CIVIL LAW

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So long as man lives in a civil society, so long would he have dealings with his fellow-men. At times he may believe that he is merely exercising his rights when in fact he has already stepped over the rights of others. At other times he may think that he has complied with his obligations when in fact his compliance is not sufficient. His individual interests often conflict with those of others and if an amicable settlement is not reached such conflict gives rise to judicial adjudication. It would, indeed, be ideal to have a society wherein complete harmony among its members reigns, but such a society would be an Utopian concept. And Philippine society is not an exception to the rule.

Thus, in 1951, the Supreme Court of the Philippines, as in previous years, had to play an active role in regulating the civil relationships of the members of Philippine society with one another. The war years and the subsequent liberation of the Philippines continued to occupy the attention of the Supreme Court as a number of cases brought before it relate to transactions done during or arising as a result of the war. The year 1951 did not find the highest tribunal of the land laying down very outstanding pronouncements in civil law. However, in some instances it had occasion to clarify certain doctrines heretofore rather vague; in other instances, it reiterated some principles as if to give notice to all and sundry that there can be no swerving from them. The cases cited in the following survey are representative of the rulings of the Supreme Court in the field of law which affects most the lives of the people of the Philippines—civil law.

I. PERSONS

A. *Marriage: Proof of Marriage.*

Where no certificate of marriage or entry in the civil registry has been presented nor has satisfactory explanation of their absence been offered, existence of marriage is not proved.[1]

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[1] *Ramos et al. v. Ortuzar et al.*, G. R. No. L-3299, prom. Aug. 19, 1951

B. *Liquidation of the Conjugal Partnership: Right of Creditor.*

When the husband and his creditor stipulate that the creditor shall have the right to ask for the execution of the judgment he obtained on whatever share the husband may still have in the conjugal partnership between him and his wife after the final liquidation and partition thereof, the execution of the judgment is premised upon a condition precedent which is the over-all and final liquidation and partition of the conjugal partnership. Such being the case, the writ of execution asked for by the creditor after the liquidation of a particular property of the partnership is premature.[2]

C. *Paternity and Filiation: Natural child; Forms of Acknowledgment.*

There are two forms of acknowledgment of a natural child: voluntary and compulsory. A voluntary acknowledgment may be embodied in a will or in some other public documents.[3] A compulsory acknowledgment exists when "the father may be compelled to acknowledge his natural child . . . when an indubitable writing exists in which he expressly acknowledges his paternity," or "when the child is in the uninterrupted possession of the status of a natural child of the defendant father, judged by the conduct of the father himself or that of his family." [4] In the case of *Ramos v. Ortuzar*,[5] although the civil registry of Marvin Hill's birth which states that this plaintiff was Percy A. Hill's legitimate child is in evidence, that alone is insufficient to establish plaintiff's legitimacy, for following the ruling of the court in *Samson v. Corrales* [6] an acknowledgment in the record of birth is not recognized in this country for the reason that article 326 of the Old Civil Code (now article 408 of the New Civil Code), which defines the record of birth mentioned in article 131 (now article 278) had never been put into effect in the Philippines.

By article 137 (now article 285), "action for acknowledgment of a natural child may be commenced only during the lifetime of the supposed parents," except when the parent's death occurred during the minority of the child, in which case the latter may commence the action within certain period after the attainment of his or her majority. In the case at bar, being of age when their father died, Richard Hill and Marvin Hill do not come within the saving clause.

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[2] *Dalupan v. Harden*, G. R. No. L-3975, prom. Nov. 27, 1951.
[3] Article 131, Old Civil Code (now article 278).
[4] Article 135, Old Civil Code.
[5] G. R. No. L-3299, prom. Aug. 29, 1951.
[6] 48 Phil. 401.

D. *Parental Authority.*

Article 311 of the New Civil Code provides that "the father and mother, jointly exercise parental authority over their legitimate children who are not emancipated," and that "the recognized natural and adopted children who are under age are under the parental authority of the father or mother recognizing or adopting them."

Under Article 316 of the same Code the effects of parental authority of the legitimate father and mother upon their unemancipated legitimate children, and of the father or mother over their minor recognized natural children, are among others, the duty to support and keep them in their company. The parents' duty of keeping their legitimate and recognized children in their company or giving them a place wherein to live is part of the care due them, but this duty is at the same time a right which is incumbent upon them to facilitate compliance with their duties imposed upon the parents by said article 316.

If only one of the parents, for instance the father, has recognized a natural child, there would be no question or doubt that in the exercise of his parental authority, he has the right to keep the recognized child in his company or to have it under his custody, and he cannot be deprived of such right and may not even renounce or transfer it "except in cases of guardianship or adoption approved by the court, or emancipation by concession," according to article 315 of the same code. In the case of *Garcia vs. Pongan*,[7] the minor Teofila Garcia having been legally recognized by both the father and the mother, and as the said minor is over ten years and prefers to live with her mother, the court did not err in awarding to the mother the care, custody, and control of said minor, there being no showing that she is unfit to take charge of the child by reason of moral depravity, habitual drunkenness, incapacity or poverty in accordance with the provision of section 6, Rule 100 of the Rules of Court.

