CIVIL LAW: 1953

MINERVA GONZAGA *
ANTONIO P. FLORENDO **

A mastery of the Civil Code provisions does not alone assure adequate knowledge of civil law. Understanding of their application to a variety of factual setting is even more important. In 1953, the Supreme Court has, as usual, quite a number of civil law cases brought to its attention. The decisions, mostly reiterations of settled doctrines, are not unimportant, serving as they do to explain the law and expand or limit past interpretations.

In this survey of the cases decided last year, there has been no attempt at a critical evaluation, with the hope that the student of civil law will get the full benefit of an authoritative interpretation by the only tribunal empowered to apply the law with finality.

I. PERSONS AND FAMILY RELATIONS

A. PROPERTY RELATIONS IN THE CONJUGAL PARTNERSHIP

Under the conjugal partnership regime, property acquired by onerous title during the marriage at the expense of the common fund is conjugal partnership property,[1] all property of the marriage being presumed conjugal.[2] And improvements made on the separate property of the spouses through advancements from the partnership or through the industry of either spouse belong to the conjugal partnership.[3] These principles found application in the case of *Vitug vs. Montemayor*.[4] Here, defendant was the second wife of Clodualdo Vitug. Plaintiff is the only heir of Vitug by the first marriage. During the second marriage, defendant inherited from her parents a parcel of land valued at ₱9,461.87. The spouses converted the land into a fishpond, which they sold later for ₱116,488.37. Discounting the ₱9,461.87 which was due to defendant as owner of the land, there was left a balance of ₱107,006.50. Out of this fund, the spouses paid the thirty parcels of land in litigation for ₱95,000. In the intestate proceedings instituted after Vitug's death, the Supreme Court found the thirty parcels to be conjugal partnership property. It

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* LL.B.,U.P. (1954); formerly Vice-Chairman, Student Editorial Board, Philippine Law Journal.
** LL.B., U.P. (1954); formerly Administrative Assistant, Philippine Law Journal.

[1] Article 153 (1), Civil Code of the Philippines.
[2] Article 160.
[3] Article 158.
[4] G. R. L-5297, prom. October 20, 1953.

ruled that, notwithstanding the intention of Vitug to donate all of the thirty parcels to defendant during the marriage, the conveyance is void because prohibited by law.[5] In the absence of concrete proof that the conversion of the lands into fishponds were made exclusively at the expense of defendant, it is presumed made at the cost of the partnership.[6] Because they were so converted by the industry and efforts of the spouses, said fishponds are conjugal property, reimbursing the value of the land to the spouse to whom it pertains.[7] The purchase price of the thirty parcels came from the proceeds of the sale of the fishponds, and said thirty parcels are conjugal because acquired by onerous title during the marriage,[8] regardless of the name appearing in the deeds of sale and transfer certificates of title.

Similarly, in *Flores vs. Escudero* [9] the point involved is whether or not certain land bought by Simeona de Mesa in 1912, while living separately from her husband, was conjugal property. It was claimed that it was her exclusive property because the husband contributed nothing to its acquisition since he had abandoned her and was living separately from her. The Supreme Court found the contention untenable. The law presumes all property acquired during the marriage, regardless of whether the spouses are living together or not, as conjugal property. It is true that the purchase herein was made exclusively by Simeona, but it was not shown that she made the purchase with her own money. In the absence of proof to that effect, the law equally presumes that the money came from conjugal funds, which may consist of any income from conjugal properties or from the exclusive properties of the spouses or from the services, industry, wages or work of the spouses or of either of them.

Where the property is paraphernal, however, its management and disposition comes under the exclusive power of the wife. Thus in *Mora vs. La Insular*,[10] it was claimed on appeal that the alleged assignment of credit embodied in the document in question is not valid because of lack of marital consent. The court, finding that the said credit is a derivative of certain shares of stock excluded from the conjugal partnership by the ante-nuptial contract between the spouses, held that the husband's consent was not necessary. The Court pointed out that even in the assumption that it forms part of

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[5] Article 133, Civil Code.
[6] Citing 9 MANRESA 3a ed. 634.
[7] Article 1404, Spanish Civil Code, now Article 158, Civil Code of the Philippines.
[8] Article 1401, Spanish Civil Code, now Article 153, Civil Code of the Philippines.
[9] G. R. L-5302, prom. March 11, 1953.
[10] G. R. L-5021, prom. July 31, 1953.

the paraphernal property or its fruits,[11] the fact remains that any alienation of such property by the wife without the consent of the husband is not void, but merely voidable within four years from the death of the wife.[12] At any rate, the court emphasized, what the wife in effect did in connection with this transaction was merely to collect a portion of her credit against the corporation, an act which may be considered as within the power of administration of a married woman, for which the husband's consent is not necessary.

