain and suffering have been denied, is based on a breach of contract. The general rule, it may be concluded, in American jurisdictions, is that damages for mental pain and suffering cannot be recovered for breach of contract. Every breach of contract is likely to cause some pain, but most of these contracts relate to property and pecuniary matters, and in such case the law furnishes what has always been held to be an adequate remedy for the pecuniary loss sustained. Mental suffering has never been considered as within the contemplation of the parties at the time the contract is entered into, and hence recovery cannot be had therefore. This is the reason for the general rule.

But there are contracts which have a direct relation to the feelings and sensibilities of the parties entering them, and the pain growing out of the ordinary breach of contracts relating to property is entirely different from that suffered in certain contracts that affect the emotions.

A classic example of the exception to the general rule above mentioned is found in a Washington case. The defendants agreed, for sufficient consideration, to bury the corpse of the plaintiffs' child, in a decent manner. But in violation of this contract, they buried the child in a grave which was then used as the grave of another child, and left the body in a rough coffin within a box and within six inches of the surface of the ground and on top of the coffin of the other child. The court said: "Where one person agrees to give a dead body decent burial, and under such agreement obtains possession of the body, and in violation of his duty casts the body by the way, or wrongfully mutilates it, or deposits it in a grave without covering, in such a manner as to cause the relatives or persons charged with its decent sepulture to naturally suffer mental anguish, it would shock the sensibilities to hold that there was no remedy for such a wrong." In this case, however, the court seemed to have based its decision upon a tort incident to a breach of contract. For it said: "While it is true that the complaint alleges that a contract was entered into, and that by reason of the failure of defendants to perform their duty under the contract plaintiffs have been damaged, etc., still the facts stated in the complaint and testified to by the plaintiffs show that the action is for a wrong against the feeling of the plaintiffs inflicted by a wrongful and improper burial of their dead; in other words, a tort or injury against the person. In

case of this character, the rule has frequently been applied that damages may be had for mental suffering." (Wright vs. Beardsley, 46 Wash. 16, 89 Pac. 172.)

Thus, American courts have often awarded damages for mental pain and suffering although the cause of action is upon breach of contract, where the facts stated and prove also constitute a tortious wrong. In an Iowa case, the plaintiff, by reason of negligence and delay on the part of the defendant telegraph company, failed to receive a telegram advising him of the nearness his mother to death, and by reason of such failure he was not able to attend the funeral. "It must be conceded that every person desires to attend upon the obsequies of his near relations. And when, able anxious to attend, he is, through the negligence of a telegraph company, not notified of their death in time to attend the funeral, he naturally and almost inevitably suffers mental pain and anguish. No man is so depraved but that he yet remembers his mother, and, when able, will pay her the last respect that is her due." Damages were therefore granted to the plaintiff for mental pain and suffering although there was no actual injury suffered. (Mentzer vs. Western Union, 93 Iowa 752, 62 N. W. I.)

In cases of torts, it seems pretty well settled that damages for mental pain and suffering are allowable as a distinct cause of action. The rule was stated in a Minnesota case in which the defendants had mutilated the corpse of plaintiff's husband. "Whenever the act complained of constitutes a violation of some legal right of the plaintiff which always in contemplation of law causes an injury, he is entitled to recover all damages which are the proximate and natural consequences of the wrongful act. That mental suffering and injury to the feeling would be ordinarily the natural and proximate results of knowledge that the remains of a deceased husband had been mutilated is too plain to admit of argument." (Larson vs. Chase, 47 Minn. 307, 50 N. W. 238.) In Meagher vs. Driscoll, 99 Mass. 281, 96 Am. Dec. 759, where the defendant entered upon plaintiff's land and dug up and removed the dead body of his child, it was held that plaintiff might recover compensation for the mental anguish caused thereby.

Because of the recognition of the right to recover damages for mental pain and suffering, which constitute the essence of moral damages, there are several American decisions granting damages without proof of actual pecuniary loss or preju-

dice. Only a few of these instances can be touched upon in this discussion. It will suffice to mention some decisions which will serve to show to what extent American courts have allowed moral damages.