E. *Authority of Mother to Represent Minor Children.*

A widow who has not been appointed guardian of the person and property of her minor children authorizing her to act in their behalf on matters affecting their interest in the property, could not legally represent them in the disposition of their property or of their interest therein, because under the law, not only is a mother required to be appointed guardian of her minor children but that she must obtain beforehand an authority from the court to carry out the sale and secure later its approval. A sale of the minor's

[7] G. R. No. L-4362, prom. Aug. 31, 1951.

property made by the widow without such authorization is, therefore, null and void.[8]

F. *Support.*

Both by law authority as well as by its very nature, a judgment for alimony does not become dormant, much less does it prescribe, except as to installments not recovered within the period fixed by the Statute of Limitations. The authorities are in harmony that a money decree for alimony is not a judgment in the full legal meaning of the term and does not become stale simply because of a failure to issue execution thereon within the period limited by the statute. The decree continues in force until it expires or is changed, which is within the authority of the court to effectuate. The court which awarded the alimony, it has been held, has the parties before it as long as the award has operative force, and may modify or terminate the decree as the changed or changing circumstances make modification or termination just or necessary.[9]

II. PROPERTY

A. *Ownership; usufruct; shares of stock; dividends as fruits.*

The case of *Orozco v. Araneta* [10] concerns a will, a certain clause of which provided that certain shares of stock should be given in usufruct to one heir while the naked ownership to another. The question is whether dividends of the shares are part of capital or income of capital. The court ruled that a dividend whether in form of cash or stock, is income and consequently, should go to the usufructuary inasmuch as stock dividends as well as cash dividends can be declared only out of profits of the corporation.

B. *Dissolution of the Coownership.*

For the purpose of dissolving the co-ownership, the co-owners may enter into a contract for the purpose of selling the parcel of land held in common and dividing the proceeds of the sale among the co-owners. The obligation imposed in the contract to preserve the co-ownership until all the lots shall have been sold is a mere incident to the main object of dissolving the co-ownership and is therefore not violative of article 400 of the Old Civil Code (now article 494).[11]

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[8] *Valeriana Guantia et al. v. Elena Tatoy et al.*, G. R. No. L-3244, prom. March 8, 1951.

[9] *Trinidad Florendo v. Rufina Organo*, G. R. No. L-4037, prom. Nov. 29, 1951.

[10] *Orozco v. Araneta et al.*, G. R. No. L-3691, prom. Nov. 21, 1951, citing *Testate Estate of Bachrach*, G. R. No. L-2659, prom. Oct. 12, 1950.

[11] *Tuason v. Tuason*, G. R. No. L-3404, prom. April 2, 1951.

C. *Easements.*

The court having ruled in the case of *Molina v. Rafferty* [12] that a fishpond come within the classification of agricultural land, the owner of a fishpond who desires to draw water from a river for the use of his fishpond, has an equal right with a person who has obtained from the government a grant to use water from a river for irrigation to construct a canal over the intervening lands and other private owners upon payment of indemnity. Articles 557 and 558 (now articles 642 and 643), can be invoked in support of his claim for easement of water over the land of an adjoining owner so that he may have a source of water to irrigate his fishpond.[13]

D. *Ownership: Prescription by prescriptive title; No fiduciary relation.*

Where the property was in possession of a person adversely, exclusively, publicly and in the concept of owner, any right which a claimant might have in said property has been lost by prescription, if said claimant slept over her alleged right for more than thirty (30) years and woke up only after the property has been partitioned and distributed, which she could have known by the exercise of reasonable diligence, and there existed no fiduciary relation between the claimant and the person which could have prevented the exclusive, continuous and peaceful possession from ripening into title.[14]

E. *No prescription as to property entrusted to administrator.*

An heir in possession of property which was originally conjugal and was distributed and adjudicated in a manner stated in a decision rendered in a registration case, is only in his capacity as administrator thereof, with the exception of those adjudicated to him; and therefore, he could not possibly acquire them by prescription to the prejudice of his co-heirs.[15]

III. SUCCESSION

A. *Wills: The Attestation Clause.*

Article 805, paragraph 3 of the New Civil Code provided that the attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental wit-

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[12] 38 Phil. 167.
[13] *Gonzales v. De Dios*, G. R. No. L-3099, prom. May 21, 1951.
[14] *Martina Ramos et al. v. Ortuzar et al.*, G. R. No. L-3299, prom. Aug. 28, 1951.
[15] *Ranjo v. Payomo*, G. R. No. L-7866, prom. May 30, 1951.

nesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

The disallowance of a number of wills submitted to the court for probate has been sought on the ground that the attestation clause was defective. One attestation clause, for example, did not state that the testator signed the will.[16] It declared only that it was signed by the witnesses. The last paragraph of the body of the will, however, stated that the testator signed the will. The court ruled that this is a fatal defect, for the precise purpose of the attestation clause is to certify that the testator signed the will, this being the most essential element of the clause. Without it, there is no attestation at all. While the court may correct a mere clerical error, this is too much of a clerical error for it affects the very essence of the clause. Alleged errors may be overlooked or corrected only in matters of form which do not affect the substance of the testament. The last paragraph of the will where the testator stated that he signed the will cannot cure in anyway the fatal defect of the attestation clause. This clause is the function of the witnesses, not of the testator. The testator cannot attest his own signature for it does not increase the evidence of its authenticity.