B. RECOGNITION OF NATURAL CHILDREN

The Civil Code enumerates the cases where the father or mother may be compelled to recognize the child as his natural child.[13] But the action for recognition may be brought only during the lifetime of the presumed parents, with two exceptions: (1) if the parent died during the minority of the child, in which case the action should be brought within four years following the attainment of its majority; (2) if after the death of the parent, some document should appear of which nothing had been heard, and in which either or both parents recognize the child; in this case, action should be brought within four years from the finding of the document.[14] The right of action prescribes, as it did in *Gabrinao vs. Latorre*.[15] Here, one of the alleged daughters of Vicente Latorre became of age during his lifetime, and the other failed to bring action within two years[16] after majority. The Court held the action has prescribed. In reply to the contention that the defense of prescription had been waived because of the alleged fact that the defendant (brother of the deceased Vicente Latorre) continously gave them their share in the products of the land and in the rentals for the carabaos in question until he desisted in November, 1948, the Supreme Court found the allegation unsupported by proof, even supposing that the defense of prescription may be waived.

C. SUPPORT: EXTENT OF OBLIGATION TO GIVE

Parents are legally obliged to support their children.[17] How much is due by way of support? According to the Civil Code, the

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[11] Under the Civil Code, Article 140, a married woman of age may mortgage, encumber or alienate or otherwise dispose of her paraphernal property, without permission of the husband and appear in court to litigate in regard to the same.

[12] Citing *People's Bank & Trust Co. vs. Reg. of Deeds of Manila*, 60 Phil. 167; *Papa & Delgado vs. Montemayor*, 54 Phil. 331.

[13] Articles 282 and 283, Civil Code.

[14] Article 285, Civil Code.

[15] G. R. L-5825, February 27, 1953.

[16] This period fixed in section 45 of the Code of Civil Procedure has been changed to four years under Article 285.

[17] Article 291, Civil Code.

amount shall be in proportion to the resources or means of the giver and to the necessities of the recipient.[18] This is illustrated in *Astudillo vs. Astudillo.*[19] Antonio Astudillo was sentenced in a divorce proceeding in 1944 to support his two children by Flora Cuetilo "in an amount equal to ¼ of his monthly salary or income which he is now receiving or which he may receive in the future." In this action to enforce the order of support, the court sentenced the defendant to give ₱200 monthly support to the plaintiffs. The obligation to give support commenced in 1947 because from 1944 to 1946, there is no evidence that defendant had any income at all. From 1947 to 1949, the Court referred to the joint income tax returns of Antonio and his second wife. The court held that granting that the conjugal property of Antonio and his present wife is chargeable with the support of his own children, the plaintiffs, nevertheless it must be borne in mind that Antonio has other children by his present wife, and the latter also has a claim on and right to the conjugal property to the extent of ½ of it. To arrive at a just ascertainment for purposes of fixing the ¼ portion, the joint net income of Antonio and his present wife was divided into two. Adding their net incomes of ₱15,856 for 1947, ₱9,646 for 1948, and ₱26,681.50 for 1949, dividing the total by two and getting ¼ of that, we get ₱6,522.93 which defendant should have paid for the support of his children for those years. The amount fixed by the lower court—₱200 per month—was held justified.

D. THE OBLIGOR'S RIGHT OF ELECTION

The Civil Code confers an option upon the obligor to elect the manner in which support shall be given.[20] He may either pay the allowance fixed, or receive and maintain in his house the person who has a right to receive support. The option may be waived [21] or restricted [22] when there is "a moral or legal obstacle thereto." [23] In the case of *Villasor vs. Villasor*,[24] a complaint for support was filed against Agapito Villasor by his acknowledged natural daughter. Pursuant to a stipulation of facts submitted by the parties, wherein the father promised to support the child by depositing with the clerk of court ₱45 monthly, the court rendered judgment on July 25, 1950 making the agreement binding upon the parties. But on September

[18] Article 296, Civil Code.
[19] G. R. L-4669, prom. September 22, 1953.
[20] Article 299, Civil Code.
[21] *Estrella vs. Court of First Instance of Manila & Batu*, 62 Phil. 429 (1935).
[22] *Pascual vs. Martinez* 37 O. G. No. 118, p. 2418.
[23] Article 299, Civil Code.
[24] G. R. L-4647, prom. April 20, 1953.

25, 1950, defendant filed a motion offering to fulfill his obligation by recognizing and maintaining in his house the minor plaintiff, and alleging among other things, that plaintiff's mother had no means of livelihood and was very fond of gambling, besides being addicted to intoxicating drinks. The trial court denied the motion. The Supreme Court affirmed the order of denial. In its opinion, the Court cited *Estrella vs. Court of First Instance of Manila & Batu* [25] wherein it was held that after the obligor had expressly agreed that the mother should have the custody and care of the minor, voluntarily binding himself to pay a monthly allowance, he could not thereafter claim the right to support said child in his own home. Citing *Pascual vs. Martinez*,[26] the Court declared that irrespective of any waiver, "the optional right may be restricted when it is in conflict with another preferential right, or when there is any justified reason for so doing." *U.S. vs. Alvir* [27] was also cited where it was said that:

> "The marriage of the father with his present wife who is not the mother of the minor for whose guardianship this case was instituted; the intention of the father to make illusory the support judicially granted to the minor; the determination of the former to have the latter at his side only when pressed to pay the allowance overdue; and above all, the treatment the father had accorded his child, aside from the existence of a moral cause that would prevent the mother of the minor to visit her child in the house of his father, were factors that would become the cause of disturbance in the said home, and an obstacle to the satisfaction and enjoyment springing from love and affection so necessary for his unhampered development and for the assurance of his future."