Damages have been awarded for assault by reason of the intimidation of the plaintiff by the defendant, even when there was no actual physical injury inflicted. "One of the most important objects to be attained by the enactment of laws and the institutions of society," said the court, "is, that each of us shall feel security against unlawful assaults. Without such security, society loses much of its value. Peace and order and domestic happiness, inexpressively more precious than mere forms of government, cannot be enjoyed without the sense of perfect security. We have a right to live in society without being put in fear of personal harm. But it must be reasonable fear of which we complain." (*Beach vs. Hancock*, 27 N. H. 223, 59 Am. Dec., 323.) Damages were therefore granted to a woman for the defendant's act in soliciting sexual intercourse in a manner that excited fear and apprehension of force in the execution of the felonious purpose. (*Leach vs. Leach*, 11 Tex. Civ. App. 699, 33 S. W. 702.)

In one case, for spitting on a woman's face the defendant was sentenced to pay damages in the amount of \$1,200. (*Dra-per vs. Baker*, 61 Wis. 450, 21 N. W. 527.) And a woman who was infected with venereal disease by her own husband recovered from him \$10,000 for the infection. (*Crowell vs. Crowell*, 180 N. C. 516, 105 S. E. 206.)

In actions for alienation of affection or seduction of a wife, damages are given for the outraged feelings of the husband and compensation for his humiliation. (*Johnson vs. Disbrow*, 47 Mich. 59, 10 N. W. 79.) In such cases, it is not always necessary that there be coition. Says a South Dakota court: "We refuse to subscribe to any rule of law which would recognize as an actionable wrong the consummated act of coition, but would leave the wronged party to right of recovery for the wrong done him, where by fortunate chance he appeared on the scene of action a moment before the wrongdoer had consummated his villanous purpose and thus prevented a such consummation \* \* \*. Surely, while the wrong done the husband may differ in degree from that intended, it did not differ in kind, and we apprehend that, to the mind of any right-thinking man, or woman, the dif-

ference of degree would scarcely be perceptible." (Roberts vs. Jacobs, 37 S. D. 27, 156 N. W. 589.)

In actions for breach of contract to marry, American courts have considered a seduction of the plaintiff as producing such shame and sorrow as form elements of compensatory damages. "The result of an ordinary breach of promise is the loss of the alliance, and the mortification and pain consequent upon the rejection. But in case of seduction there is added to this a loss of character and social position, and not only deeper shame and sorrow, but a darkened future." Such matters are considered in awarding the damages due the plaintiff in actions for breach of contract to marry. (Osmun vs. Winters, 25 Ore. 260, 35 Pac. 250.) When a woman has been wantonly deserted after a long engagement, and when her affections have been deeply implanted, her wounded spirit, the disgrace, the result to her feelings, the probable solitude which may result by reason of such desertion after a long courtship, are all matters to be considered in awarding damages to compensate for the wrong suffered. (McPherson vs. Ryan, 26 N. W. 321.)

With these instances of the application of the Anglo-American rule allowing moral damages, we may now proceed to examine the rule on the same matter and its application in the civil law.

*Civil Law Rule.*—We shall here consider the rule of the civil law in the light of the provisions contained our Civil Code, which finds its origin in Spain, a civil law country. The law of damages under the Civil Code hinges on the following provision:

"Article 1902, 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."

This article states the rule on damages for tortious actions in the Civil Code. As to what "damage" is referred to by the article, the Supreme Court of Spain, in a decision of February 7, 1900, said: "It is undisputed that said reparation, to be efficacious and substantial, must rationally include the generic idea of complete indemnity such as is defined and explained in Article 1106 of the Civil Code."

Articles 1106 and 1107, which lay down the measure of damages in cases of breach of contract, and to which the above-quoted decision of the Spanish Supreme Court refers provide:

“Article 1106. Indemnity for losses and damages includes not only the amount of the loss which may have been suffered but also that of the profit which the creditor may have failed to realize, reserving the provisions contained in the following articles.

“Article 1107. The losses and damages for which a debtor in good faith is liable are those foreseen or which may have been foreseen at the time of constituting the obligation and which may be a necessary consequence of the non-fulfillment.

“In case of fraud, the debtor shall be liable for all those which clearly may originate from the non-fulfillment of the obligation.”

The above-quoted provisions of articles 1902, 1106 and 1107, constitute the basic law of damages in the Civil Code. The question that arises from a study of these articles is this: Do the “losses and damages” referred to in the foregoing articles include moral damages as defined earlier in this work?