Another attestation clause appeared to have been made by the testator himself more than by the instrumental witnesses. The will involved in the case of *Valentina Cuevas v. Pilar Achacoso*,[17] after reciting in separate paragraphs, and under correlative numbers the provisions of the will, winds up with the following clause:

> "In witness whereof, I sign this testament or last will in the municipality of Iba, Zambales, Philippines, this 10th day of October 1945, in the presence of three witnesses, namely, Dr. Nestorio Trinidad, Don Baldomero Achacoso, and Mr. Proceso Cabal as instrumental witnesses to my signing; this testament is written in three (3) sheets marked by letters "A," "B," and "C" consecutively on top of each sheet and upon my request and in my presence and also in the presence of each of the aforesaid instrumental witnesses, they also signed this testament already referred to.
>
> "I hereby manifest that every sheet of the aforesaid testament, on the left-hand margin as well as the testament itself have been signed by me as also each of the witnesses has also signed in my presence and in the presence of each other."
>
> (Sgd. JOSE VENZON
>
> WITNESSES:
> (Sgd.) NESTORIO TRINIDAD
> (Sgd.) BALDOMERO ACHACOSO
> (Sgd.) PROCESO CABAL

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[16] *Isabel vda. de Gil, Admx. v. Pilar Gil vda. de Murciano*, G. R. No. L-3362, prom. March 1, 1951.

[17] G. R. No. L-3497, prom. May 18, 1951.

According to the court, the above attestation clause substantially complies with the requirements of the law. The fact that it appeared to be an attestation clause made by the testator himself more than by the instrumental witnesses is not serious nor substantial as to affect the validity of the will, it appearing that right under the signature of the testator there appear the signatures of the three instrumental witnesses. These signatures show that they have in fact attested not only to the genuineness of his signature but also to the due execution of the will as embodied in the attestation clause.

Moreover, this liberal view of interpretation taken by the court is in consonance with the rules embodied in the New Civil Code.[18]

In the case of *Gonzales v. Gonzales de Carungcong*,[19] the court reiterated the doctrine laid down in the above-entitled case (*Cuevas v. Achacoso*) concerning the validity of the attestation clause contained in the body of the will. Here the disallowance of the will was sought on the ground that it does not contain any attestation clause, that assuming the concluding paragraph to be the attestation clause, it is not valid because it is the act of the testatrix and not of the witnesses, and because it does not state the number of pages or sheets of the will. The paragraph before the concluding one, however, states that there are seven (7) pages. This statement according to the court, is sufficient attestation which may be considered in conjunction with the last paragraph. It is significant, the court said further, that the law does not require the attestation to be contained in a single clause. While perfection in the drafting of a will may be desirable, unsubstantial departure from the usual forms should be ignored especially where the authenticity of the will is not assailed.

The case of *Rosario Garcia v. Juliana Lacuesta et al.*[20] concerns a defective attestation clause. Here the will submitted for probate was signed not by the testator but by his attorney. The attorney wrote the name of the testator with the note below that it was done at the request of the testator. Also appearing below the name of the testator was the attorney's name. The testator put a cross

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[18] Art. 788. If a testamentary disposition admits of different interpretations, in cases of doubt, that interpretation by which the disposition is to be operative shall be preferred.

Art. 791. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative; and of the two modes of interpreting a will, that is to be preferred which will prevent intestacy.

[19] G. R. No. L-3272-73, prom. November 29, 1951.

[20] G. R. No. L-4067, prom. Nov. 29, 1951.

immediately after his own name. The attesting clause signed by the attesting witnesses stated that the will was signed by the testator without mentioning the fact that the testator's signature was affixed by the attorney. The contention is that there is no need for such recital in the attestation clause because the cross written by the testator after his name is a sufficient signature and that the attorney's signature is a surplusage. This is based on the theory that a cross is as much a signature as a thumb-mark. The court held that the attestation clause is fatally defective for failing to state that the testator caused his attorney to write the testator's name under his express direction. It said further, "It is not here pretended that the cross appearing on the will is the usual signature of Antero Mercado or even one of the ways by which he signed his name. After mature reflection we are not prepared to liken the mere sign of a cross to a thumb-mark and the reason is obvious. The cross cannot and does not have the trustworthiness of a thumb-mark."