The court, concluding that the same circumstances were present in the case at bar, held that defendant may not insist upon bringing up the minor in his and his wife's home against the plaintiff's and her mother's justified objections.

E. ADOPTION

May a step-father who has legitimate children legally adopt his step-child? This question was raised in *Ball vs. Republic of the Philippines*.[28] The petition for adoption of George W. York was opposed on the ground that those who have legitimate children cannot adopt under Article 335 of the Civil Code of the Philippines. The trial court, over the opposition of the Solicitor General, granted

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[25] *Supra* note 21.
[26] *Supra* note 22.
[27] 9 Phil. 576.
[28] G. R. L-5272, prom. December 21, 1953.

the petition relying on Article 338 of the Civil Code which provides that a step-child may be adopted by the step-father or step-mother. The Supreme Court, reversing the appealed decision, held that according to the Code Commission in interpreting Article 338, the adoption of a step-child by a step-father or step-mother is advisable for it eases up existing family relations. This argument is good if the step-father or step-mother has no legitimate children. Otherwise, the adoption of a step-child would create friction in the family. The legitimate children would not look with favor at the adoption of their step-brother as their participation in the inheritance would be reduced. Article 338 contemplates a situation where the step-father has no legitimate children. Reconciling articles 335 and 338, apparently conflicting provisions of the Civil Code of the Philippines, this Court held that a step-father who has no legitimate children can adopt his step-child; but a step-father who has legitimate children cannot adopt his step-child.[29]

F. CONSENT OF THE NATURAL FATHER TO THE ADOPTION

In a petition for adoption, the written consent of the parents, guardian or person in charge of the person to be adopted is necessary,[30] except, among other causes, when the parent has abandoned such child.[31] Hence in *Dayrit vs. Piccio*[32] it was held that in a petition for adoption of a child the consent of the natural father is not indispensable when he abandons his child, leaving her to the care of strangers, and does not recognize her. The decree of adoption sought to be revoked for lack of the natural father's consent was declared final. Subsequently a petition for habeas corpus was brought to recover custody of the same child.[33] The Supreme Court, in denying the petition, cited Rule 100, sec. 5 of the Rules of Court, and Article 341 of the Civil Code as to the effects of adoption,[34] and held that having been legally adopted by the respondents, they have the right to exercise parental authority over the child.

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[29] The Court declared that the word "may" in Article 338 is used in the sense that it allows discretion; it permits but does not oblige, the adoption of a step-child.

[30] Article 340, par. 2.

[31] Rule 100, Sec. 3, Rules of Court.

[32] G. R. L-5627, February 27, 1953.

[33] *Dayrit vs. Dayrit*, G. R. L-6013, March 10, 1953.

[34] "La orden de adopcion libera el adoptado 'de todas las obligaciones legales de obediencia y manutencion con respecto a sus padres naturales, salvo con respecto a la madre cuando el niño fuere adoptado por el marido de aquélla, y que, para todos los fines y propositos legales dicho niño adoptado sera el heredero legal de sus padres adoptivos y tambien permanecerá siendo heredero legal re sus padres naturales."

II. PROPERTY

A. ACCESSION WITH RESPECT TO IMMOVABLE PROPERTY

One of the time-honored principles of the law of property is the principle of accession whereby the owner of land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting after payment of indemnity for necessary, useful and voluntary expenses, or to oblige the one who built or planted to pay the price of the land, or the one who sowed, the proper rent.[35] In view of the impracticability of creating a state of "forced coownership," [36] the law gives the owner of the land this option. It is the owner of the land who is allowed to exercise the option because his right is older and because, by the principle of accession, he is entitled to the ownership of the accessory thing.[37] These principles were affirmed in *Acuña vs. Furukawa Plantation Co.*[38] In this case, defendant corporation is the registered owner of a large tract of land in Davao. Plaintiffs were among those homesteaders who were favored with an allocation of this tract of land as a result of the last war, when the National Abaca & Other Fibers Corporation administered the land together with other Japanese-owned properties and distributed them among war veterans and deserving civilians. What plaintiffs appear to claim is that, while the land occupied by them as homestead is embraced in defendant's Torrens title, the improvements thereon are expressly excluded therefrom, being among those noted down in the Torrens certificate as properties belonging to other persons. On this hypothesis, plaintiffs seek, among other remedies, to have defendant cede to them the land on which the improvements stand, invoking for this purpose Article 361 of the old Civil Code (Art. 448 of the new). The court reiterated that under this article, it is the owner of the land who has the right to choose between acquiring the improvements and selling the land. An action predicated on the assumption that the option may be exercised by the owner of the improvements is clearly without legal basis.