Regarding articles 1106 and 1107, the Supreme Court of Spain, in its decision of February 12, 1896, said: “Pursuant to articles 1106 and 1107 of the said code, which govern general matters of indemnity due for the non-fulfillment of obligations, the indemnity comprises not only the value of the loss suffered but also that of the prospective profit that was not realized, but the obligation of the debtor in good faith is limited to such losses and damages as were foreseen or might have been foreseen at the time the obligation was conceived and which are a necessary consequence of his failure of fulfillment. Losses and damages under such limitations and frustrated profits *must therefore be proved directly by means of evidence* that the law authorizes.”

The requirement that the losses and damages must be “proved directly by means of evidence” is tantamount to saying that when they are not subject to exact proof by competent evidence, no such losses and damages can be allowed to the plaintiff. Since moral damages, as already seen, are not capable of exact pecuniary estimation and proof, it is evident that the Civil Code at least is not a good basis for an award of moral damages, following the interpretation given by the Spanish Supreme Court in its decision just quoted. In fact, in a proceeding for slander, in which the offended party sought to recover damages for the slander the Spanish Supreme Court said in disallowing such damages, “Inasmuch as the value of honor cannot be appraised, it is

not possible to fix the amount of damage, nor can the payment of indemnity be imposed upon the offender under article 18 of the Penal Code by way of civil liability arising from a criminal act."

This strict view of the law as contained in the Civil Code has been followed in this jurisdiction. In effect, it is the application of the maxim *injura sine damno*, which means "wrong without damage." There can be, in our law, as the Civil Code has been interpreted several times both by the Spanish Supreme Court and the local supreme court, an injury to a person without damage, if such damage cannot be proved. The rule that no damages will be awarded except upon proof of the amount of the damages actually suffered, is a fundamental principle deeply imbedded in the civil law.

Thus, in a case where the plaintiff's legs were broken as a result of the piling of pieces of iron in the defendant's store, and at the end of several months he felt the hospital cured, with the exception of a slight lameness, the absence of competent evidence to show that his lameness would interfere in any way with the prosecution of his business in which he was engaged barred recovery of the plaintiff on account of such disability. The court required that proof of the extent of the damage must be clear and specific; otherwise, damages will not be allowed. In the same case, it was definitely held that no damages can be recovered by an injured person for the pain suffered at the time of or subsequent to the accident causing the injury. (*Marcelo vs. Velasco*, 11 Phil. 287.)

It will be seen that this doctrine of the Philippine Supreme Court, applying the provisions of the Civil Code, are in marked contrast with the decisions of the American courts already touched upon in the preceding topic. In fact, our Supreme Court has said: "Actual damages, under the American system, include pecuniary recompense for pain and suffering, injured feelings, and the like. Article 1902, as interpreted by this court in *Marcelo vs. Velasco*, does not extend to such incidents." (*Algarra vs. Sandejas*, 27 Phil. 284.)

Our Supreme Court has had occasion to pass upon some cases for breach of contract to marry. We have seen in the discussion of the preceding topic that under American decisions, damages are allowed for mental anguish and disgrace and diminution of matrimonial prospects resultant upon the breach of contract to marry, especially if there had been carnal

intercourse or seduction. In the Philippines, however, the general rule is that a promise of marriage, based upon carnal relations, is founded upon an unlawful consideration and no action can be maintained by the woman against the man for a breach thereof. (*Inzon vs. Belzunce*, 32 Phil. 342.)

The reason for this rule, as stated by our court, is that if the carnal intercourse between the parties is a crime or a misdemeanor, the crime or misdemeanor is common to both, and article 1305 of the Civil Code prevents a recovery. The same is true if the act did not constitute a crime or misdemeanor. It is in any event an immoral act and the fault lies with both parties. By the provisions of article 1306 of the Civil Code there can, in such a case, be no recovery by one against the other. Nor can there be a recovery under the provisions of article 1902 of the Civil Code, which provides that a person who by an act or omission causes damage to another by his fault or negligence shall be obliged to repair the damage so done, for the plaintiff voluntarily participates in the act. (*Batarra vs. Marcos*, 7 Phil. 156.)

Where there has been no carnal intercourse as a basis of the action, which is purely on breach of contract to marry, it has been held that such pecuniary damage as may have been suffered can be recovered. In a case of this kind, the plaintiff recovered from the defendant the sum of ₱516, which is the amount the former had paid the latter in consideration of the promise of the latter to wed his daughter to the plaintiff's son, which promise was broken because the daughter married another man. (*Domalagan vs. Bolifer*, 33 Phil. 471.)