B. *Revocation of Wills and Testamentary Dispositions: Principle of Dependent Relative Revocation.*

The court held in the case of *Juana J. vda. de Molo v. Luz Molo et al.*[21] that the ruling in the Samson case [22] is still sound and good. In the Molo case, the testator left two wills, one executed in 1918 and the other in 1939. The latter will contained a clause which expressly revoked the will executed in 1918. The 1939 will was not executed in accordance with law. There was no direct evidence or deliberate destruction of the first will by the testator. Assuming that the first will was voluntarily destroyed by the testator after the execution of the second will which revoked the first, still said earlier will was destroyed in the mistaken belief that the new will was valid. If such is the case, then the earlier will can still be admitted under the principle of dependent relative revocation. The theory on which this principle is predicated is that the testator did not intend to die intestate. This intention is clearly manifest when he executed two wills on two different occasions and instituted his wife as his universal heir.

C. *Reserva Troncal: Half-blood nieces not considered as descendants within the purview of article 968, Old Civil Code.*

When a wife donates to her husband her paraphernal property as well as her share in the conjugal partnership, the half blood nieces of the former cannot compel the latter to register their right

[21] G. R. No. L-3095, prom. Sept. 21, 1951.
[22] 41 Phil. 838.

as reservees of the properties donated because the reservation provided in article 968 [23] of the Old Civil Code was intended for the benefit alone of the children and descendants of the first marriage, meaning the marriage formed by the spouses from whom the property came. They exclude all other relatives belonging to the collateral line.[24]

IV. Obligations and Contracts

A. *Obligations with a period: Accelerating the payment of the obligation.*

In a monetary obligation contracted with a period, the debtor unless the creditor consents, has no right to accelerate the time of payment even if premature tender included an offer to pay principal and interests in full because under the law, the presumption is that the period is deemed constituted in favor of both the creditor and the debtor unless from its tenor or from other circumstances it appears that the period has been established for the benefit of either of them.[25] The payment of the interest is not the only reason why a creditor cannot be forced to accept payment contrary to stipulation. Other reasons are: that the creditor may want to keep his money invested safely instead of having it in his hands, the creditor, by fixing the period, protects himself against sudden decline in the purchasing power of the currency loaned specially at a time when there are many factors that influence the fluctuation of the currency, and because the Usury Law specially prohibits payment of interest in advance for more than a year.[26]

B. *Extinguishment of Obligations: War or Force Majeure Relieves Party from Obligation to Comply with Terms of Contract of Lease.*

In the light of the authorities and precedent on the matter, war or its effects and other factors which could not have been foreseen or avoided are deemed sufficient causes to justify the nonfulfillment

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[23] Art. 968, of the Old Civil Code provides:

Besides the reservation imposed by article 811, the widower or widow who contracts a second marriage shall be obliged to reserve for the children and descendants of the first marriage the ownership of all the property acquired from the deceased spouse by will, by intestate succession, by donation, or by any other lucrative title; but not his or her half of the conjugal property.

[24] *Matilde Guerra et al. v. Eulalio Tolentino et al.*, G. R. No. L-3095, prom. Oct. 25, 1951.

[25] Article 1127, Old Civil Code (now article 1196).

[26] *Ponce de Leon v. Syjuco and PNB*, G. R. No. L-3316, prom. October 31, 1951; *Nicolas v. Matias*, G. R. No. L-1743, prom. May 29, 1951, citing *Sarmiento v. Villaseñor*, 43 Phil. 580; *Ilusorio v. Busuego*, G. R. No. L-822, prom. Sept. 30, 1949

by a lessee of the terms of the contract of lease with the lessor and to relieve him of all responsibility therefor. When war or force majeure or the invasion and occupation of the Philippines by the enemy results in a failure on the part of the lessee to produce sugar in his hacienda and consequently to pay the sugar rentals he has obligated himself to pay to the lessor under a contract of lease, his default is thereby excused and he cannot be held liable to the creditor for non-compliance with the terms and conditions of the contract. Furthermore, at the time when the obligation fell due, to produce or mill sugar cane was contrary to public policy as it would be giving aid and comfort to the enemy and would be in violation of a specific order [27] emanating from our legitimate government to forestall any help that may be rendered the enemy in his war effort, it being an undisputed fact that sugar is essential not only to feed the enemy but as raw material for free to bolster up his war machine.[28]

In another case,[29] the court held that there is no legal way of holding that the parties obligated are responsible for sugar, molasses, tires, and tubes because it having been established that the Luzon Sugar Company was bombed on December 28, 1941, and the Japanese occupied it from January 1 to February 20, 1942, that some of the sugar stored in the warehouse were looted, some taken by the Imperial Japanese Army and the remaining brought to Northern Luzon by said army, the loss was likewise due to war or to a fortuitous event.

C. *Obligation not extinguished when truck was commandeered during the war by the USAFFE.*

The case of *Bachrach Motor Co. Inc. v. Lee Tay and Lee Chay Inc.*[30] concerns the purchase of a truck by the defendant from the plaintiff before the outbreak of the war, the price to be paid by installments. The truck was commandeered by the USAFFE during the war. The court ruled that the seizure by the USAFFE did not relieve the defendant from paying the balance of its value to the plaintiff because in the first place, the truck became the property of the defendant when it was delivered to him and consequently, the defendant should suffer the loss, and in the second place, the

[27] During the existence of the war, the late President Quezon gave an order prohibiting the milling of sugar cane to forestall any help to the enemy in his war effort.