B. ACCESSION: RIGHTS OF THE RIPARIAN OWNER

In *Guerrero vs. Director of Lands* [39] the riparian owner applied for registration of the bed abandoned by the Pampanga River when it changed its course after 1937. Her right was sustained under Art-

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[35] Article 448, Civil Code.
[36] 3 MANRESA 213 (4th ed.).
[37] *Bernardo vs. Bataclan*, 66 Phil. 598.
[38] G. R. L-5833, prom. October 22, 1953.
[39] G. R. L-4371, prom. August 27, 1953.

icle 370 of the old Civil Code.[40] It should be noted that the rule has been changed under the new Civil Code, whereby the abandoned land ipso facto belongs to the owners whose lands are occupied by the new course in proportion to the area lost.[41] The Director of Lands in opposition argued that Article 370 is not applicable as the riparian land was acquired by virtue of a homestead patent, and said land cannot be increased except in the manner provided for in the Public Land Act. This contention was dismissed as without merit, because after the title to the lot had become absolute, the land ceased to be public and became one of private ownership entitled to all the benefits granted by law.

III. Different Modes of Acquiring Ownership

A. Donations: Their Formal and Intrinsic Validity

In the case of *Benito vs. Enero*,[42] action was commenced to revindicate certain land held by homestead patent by Estefanio Benito as conjugal property with Apolonia Corpuz. Shortly after the issuance of the patent, said Estefanio Benito (father of the plaintiff) donated ¼ of that lot to his brother and ¼ to another brother, these portions making up the northern half of the entire lot. It is admitted that these donations were void because made verbally or at the most by private documents, and besides within five years from the date of the patent. But in 1935, after patentee's death and the expiration of the prohibition period, Benito's widow executed a deed in favor of each of her brothers-in-law, "for the formalization of the very act of my deceased husband."[43] The deeds were properly notarized. The Court held that the deeds, standing alone and independent of the deceased's donations, were sufficient in form and intent to pass title. Finding them more than a mere formalization or rati-

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[40] "Beds of rivers abandoned because of a natural change in the course of the water belong to the owners of the lands bordering therein throughout their respective extents. * * *"

[41] Article 461, Civil Code.

[42] G. R. L-5238, prom. October 22, 1953.

[43] These two deeds, identified as Exhibits 3 and 5, contained the following paragraphs:

"Now, then, for the formalization of said donation in view that the donation executed by my deceased husband was executed in a private document, and complying with the request of Saturnino Benito to formalize said donation by way of public document, in my capacity as widow of Estefanio Benito and administratrix of the properties left by him, and in consideration further of the fact that this act and deeds are but the formalization of the very act of my deceased husband, by these presents I hereby convey and transfer unto said Saturnino Benito married to Agustina Apolinar, of legal age, and a resident of the barrio of Bonfal, Bayombong, Nueva Vizcaya, the northernmost portion of the property above described."

fication of the donations previously made by Estefanio Benito to his brothers, the Court said:

> "* * * Note that, although Apolonia Cruz in the recital seemed to consider the deeds as 'the formalization of the very act of my deceased husband,' yet she said in the '*habendum*': 'I hereby convey and transfer unto said Saturnino Benito (or Eugenio Benito) * * * the northernmost portion of the property described * * *.' Regarded as well they may be, as deeds of donation, Exhibits 3 and 5, as already seen, were done in the manner provided by law after the five-year period in which the alienation of the property was prohibited, and the donations were duly accepted by the donees. The fact that Apolonia Cruz' interest in the homestead was indeterminate may have affected or voided the donations as regards the identity of the portions donated, but it did not affect the intrinsic validity of the donations. A deed which purports to convey a greater estate than the grantor has will be void only as to the excess and construed as a conveyance of that which it was within the grantor's power to convey. (26 C.J.S. 418)."

B. SUCCESSION

1. *Transmission of rights in succession*

Article 657 of the old Civil Code provides: "The right to the succession of a person are transmitted from the moment of his death." In a slightly different language, this article is incorporated in the new Civil Code as Article 777. It has been said in comment:

> "The moment of death is the determining factor when the heirs acquire a definite right to the inheritance, whether such right be pure or contingent. It is immaterial whether a short or long period of time lapses between the death of the predecessor and the entry into possession of the property of the inheritance because the right is always deemed to be retroactive from the moment of death."[44]

The above provision and comment were cited in *Ibarle vs. Po*[45] to declare null and void in part a sale of conjugal property made by the wife after the husband's death. When the widow, Catalina Navarro, sold the parcel of land in question, one-half of it already belonged to the seller's children, who succeeded to the property from the moment of their father's death. No formal or judicial declaration being needed to confirm the children's title, it follows that the sale was null and void insofar as it included the children's share.