In another case, although there was carnal intercourse, it appearing that when the plaintiff became pregnant the defendant urged her to resign as a teacher, and the plaintiff, trusting in the sincerity of the defendant's promise of marriage, acceded to his suggestions and resigned from her employment, the court held:

"The conclusion, therefore, is that the defendant, in not carrying out the promise of marriage he made to the plaintiff, caused her damages in her employment as a teacher, whereby she received a salary of ₱30 a month, by making her resign therefrom, as she did. On account of this action of the defendant, indemnity for damages can be recovered from him, for through his fault in failing to carry out his promise

of marriage plaintiff lost her position as teacher. (Article 1902, Civil Code.)" (Garcia vs. del Rosario, 33 Phil. 189.)

The foregoing discussion shows how the Philippine Supreme Court has been very strict in applying the rule of damages contained in the Civil Code. The decisions touched upon so far indicate that no damages except such as are material and pecuniary and proved by competent evidence can be recovered.

*Innovations by Statute.*—In spite of the decisions of the Supreme Court of the Philippines mentioned in the foregoing topic, our jurisprudence is not entirely barren of applications of the Anglo-American rule allowing moral damages, more specifically, damages for pain and suffering. The implantation of American sovereignty in the Islands brought about an invasion of American-modelled statutes, which, to be interpreted correctly, must be interpreted in the light of decisions and principles already well-settled in the jurisdictions from which they were drawn or copied. Two statutes were enacted that have a direct relation to moral damages: the Libel Law (Act No. 277), and the Employer's Liability (Act No. 1874.)

Under the Libel Law (Act No. 277), any person libelled "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 just punishment to the libeler and an example to others." This law expressly granted damages for injury to the feeling and reputation, although, as must be evident, it is impossible to give proof of the pecuniary value of the injury to feelings and reputation caused by a Libel.

It should be noted, however, that the Revised Penal Code has expressly repealed the Libel Law. Does this repeal throw the law on libel back upon the rule of the Civil Code and abolish the allowance of damages for injury to the feelings and reputation? It is submitted that in spite of the repeal of the Libel Law, damages may still be awarded for injury to feelings and reputation. The Libel law, as now reproduced in the Revised Penal Code, does not lose its American origin. Being of American origin, its interpretation must follow the established principles of the law on the matter in America, and not the principles of the Spanish codes. "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 and underlies the whole scheme of civilization and stable government. The possession of it is among the highest rewards of a well spent life vouchsafed to a man. The loss of it is immeasurable." (Perfecto vs. Contreras, 28 Phil. 538.) This principle is so well-recognized and has become a part of our jurisprudence that it seems clear that despite the repeal of Act No. 277, the provision for the punishment of libel and for a civil action for libel in the Revised Penal Code carries with it the jurisprudence on the subject while Act No. 277 was still in force.

General damages to feelings and reputation may be recovered by the person libelled. General damages are such as the law will presume to be the natural or probable consequence of the defendant's conduct. They arise by inference of law, and need not therefore be proved by evidence. Such damages may be recovered where the immediate tendency of the words is to impair the plaintiff's reputation, although no actual pecuniary loss has in fact resulted. Such general damages will only be presumed where the words are actionable *per se*. 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 plaintiff's mental suffering, are elements to be considered. (Jimenez vs. Reyes, 27 Phil. 52.) Hence, we find in cases of libel one American-modelled statute that introduces mental suffering and injury to the feeling and reputation as elements in awarding damages.

Another law which has introduced the Anglo-American standard of damages in the Philippines is the Employer's Liability Act (No. 1874.) In a case involving this law, the Philippine Supreme Court said:

"We now come to the consideration of damages. As above, stated, the record fails to disclose to what extent, if any, the earning capacity of Braulio Tamayo has been diminished by reason of the injuries. He could not, therefore, recover any amount if this action had been brought under the Civil Code, as the services for medical confinement have been paid by the defendants. But this court has never held that slight lameness or permanent injuries and pain and suffering are not elements

of damages, but simply that damages cannot be allowed for the former, unless the extent of the earning power or capacity is shown, and that the Civil Code does not include damages for the latter. \* \* \*.