[28] *Simeona M. de Castro et al. v. Jose Longa*, G. R. No. L-2152 and 2153, prom. July 31, 1951.

[29] *Cruz v. Valero*, G. R. No. L-2826, prom. June 11, 1951.

[30] G. R. No. L-3885, prom. Dec. 17, 1951.

defendant could have filed a claim with the United States Government and he would have been paid. His negligent omission cannot be imputed to the plaintiff who was no longer the owner of the vehicle and could not have filed the claim himself.

D. *Extinguishment of Obligations: Payment.*

1. The Moratorium Law.

Executive Order No. 25 amended by Executive Order No. 32 provides for a moratorium on all debts contracted before or during the last world war. By Republic Act No. 342 approved on July 26, 1948, the Moratorium was lifted as to the pre-war debts except as to those who have filed claims with the United States Philippine War Damage Commission. But the act did not lift the moratorium on debts contracted during the war. These debts are therefore still subject to the moratorium provided for in the executive orders.

A number of cases calling for the application of the Moratorium Law have come before the Supreme Court. In one,[31] the court held that for one to invoke the Moratorium Law with respect to pre-war obligations he must have filed claims with the Philippine War Damage Commission. It is not however necessary so as to entitle a debtor to the benefits of the debt moratorium that a war damage claim be actually paid and settled. While "settlement of the war damage claim of the debtor marks the starting point of the eight-year moratorium period, it does not exclude from the beneficent scope of the law a debtor whose claim is still pending and not disallowed, because the latter is as much a war sufferer as the former intended to be protected by Republic Act No. 342.[32] A debt contracted during the years 1943 and 1944 is still subject to the Moratorium Law, and an action to recover the payment of the same will not lie.[33]

The Moratorium has merely the effect of superseding the collection or payment, not condone the debt. As interest is an accessory obligation, it is affected in the same manner. Furthermore, if the interests due or debts owed to the government are not deemed condoned by virtue of the moratorium order so much so that an express legislation [34] was necessary to effect their condonation, there is every

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[31] *The Bachrach Motor Co. v. Lee Tay & Lee Chay, Inc.*, G. R. No. L-3885, prom. Dec. 17, 1951.

[32] *Gregoria Aranzanso v. Gregorio Martinez*, G. R. No. L-3468, prom. April 25, 1951.

[33] *Timbol v. Kabakaw*, G. R. No. L-3549, prom. May 23, 1951.

[34] Republic Act No. 401 condones all unpaid interests accruing from January 1, 1942 to December 31, 1945 on all obligations outstanding on December 8, 1941 in favor of the Government or government-owned or controlled corporations under certain conditions.

reason to suppose that the interest due on other kinds of monetary obligations are not likewise condoned simply because of the existence of the Moratorium Law.[35]

The law does not apply to foreclosure proceedings. The judgment debtor whose property has been sold is not in debt for the redemption money. He could not be required by action to redeem. He is therefore not entitled to invoke the suspension.[36]

2. Waiver of Moratorium: Term; Insolvency.

The theory that the benefits of the Moratorium Law have been waived under article 1129 (now 1198) of the Civil Code,[37] cannot be properly sustained. Firstly, article 1129, obviously contemplates a period fixed by the contracting parties. The Moratorium Law was not so fixed. It was not even foreseen by the parties at the time they entered into the contract.

Secondly, under article 1129 of the Civil Code the insolvency must be one occurring after the term was fixed.

Thirdly, the insolvency of the debtor could not rightly be pleaded in avoidance of the moratorium because the general inability of debtors to satisfy their obligations, their temporary insolvency, so to speak, was precisely the *raison d'etre* for the suspension of collection suits. And it would be plain inconsistency to declare that the debtor's financial difficulties deprive him automatically of the benefits of the moratory statute.[38]

E. *Payment to Japanese Enemy Property Custodian.*

Payment of a pre-war debt or the outstanding balance of the same made by a pre-war debtor to the Japanese Enemy Property Custodian during the occupation is valid under the principle of International Law.[39]

F. *Payment: Currency.*

Payment of pre-war debts in Japanese war notes has been uniformly held valid and effective to discharge the obligations if the con-

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[35] *Guzman v. Fernando et al.*, G. R. No. L-412, prom. Oct. 25, 1951.

[36] *Tiglao v. Botones*, G. R. No. L-3619, prom. Oct. 29, 1951, citing *Barrozo v. Macaraig*, G. R. No. L-1282, prom. April 25, 1949.

[37] Article 1198 of the New Civil Code provides: "The debtor shall lose every right to make use of the period:

(1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt; . . ."

[38] *Timbol v. Martin, et al.*, G. R. No. L-3469, prom. April 20, 1951.