2. *Wills: The attestation clause*

The attestation clause is perhaps the most troublesome formality required in the making of a will. Not too infrequently its legal suf-

[44] MANRESA, 317.

[45] G. R. L-5046, prom. February 27, 1953.

ficiency has been attacked and even proved fatal to the admission of a will to probate.[46] In 1953, it has not failed to furnish litigation. It is gratifying, however, to note the tendency toward a liberal construction of the statutory formalities of wills, started by the case of *Abangan vs. Abangan*,[47] often cited approvingly in later decisions,[48] and presently embodied in Article 809 of the new Civil Code.[49] In the recent case of *Testamentaria de Carlos Gil*,[50] the two divergent tendencies noted in *Dichoso de Ticson vs. De Gorostiza* [51]—one toward strict construction and the other toward a liberal construction—was set at rest by a recognition of the justice of a liberal enforcement of the law. This preference was affirmed over the dissent of five justices.[52] In this case, the will consisted of only two pages, and the attestation clause reads:

> *"Nosotros los que suscribimos, todos mayores de edad, certificamos: que el testamento que procede escrito en la lengua castellana que conoce la testador, compuesto de dos paginas utiles con la clausula de atestiguamiento paginadas correlativamente en letras y numeros en la parte superior de la casilla, asi como todos las hojas del mismo, en nuestra presencia y que cada uno de nosotros hemos atestiguado y firmado dicho documento y todas las hojas del mismo en presencia del testador y en la de cada uno de nosotros."*

It will be noted that the last of the compound sentences is truncated and meaningless. This defect is the basis of appellant's sole assignment of error. On the other hand, counsel for appellee contends that the phrase "han sido firmados por el testador" or equivalent expression between the words "del mismo" and the words "en nuestra presencia" should be inserted if the attestation clause is to be complete and have sense. With this insertion, the attestation clause would read "* * * asi como todas las hojas del mismo *han sido firmadas* por el testador en nuestra presencia * * *." The point was held

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[46] See, among other cases, *Uy Coque vs. Navas Sioca*, 43 Phil. 405; *Rodriguez vs. Alcala*, 55 Phil. 150; *Saño vs. Quintana*, 48 Phil. 506; *Quinto vs. Morata*, 54 Phil. 481; *Garcia vs. Lacuesta*, G. R. L-4067, prom. Nov. 29, 1951; *Testate Estate of Toray vs. Abaja*, 47 O.G. Sup. 12, 327.

[47] 40 Phil. 476 (1919).

[48] Among others, *De Gala vs. Gonzalez & Ona*, 53 Phil. 104; *Leynez vs. Leynez*, 68 Phil. 745; *Mendoza vs. Pilapil*, 72 Phil. 546; *Singson vs. Florentino*, 48 O.G. 4353.

[49] "In the absence of bad faith, forgery, or fraud or undue and improper pressure and influence, defects and imperfections in the form of the attestation or in the language used therein, shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805."

[50] G. R. L-3362, prom. March 20, 1953.

[51] 57 Phil. 437 (1922).

[52] Justices Jugo, Padilla, Reyes, Pablo, Bengzon.

by the court to be well taken. Aside from the possibility that the missing phrase could have been left out by carelessness in the transcription, the Court presumed that the testator knew the law and that the attorney who drew the instrument, and signed it as an attesting witness, knew the law and the rules of grammar and could not have made such an omission intentionally or otherwise.

It was objected that if the deficiency were cured by means of inferences, it would be difficult to draw the line where the court will stop making inferences to supply fatal deficiencies. The Court held that the liberal rule has been well defined in past decisions: these decisions do not allow evidence *aliunde* [53] to fill a void in any part of the document; they only permit a "probe into the will, an exploration within its confines, to ascertain its meaning or to determine the existence or absence of the requisite formalities of law." The Court held that if the witnesses in the case at hand purposely omitted or forgot to say that the testator signed the will in their presence, the testator said that he did, and the witnesses by their signatures in the will itself said it was so. No extraneous proof was necessary nor was considered. It was said in conclusion:

> "To regard the letter rather than the spirit of the will and of the law behind it was the thing that led to unfortunate consequences. It was the realization of the injustice of the old way that impelled this court, so we believe, to forsake the antiquated, outworn worship of form in preference to substance. It has been said, and experience has shown, that the mechanical system of construction has operated more to defeat honest wills than prevent fraudulent ones * * *.
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> "Coming to execution of wills, we see no legitimate practical reason for objecting to the testator instead of the witnesses certifying that he signed the will in the presence of the latter. The will is of the testator's own making; the intervention of attesting witnesses being designed merely to protect his interest. If the sole purpose of the statute in requiring the intervention of witnesses is to make it certain that the testator has definite and complete intention to pass his property, and to prevent, as far as possible, any chance of substituting one instrument for another (1 Page on Wills, 481), what better guaranty of the genuineness of the will can there be than a certification by the testator himself in the body of the will so long as the testator's signature is duly authenticated? Witnesses may sabotage the will by muddling and bungling it or the attestation clause. For the testator, who is desirous of making a valid will, to do so would be a contradiction. If the formalities are only a means to an end and not the end themselves, and that end is achieved by another method slightly different from the prescribed manner, what has been done by the testator and the witnesses in the execution of the instant will would satisfy both law and conscience."