“The inevitable conclusion is, therefore, that the Legislature intended that the measure of damages in personal injury cases brought under Act No. 1874 shall be the same as that in the country from which the Act was taken. The result is that Braulio Tamayo is entitled to recover, through his guardian and ad litem, damages for pain and suffering and permanent injury, such damages being as they are the approximate result of the injuries. Bodily disfigurement is included in his permanent injury. It needs no proof to show that the severing of the ring finger at the first joint caused pain and suffering and a permanent injury and bodily disfigurement, although slight. The fact that damages for such injuries cannot be ascertained with mathematical exactness does not and should not defeat recovery for a reasonable amount.” (Tamayo vs. Gsell, 33 Phil. 953.) It may be concluded, therefore, that the measure of damages recoverable under Act No. 1874 is that of the Anglo-American common law, which includes damages for pecuniary loss, pain and suffering, and permanent injuries.

The Libel Law and the Employer's Liability Act, therefore, constitute exceptions to the law of damages contained in the Civil Code. They are innovations to remedy the great deficiency of the Civil Code as to damages to two things valuable to man: his reputation and his physical welfare.

The question remains whether in spite of these innovations of American-modelled statutes and the influx of American authorities into the jurisprudence of the country, the rule of the Civil Code on moral damages has still remained unchanged and as rigid as before, unaffected by the trend of modern decisions and legal thought. Before entering into this last phase of this work, it will not be amiss to touch the tendency of the law on the matter in Spain. Our law was “conceived in the womb of the civil law,” which was brought to us by Spain; we should therefore look to the tendency of the law in that country for it should indicate the trend of development in the civil law.

*Tendency of the Law on Moral Damages in Spain.*—As already observed earlier in this work, the Supreme Court of Spain had once ruled that no damages for slander could be recovered

by the offended party because "the value of honor is a thing that cannot be appraised." The weakness of the premise on which this ruling was based is shown by the following remark of Al-cubilla: "If the value of honor cannot be appraised, neither can the value of life. And if indemnity is granted to the widow and orphans of the victim of a homicide, why should it not also be granted to the party injured by a slander or calumny?"

Evidently recognizing that justice demands compensation for injured feelings as much as for an injured body, the Supreme Court of Spain, in a decision of December 6, 1922, made a sudden departure from the old doctrine that damages cannot be allowed for moral or mental suffering. A Madrid newspaper published the news that a Capuchin friar had fled from a convent carrying within him a pretty young woman. The news was false, and as a consequence of the publication, the father of the woman filed an action for damages against the editor of the newspaper, who was sentenced to pay 150,000 pesetas. The sentence was based on the fact that the plaintiff sustained an irreparable damage by the staining of the honor of his daughter, causing her and her family evident injuries of the moral kind, and even social and material damage, and the existence of the damages needed no proof apart from the moral damage to her and her family as the natural result of the scandal which made difficult the contracting of another marriage. "It is true that honor is beyond the commerce of man and there can be no material amount to pay for it," said the court, "but it is up to the court to fix a reasonable amount, taking into consideration her age and social position. We should not wait until the actual damage has been shown."

As indicating the trend of legal thought in Spain, we may also advert to the opinions of leading jurists and commentators on the civil law. Clemente de Diego and Planiol include moral damages among recoverable damages in the proper cases. (*Curso Elemental de Derecho Civil Español Comun y Foral*, by de Diego.)

Jose Castan Tobeñas, Professor of Civil Law in the University of Valencia, is also of the opinion that the doctrine of Article 1902 admits of interpretation that any damages, whether material or moral, provided it is real damage, must give rise to reparation.

Manresa, commenting on the same article, says that formerly the general concensus of opinion was against the allowance of

moral damages, and this he calls the classical opinion. He asserts however that nowadays the contrary opinion is being recognized, and according to him, "it is a highly plausible doctrine consonant with the progressive spirit and not contrary to the text of article 1902 if this is given its proper scope."

This inquiry into the new decision of the Spanish Supreme Court and the opinions of Spanish jurists should be sufficient to show that the modern tendency in that civil law country is towards giving moral damages whenever necessary to compensate for injury sustained, even when there is no actual proof of the pecuniary value of the injury. If the very country which gave us our Civil Code has finally swerved from its rigid path to follow the more humane, progressive, and liberal rule on moral damages, has this jurisdiction taken any step (The Case of *Lilius vs. Manila Railroad*).—The Supreme Court has recently rendered a decision on damages which should be indicative of the tendency of the law on the matter in this jurisdiction. The plaintiffs in the case were injured in a collision between their automobile and a train of the defendant company, caused by the negligence of the defendant and its flagman at the crossing.