[39] *Henson v. J. K. Pickering & Co.*, G. R. No. L-3440, prom. March 6, 1951, citing *Haw Pia v. China Banking Corporation*, 45 O. G. No. 9, 1948; *C. N. Hodges v. Maria Gay et al.*, G. R. No. L-2467, prom. Sept. 29, 1950; *Philippine Refining Co., Inc. v. Cesar Ledesma*, G. R. No. L-2913, prom. April 27, 1951.

tract did not specify the currency with which the debt was to be satisfied and was silent as to the date of maturity. On the authority of these decisions, it was immaterial whether duress or coercion, general or specific, was exerted on the creditors.[40] Even when the creditor was given the option to demand payment in either Philippine currency or English currency upon maturity of the obligation, tender of payment made by the debtor in Japanese Military notes would still be valid because all other currencies including the English were outlawed by a proclamation issued by the Japanese Imperial Commander on January 3, 1942, and because the Japanese Military notes was the only currency at the time and because payment in said notes is tantamount to payment in Philippine currency.[41]

G. *Authority to Discharge and Collect Interest on Pre-war Loans Accruing During the Period of Occupation.*

If the Japanese prohibited the debtor from paying his debt to the creditor, interest is not demandable, otherwise the debtor must pay interest on the principal debt during the occupation because as a general rule, whenever the law prohibits the payment of the principal, interest during the existence of the prohibition is not demandable.[42] The occupant did not confiscate the assets of the enemy and did not prohibit them from paying their obligation.[43] There was only sequestration and freezing of properties and assets of the

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[40] *Gustilo et al. v. Jagunap et al.*, G. R. No. L-4249, prom. Nov. 20, 1951; *Philippine Refining Co., Inc. v. Ledesma*, G. R. No. L-2913, prom. April 27, 1951.

[41] *Clara Tambunting de Legarda et al. v. Victoria Desbarats Mailhe*, G. R. No. L-3435, prom. April 28, 1951.

[42] *Intestate Estate of Charles A. McDonough, People's Bank and Trust Co v. Phil. National Bank*, G. R. No. L-3405, prom. April 28, 1951, citing *Heat v. Brown*, 82 U. S. 128, 131, *Ward v. Smith*, 74 U. S. 207.

[43] "The Japanese Military Administration did not prohibit the enemy nationals from paying their overdue debts or obligations. On the contrary, the Director General of the Military Administration in his instructions dated June 30, 1942, No. 28 to Mr. Jose Yulo, then Chief Justice of the Supreme Court, and No. 42 to Dr. Jose P. Laurel, then Commissioner of Justice of the Philippine Government, about the procedure to be followed by the Courts in connection with 'civil cases in which American, British or any other enemy subjects or hostile aliens are parties and which were pending in Philippine judicial courts at the outbreak of the war or such like cases as may be brought to said courts hereafter,' ordered that 'the trial and determination of all pending cases shall be suspended and no new cases shall be accepted for filing except when approved by the Director General of the Japanese Military Administration upon application of the party or parties.' These Instructions show that there was no such prohibition for enemy aliens to pay their matured debts subject to the approval of the Japanese, for, otherwise, such instructions should not have been given, because it would have been useless to approve the filing of suit against American, British or any other enemy subjects, if the latter were prohibited to pay their debts if sentenced to do so by the Court."

enemy nationals made for the purpose of avoiding the use of enemy property for financing propaganda, espionage and sabotage, and acquiring stocks of strategic materials and supplies for the enemy.[44]

H. *Consignation.*

Consignation, to be effectual must be made strictly in consonance with the provisions which regulate payment.[45] Therefore, consignation made in the court by means of a certified check cannot have any legal effect for the simple reason that a certified check is not legal tender within the meaning of the law. Such consignation cannot, therefore, have the effect of relieving a debtor of the obligation.[46]

Article 1257 requires that previous notice of the consignation should be given to the person interested in the fulfillment of the obligation. The question arises whether by reason of the absence of the creditors, they lose their right to be informed of the consignation. The law and available commentaries are vague as to what action the obligor is to take in the situation here presented. Common sense would tell us that the person obligated to receive the money or thing consigned could not demand that he be notified of the consignation if he purposely kept away to elude notice or where his location was unknown and could not be ascertained with the exercise of reasonable diligence. On the other hand, it must also be true that the mere absence of the creditor or bona fide removal to another place known to or easily ascertainable by the debtor will not furnish a valid excuse for dispensing with a legal requirement so vital to the right and interest of the obligee.

It is fairly safe to assume that debtors know the whereabouts of creditors. If the debtor tenders payment to the father of the creditor who refuses to receive the same, the debtor should ask him where his children were or the father should volunteer the information without being asked.[47]

Notice to the creditors of consignation is also required after the consignation is effected.[48] How the second notice is to be effected is not specified. The usual method is, when the consignation is followed by a filing of a suit, through service to the defendant of the summons accompanied by a copy of the complaint.[49]

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[44] Do., citing *Haw Pia v. China Banking Corporation*, G. R. No. L-554, *supra.*

[45] Article 1257, New Civil Code.

[46] *Clara Tambunting de Legarda et al. v. Victoria D. Miailhe, supra.*

[47] *Dungao and Blas v. Roque et al.*, G. R. No. L-4140 and 4141, prom. Dec. 29, 1951.

[48] Article 1258, New Civil Code.

[49] *Limkako and Limkako v. Teodoro*, 74 Phil. 313.