[53] Proof *aliunde* is evidence of matters not contained in a writing offered to affect the writing itself as evidence. BALLENTINE LAW DICTIONARY.

3. *Must the attestation clause be signed by the witnesses at the bottom thereof?*

The question was raised in *Cagro vs. Cagro*,[54] where the signatures of the three attesting witnesses do not appear at the bottom of the attestation clause although the page containing the same is signed by the witnesses on the left-hand margin. The Supreme Court, through Justice Paras, held that the attestation clause being a "memorandum of the facts attending the execution of the will" required by law to be made by the attesting witnesses, it must necessarily bear their signatures. An unsigned attestation clause cannot be considered an act of the witnesses, since the omission of their signatures at the bottom thereof negatives their participation. The contention that the signatures at the left hand margin conform substantially to the law and may be deemed as their signatures to the attestation clause was dismissed as untenable, for the reason that said signatures were in compliance with the legal mandate that the will be signed on the left hand margin of all its pages. If an attestation clause not signed at the bottom be admitted as sufficient, the court conjectured it would be easy to add such clause to a will on a subsequent occasion and in the absence of the testator and any or all of the witnesses.

Justice Tuason dissented with the opinion that the law on wills does not provide that the attesting witnesses should sign the clause at the bottom, observing further that "a letter is not any the less the writer's simply because it was signed, not at the conventional place but on the side or on the top."

Justice Bautista Angelo, dissenting, believes that the will has substantially complied with the formalities of the law. The uncontradicted testimony of the witnesses was to the effect that when they signed the will, the attestation clause was already written thereon. Citing *Abangan, vs. Abangan*,[55] he found the objection that the signatures do not appear immediately after the clause too technical. He likewise put in a reminder on the liberal trend of the new Civil Code in the matter of interpretation of wills, the purpose of which, in case of doubt, is to give such interpretation that would have the effect of preventing intestacy.[56]

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[54] G. R. L-5826, prom. April 29, 1953.

[55] 40 Phil. 476.

[56] Articles 788 and 791, Civil Code:

Article 788: If a testamentary disposition admits of different interpretations, in case of doubt that interpretation by which the disposition is to be operative shall be preferred.

Article 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

Merza vs. Porras,[57] decided less than a month later, tested the sufficiency of the following attestation clause:

> "The foregoing instrument consisting of three (3) pages, on the date above mentioned, was executed, signed, and published by testatrix Pilar Montealegre and she declared that said instrument is her last will and testament; that in our presence and also in the very presence of the said testatrix as likewise in the presence of two witnesses and the testatrix, each of us three witnesses signed this testament."

The opponent objected that this clause did not state (1) that the testatrix and the witnesses had signed each and every page of the will, or (2) that she had signed the instrument in the presence of the witnesses. The first objection was dismissed by the finding that the failure to state in the attestation clause in question that the testatrix and/or the witnesses had signed each and every page of the will was cured by the fact that each one of the pages of the instrument appears to be signed by the testatrix and the three attesting witnesses.[58] As to the second objection, the court held that from a close examination of the whole context in relation to its purpose the implication seems clear that the testatrix signed in the presence of the witnesses. Considering that the witnesses' only business at hand was to sign and attest to the testatrix's signing of the document, and that the only actors in the proceeding were the maker and the witnesses acting and speaking collectively and in the first person, the phrase "in our presence" used as it was in the process of signing, cannot imply anything else, according to the court, but that the testatrix signed before them. The use of the word "also" was found enlightening, as it denotes that, as each of the witnesses signed in the presence of the testatrix and of one another, so the testatrix signed in similar or like manner in their presence. In consonance with the principle of liberal interpretation, adhered to in numerous later decisions of the Supreme Court, and affirmed and translated into enactment in the new Civil Code, the Court held the attestation clause in question sufficient and valid.

4. *Disinheritance: need not be made in the same will which disposes of the property*

This ruling was made in the same case of *Merza vs. Porras*.[59] Article 849 of the Civil Code of Spain [60] does not require that the

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inoperative; and of two modes of interpreting a will, that is to be preferred which will prevent intestacy.

[57] G. R. L-4888, prom. May 25, 1953.

[58] *Nayve vs. Mojal*, 47 Phil. 152; *Licson vs. Gorostiza*, 57 Phil. 437; *Leynez vs. Leynez*, 40 O. G. 3d supp. 510, 528; *Rallos vs. Rallos*, 44 O. G. 4938, 4940.

[59] *Supra* note 57.