"The plaintiff Sonja Maria Lilius suffered from fractures of the pelvic bone, the tibia and fibula of the right leg, below the knee, and received a large lacerated wound on the forehead. She underwent two surgical operations on the left leg for the purpose of joining the fractured bones but said operations notwithstanding, the leg in question still continues deformed. In the opinion of Dr. Waterous, the deformity is permanent in character and as a result the plaintiff will have some difficulty in walking. The lacerated wound, which she received on her forehead, has left a disfiguring scar.

"The child Brita Marianne Lilius received two lacerated wounds, one on the forehead and the other on the left side of the face, in addition to fractures of both legs, above and below the knees. Her condition was serious and, for several days, she was hovering between life and death. Due to a timely and successful surgical operation, she survived her wounds. The lacerations received by the child have left deep scars which will permanently disfigure her face, and because the fractures of both legs, although now completely cured, she will be forced to walk with some difficulty and require continuous extreme care in order to keep her balance."

In awarding damages to these two injured women, the Court said:

"Taking into consideration the fact that the plaintiff Sonja Maria Lilius, wife of the plaintiff Aleko E. Lilius is—in the language of the court which saw her at the trial—'young and beautiful and the big scar, which she has on her forehead caused by the lacerated wound received by her from the accident, disfigures her face and that the fracture of her left leg has caused a permanent deformity which renders it difficult for her to walk', and taking into further consideration her social standing, neither is the sum of ₱10,000, adjudicated to her by the trial court by way of indemnity for patrimonial and moral damages excessive. In the case of *Gutierrez vs. Gutierrez* (56 Phil. 177), the right leg of the plaintiff Narciso Gutierrez was fractured as a result of a collision between the auto-bus in which he was riding and the defendant's car, which fracture required medical attendance for a considerable period of time. On the day of the trial the fracture had not yet completely healed but it might cause him permanent lameness. The trial court sentenced the defendants to indemnify him in the sum of ₱10,000 which this court reduced to ₱5,000, in spite of the fact that the said plaintiff therein was neither young nor good-looking, nor had he suffered any facial deformity, nor did he have the social standing that the herein plaintiff-appellant Sonja Maria Lilius enjoys.

"As to the indemnity of ₱5,000 in favor of the child Brita Marianne Lilius, daughter of Aleko Lilius and Sonja Maria Lilius, neither is the same excessive, taking into consideration the fact that the lacerations received by her have left deep scars that permanently disfigure her face and that the fractures of both her legs permanently render it difficult for her to walk freely, continuous extreme care being necessary in order to keep her balance, in addition to the fact that all of this unfavorably and to a great extent affect her matrimonial future." (*Lilius vs. Manila Railroad*, XXXIII O.G. 933, May 7, 1935.)

It will be noticed that the court here expressly grants "patrimonial and moral damages" and considers as elements in the award of damages "permanent deformity" "social standing." "matrimonial future," and such other matters not subject to exact pecuniary estimate and proof. That this decision is a clear departure from the doctrine announced in the case of *Marcelo vs. Velasco*, *supra*, is beyond question. It is a recognition

that in the Philippines, moral damages constitute an element of compensation.

*Conclusion.*—The foregoing survey of the trend of decisions in America, Spain, and the Philippine Islands indicates one point: that this jurisdiction cannot escape the influence of the modern tendency in legal thought towards the recognition of the right of an injured party to recover damages not only for pecuniary loss but also for moral injury, such as affect the feelings, sense of pride, and physical make-up.

It is the opinion of the writer that this influence is for the better, because there are some non-physical matters, moral in nature, which are more valuable to man than money. Shame, humiliation, disgrace, anguish, and such like matter surely count more than paltry sums of money. It is therefore proper that they should likewise be taken into consideration in the award of the proper compensation for injuries sustained by one who moves the court for redress. The rule towards which this jurisdiction is finding its way on the subject of moral damages is a more modern and more equitable principle; it is a rule for which reason and natural justice are eloquent advocates. As our Supreme Court once said, "Of whatever nature 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 loss caused thereby." (Manzanares vs. Moreta, 38 Phil. 821.)