I. *Sale: Whether wholesale or retail.*

The case of *Sy Kiong v. Sarmiento* [50] followed the second criterion laid down in the case of *City of Manila v. Manila Blue Printing Co.*[51] to determine, whether a sale is wholesale or retail, namely, character of the purchaser and not the quantity of the commodity sold. If the purchaser buys the commodity for his own consumption, the sale is considered retail irrespective of the quantity of the commodity sold. If the purchaser buys the commodity for resale, the sale is deemed wholesale regardless of the quantity of the transaction.

In a later case,[52] the court said that the quantity of goods sold by a merchant, the habitual sale of such goods made by him and the license issued to him to engage in business may be indicative but are not determinative of the character of a particular sale of goods made by him. The test to determine whether a particular sale of goods or merchandise is wholesale or retail is the use made or to be made by the purchaser of such goods or merchandise. If it be for resale at profit, the goods being unaltered when resold, the quantity of goods sold being large, not to be used by the purchaser or in excess of the requirements of his business and the merchant selling the goods being habitually engaged in the sale of such goods in large quantities to his customers, then it may be deemed wholesale. Otherwise it is retail. The fact that the purchaser resells the goods after altering them by using his skill or process to secure better price for the alleged goods or manufactured products does not make the previous sale a wholesale. The sale therefore of dry goods which are later transformed into shirts, garments or autocovers and the sale of flour which is converted into bread through a physical or chemical process and later sold to the public in form of bread is still retail.[53]

J. *Pacto de Retro Sales.*

In case of a sale with pacto de retro of a parcel of land and a house, it is perfectly legal for the vendor a retro to exercise his right of repurchase only with respect to the house, because the parcel of land and the house are two divisible things and may be repurchased separately. What actually took place in this case is the novation of the original contract. The payment of a sum which represented the repurchase price of the house is not indicative that the transaction

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[50] G. R. No. L-2934, prom. Nov. 29, 1951.
[51] 74 Phil. 317.
[52] *Tan v. de la Fuente and Sarmiento,* G. R. No. L-3925, prom. Dec. 14, 1951.
[53] *Sy Kiong v. Sarmiento,* G. R. No. L-2934, prom. Nov. 29, 1951.

between the parties is one of mortgage and not sale with right to repurchase. If the contract is one of mortgage, the vendor a retro cannot transfer the said house to another without the consent of the creditor because that would be diminishing the security for the loan.[54]

With respect to the period within which the right of repurchase may be exercised, there can be no controversy that after the lapse of the ten-year period agreed upon in the deed executed by the vendor, the vendee became the absolute owner of the parcel of land sold to them. Whatever promise to sell and convey the parcels that the vendee may make after they had become absolute owners thereof, cannot be regarded as the same promise to resell the parcels reserved for the vendor in the original contract because the right to repurchase was already lost to the latter after the expiration of the ten years agreed upon without his making use of the right in question. In case of a subsequent agreement to reconvey, there is no room for the application of the provisions of article 1508 of the Civil Code which prohibit an agreement or stipulation for redemption of the property sold beyond ten years from the date of the contract. The use of the term "recomprar" may have been due to the lack of a better term available or known to the vendees. Moreover, it is usual and ordinary to refer to a sale or conveyance of real personal property as a resale or repurchase if the vendor had been the former owner thereof, such promise to sell after the lapse of the ten years period not being contrary to law, morals or public order or policy is lawful, valid and enforceable.[55]

It is likewise licit for the parties to stipulate that the right to repurchase the property shall only commence from a certain period, for example, "shall only commence from January 1, 1947 and shall end on January 10, 1948." [56]

With respect to the currency in which the repurchase price must be paid, the parties may agree that the vendor should pay the purchaser only ₱20,000 as price of repurchase regardless of the currency received by the vendor.[57] The court may not evaluate the repurchase price of the property sold and the value of a promissory note at ₱516.70 Philippine currency when the parties have stipulated that of the sixty-thousand (₱60,000) pesos in Japanese military notes,

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[54] *Vera v. Fernandez*, G. R. No. L-2260, prom. May 14, 1951.

[55] *Amanda Madamba vda. de Adiarte v. Emiliana Tumaneng*, G. R. No. L-3031, prom. March 15, 1951.

[56] *Tomasa Arevalo v. Roberto A. Barretto*, G. R. No.-3519, prom. July 31, 1951.

[57] *Teodoro Tanda v. Narcisa N. Aldaya*, G. R. No. L-3278, prom. July 23, 1951.

the vendee shall pay ₱12,000 in Philippine currency for the repurchase of the property and of the twenty-thousand in Japanese Military notes received by the plaintiff from the defendant as a loan, the former shall pay the latter ₱4,000.00 in Philippine currency after liberation.[58]

K. *Lease.*

1. Contract of Lease distinguished from *aparceria;* [59]

If the amount of the rent is certain the contract is one of lease, whereas if the rent is based on the fruits to be obtained from the land, it is an *aparceria.* And if the contract is lease, the lessee is bound to pay the rental whether or not the land has produce. If the contract is *aparceria,* the lessor is entitled to the rental only when there is some produce obtained from the land.