[60] Now Article 916 of the Civil Code of the Philippines.

disinheritance should be accomplished in the same instrument by which the maker provides for the disposition of his or her property after his or her death. This article merely provides that "disinheritance can be effected only by a will (any will) in which the legal cause upon which it is based is expressly stated." The rule being well established that two separate and distinct wills may be probated if one does not revoke the other,[61] and provided that the statutory requirements relative to the execution of wills has been complied with,[62] both documents in this case (one containing the testamentary dispositions, and the other providing for the disinheritance) could be probated together.

5. *Reserva troncal: its nature*

The ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree, and who belong to the line from which said property came.[63] There are different theories as to the nature of the *reserva troncal* or the right of the reservor. The reservor is like a life usufructuary of the reservable property,[64] or a trustee charged with the duty to preserve and transmit the property subject to reservation,[65] or an absolute owner [66] subject to resolutory condition.[67]

In *Nono vs. Nequia*,[68] the question is summarized as follows: Margarita Noble, ascendant (mother) of Fernando Nequia, inherited from him the land in question, the latter in turn having inherited it from his grandmother Catalina Quinlantang. Margarita Noble sold the land to Jose Nono on February 20, 1946, and on March 10 of the same year, she died. In conformity with the Civil Code,[69] Margarita Noble was obliged to reserve the said property gratuitously acquired by operation of law, in favor of Ruperto Nequia, who is the uncle or relative within the third degree of the *linea troncal*. Is Ruperto Nequia or Jose Nono the owner of the land?

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[61] 68 C. J. 885.
[62] *Id.*, 881.
[63] Article 891, Civil Code.
[64] *Florentino vs. Florentino*, 40 Phil. 480.
[65] II PADILLA, CIVIL CODE ANNOTATED 283 (1953 ed.), referring to Article 863 of the Civil Code on fideicommissary substitution.
[66] *Edroso vs. Sablan*, 25 Phil. 295.
[67] *Director of Lands vs. Aguas*, 63 Phil. 279.
[68] G. R. L-5829, May 22, 1953.
[69] Article 811; now Article 891, Civil Code of the Philippines.

The Supreme Court, upholding Ruperto Nequia's right to the land, ruled that *reserva troncal* is in the nature of a resolutory condition affecting the right of the ascendant who inherits, if upon the death of such ascendant, the descendant has relatives within the same degree of the *linea troncal*. Jose Nono could not have acquired more than the vendor Margarita Noble could sell.[70]

6. *Natural children cannot represent parents*

Between the natural child and the legitimate relatives of the father or mother who acknowledged it, the Code denies any right of succession.[71] The law separates the natural or illegitimate family from the legitimate family.[72] Thus the illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.[73] In *Oyao vs. Oyao*,[74] the disputed property belonged to Aniceto Oyao who died intestate in 1936. Aniceto Oyao had two legitimate children, both of whom died before him, but were survived by their recognized natural children, the plaintiffs herein, who now lay claim to his hereditary estate in representation of their deceased mothers and dispute the validity of the donation in favor of defendant's father. The Supreme Court, affirming the decision of the lower court, relied on *Llorente vs. Rodriguez*,[75] and held that plaintiffs as mere natural children could not represent their respective mothers in the inheritance of their grandfather Aniceto Oyao.

C. PRESCRIPTION OF ACTIONS

The ten-year period for prescription of the action to recover ownership and possession of immovable property[76] is interrupted from the time of the filing of the original, not the amended complaint. It was so held in *De la Cruz vs. Sosing*.[77]

IV. OBLIGATIONS

A. NATURE AND EFFECT OF OBLIGATIONS

Delay is incurred by the obligor from the time the obligee judicially or extrajudicially demands the fulfillment of the obligation;[78]

[70] Citing by analogy *Edroso vs. Sablan*, 25 Jur. Fil. 306.
[71] 7 MANRESA (3d. ed) 110, quoted in *Grey vs. Fabie*, 68 Phil. 128.
[72] II PADILLA, CIVIL CODE ANNOTATED, 420.
[73] Article 992 of the Civil Code.
[74] G. R. L-6340, prom. December 29, 1953.
[75] 10 Phil. 585.
[76] Article 1134, Civil Code.
[77] G. R. L-4875, prom. November 27, 1953.
[78] Article 1169, Civil Code of the Philippines.