2. Lessee, no title;

When the owner cancelled the contract of lease with his tenant for non-payment of rents and leased and turned over the estate to another, the former tenant can not claim ownership of said land and ask that he be restored to the possession inasmuch as he is precluded from setting up title in himself.[60] In like manner, the tenants of Tabacalera who have chosen to continue cultivating the land after this had been sold to the Government and now administered by Rural Progress Administration, cannot refuse to pay rents to the said trustee of the Government and claim ownership of the land they are allowed to continue to cultivate in the absence of a sale by the government of the hacienda to them. There exists an implied contract of tenancy between the tenant and the Government and their relations are governed by law particularly the Rice Share Tenancy Act No. 4054 as amended.[61]

3. Trespass.

Deprivation of possession as that effected by Japanese soldiers was an act of mere trespass, which as provided in article 1560 (now 1164) of the Civil Code, did not render the lessor liable to the lessee, the later's right of action being directly against the trespasser.[62]

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[58] *Tomasa Arevalo v. Roberto A. Barretto, supra.*

[59] *Simeona M. de Castro et al. v. Jose Longa, supra.*

[60] *Villacorta v. Veneracion,* G. R. No. L-3289, prom. Jan. 9, 1951.

[61] *Geronimo Deato et al. v. Rural Progress Administration,* G. R. No. L-3414, prom. April 13, 1951.

[62] *American Far Eastern School of Aviation v. Ayala y Compañia,* G. R. No. L-2376, prom. June 27, 1951.

L. *Agency.*

The relation of an agent to his principal is fiduciary and as to the property forming the subject matter of the agency, the employee is estopped from acquiring or asserting title adverse to that of the principal. It having been shown that the employee has been entrusted with the possession and management of the business and property for the benefit of the owner, it shall be the duty of said agent to return the business and render an accounting when required to do so by the principal.[63]

When agents have violated the instructions and standing regulations regarding the granting of loans of the principal, and through their carelessness, laxity and negligence have allowed loans to be granted to persons who are not entitled to receive loans, they are responsible for the consequence resulting from their breach or omission or from their tortious act. To hold such agents liable, it is not necessary to show that the persons to whom they gave loans without authority are manifestly insolvent or that the principal has exhausted all remedies against these individuals.[64]

1. Filing of suits not ratification.

The filing of suits by the principal against some of the borrowers to collect at least part of the unauthorized loans made by its agent does not amount to a ratification of the acts of said agent, there being no intention on the part of the principal to ratify the same. Its only purpose is to diminish as much as possible the loss to itself and automatically decrease the financial liability of the defendant.[65]

2. No breach of trust: valid contract.

Where copies of the contracts were shown to the principals and they had every opportunity to go over and compare them and decide on the disadvantages in entering into contract, although this agent was also a member of the board of directors of the co-owner corporation at the time the contract was executed but was not a party with which the principals contracted, said agent committed no breach of trust and therefore the contract is valid.[66]

M. *Life Annuity.*

When the trustee of the deceased's estate purchased an annuity for one Mercedes de Leon, paying to the insurance company in ad-

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[63] *Thomas v. Pineda*, G. R. No. L-2411, prom. June 28, 1951.
[64] *Phil. National Bank v. Bagamaspad*, G. R. No. L-3407, prom. June 29, 1951.
[65] Do.
[66] *Tuason v. Tuason*, G. R. No. L-3404, prom. April 2, 1951.

vance $17,000 plus as the combined premiums, this money no longer forms part of the estate of the deceased and is beyond the control of the court. It has passed completely into the hands of the company in virtue of a contract duly authorized and validly executed. Whether considered as a trust or as a simple consideration for the company's assumed obligation which it has been religiously performing, of paying periodical allowances to the annuitant, the proceeds of the sale cannot be withdrawn without the consent of the company, except upon the death of the annuitant, when the residuary legatee may claim the remainder if there be any.[67]

N. *Mortgage.*

Peñaflorida vda. de Arancillo and Arancillo v. R.F.C.[68] reiterated the ruling in the case of *Philippine Industrial Co. v. El Hogar Filipino and Vallejo*[69] which states that the prohibition in a mortgage contract against the encumbrance, sale or disposal of the property mortgaged without the consent of the mortgagee is valid because it is not contrary to law, morals or public interest (article 1255, now article 1306 of the Civil Code). Such prohibition being valid, it follows that the mortgagee cannot be compelled to give its consent to the registration of a deed of donation of the property mortgaged by delivering for that purpose the transfer certificate of title in its possession. Otherwise, the mortgagor may circumvent the prohibition by compelling the mortgagee to do what the latter has the right not to do, or give its consent against its will to the sale or disposal or encumbrance of the mortgaged property.

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[67] *In the Matter of the Testate Estate of Gordon Butler*, G. R. No. L-3677, prom. Nov. 29, 1951.

[68] G. R. No. L-4602, prom. August 31, 1951.

[69] 45 Phil. 336, 339, 341.