but demand is not necessary when the obligation [79] or the law expressly so declares, or when time is of the essence of the contract,[80] or demand would be useless. In *Adiarte vs. Court of Appeals*,[81] the facts were the following: Tuazon and Co., through its agent Gregorio Araneta, Inc., sold to Cenon Rimando a parcel of land. Rimando later sold to plaintiff Adiarte ½ of the lot for ₱1,590.00; ₱200.00 being payable upon the execution of the contract, and the balance to be paid in monthly installments to Gregorio Araneta Inc. Rimando and Adiarte agreed that in case either shall fail to meet the necessary monthly installments for their respective portions of the lot, the other party may continue the payment of the monthly installments, and the entire lot shall be owned by the party effecting the payments, and whatever amounts paid by the defaulting party with Araneta Inc. shall be forfeited and considered as rentals. The transfer or assignment by Rimando to Adiarte of his right and interest in said ½ of the lot was absolute. Adiarte made payments amounting to ₱924.47 from June, 1940 to April, 1944. The Supreme Court held that Adiarte had not failed to pay the monthly installments to Gregorio Araneta Inc. because no demand had been made, judicially or extrajudicially, by Rimando upon Adiarte to make such payments as required by Article 1100 of the old, now Article 1169 of the new Civil Code of the Philippines, since there is no stipulation in the Rimando-Adiarte contract to the effect that failure to pay the monthly installments at the time agreed upon would give rise to the forfeiture stipulated and cancellation of the contract without the necessity of demand. Assuming that there is such stipulation, the Court held that Article 1504 of the old Civil Code [82] is applicable because the contract is of absolute sale of real property, and therefore Rimando has not reacquired the right or interest in the half of the lot he sold to Adiarte, and Adiarte may still pay what she owed to Araneta if it had not yet been paid, because no demand for such resolution has ever been made judicially, or by notarial act by Rimando.

It is a principle well-established in law that no person shall be responsible for events which could not be foreseen or which though foreseen were inevitable. This rule admits of three exceptions in civil obligations: when expressly specified by law, or when declared

[79] As in *Siuliong & Co. vs. Ilagan*, 43 Phil. 393.

[80] As in *Honlon vs. Haussermann*, 40 Phil. 796.

[81] G. R. L-3517, prom. March 4, 1953.

[82] Now Article 1592: In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period as long as no demand for rescission of the contract has been made upon him either judicially or by notarial act."

by stipulation, or when the nature of the obligation requires the assumption of risk.[83] These provisions were brought up in *Republic of the Philippines vs. Litton & Co.*[84] The facts are simple: Defendant entered into a contract with plaintiff to supply and deliver to the latter on or before March 1, 1946, 96,000 padlocks to be used during the elections of April 23, 1946. The issue is whether, as contended by the plaintiff, the defendant unconditionally bound himself to deliver the padlocks on or before March 1, 1946, or whether as claimed by the defendants, the contract was for Litton to deliver the said articles subject to the condition that the plaintiff would timely obtain the corresponding export license and shipping priority. The Court found the obligation to deliver unconditional. Paragraph 2 of the "Important Conditions" appearing at the back of the purchase orders provided: "The stipulated delivery period shall not be exceeded. However, should there be delay in delivery due to an act of the Government, to force majeure, or to a condition clearly beyond contractor's control, the Purchasing Agent may grant a reasonable time for extension if applied before default is incurred. Deliveries made within the extended period of time shall not be subject to any of the penalties below provided." This makes Litton liable in all eventualities and said clause is authorized by Article 1105 of the old Civil Code. It is also significant that in the circular proposal issued to local dealers, calling for bids, it was expressly stated that the articles were for election purposes and deliveries before March 1, 1946 are to be preferred. It is then preposterous to suppose that delivery after the elections would ever be contemplated or accepted.

B. CONDITIONAL OBLIGATIONS

When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void.[85] When is a condition potestative? The condition that the obligor will pay her indebtedness "if the house of strong materials which I live in is sold" has been held to be exclusively dependent on the debtor's will.[86] Similarly, the condition "that the creditor shall not press the refund of the money until the debtor shall have recovered said amount from a third person" was held tantamount to a debtor telling his creditor that he would pay his obligation when and if he had money.[87] In

[83] Article 1174, Civil Code.
[84] G. R. L-5018, prom. November 28, 1953.
[85] Article 1182, Civil Code.
[86] *Osmeña vs. Rama*, 14 Phil. 99.
[87] *Magahiz vs. Soliman & Soliman*, (C. A.) 45 O. G. 3492.

the recent case of *Hermosa vs. Longara*,[88] the condition that payment will be made by the debtor "as soon as he received funds derived from the sale of his property in Spain" was tested in the Supreme Court. The ruling was that the condition was not potestative. Observing that the condition implies that the debtor "had already decided to sell his house" and that all that was needed to make the obligation demandable is for the sale to be consummated and the proceeds remitted to the Islands, the Court found that there are other circumstances which take the fulfillment of the condition out of the exclusive will of the debtor. In the words of the Supreme Court—

> "* * * The will to sell on the part of the intestate was therefore present in fact, or presumed legally to exist, although the price and other conditions thereof were still within his discretion and final approval. But in addition to this acceptability of the price and other conditions of the sale to him, there were other conditions that had to concur to effect the sale, mainly, that of the presence of a buyer, ready, able and willing to purchase the property under the conditions demanded by the intestate * * * It is evident therefore that the condition of the obligation was not a purely potestative one, depending exclusively upon the will of the intestate, but a mixed one, depending partly upon the will of the intestate and partly upon chance, i.e., the presence of a buyer of the property for the price and under the conditions desired by the intestate."

In *Trillana vs. Quezon College*,[89] the balance of the subscription to capital stock was proposed to be paid in this tenor: "Babayaran kong lahat pagkatapos na ako ay makapaghuli ng isda."[90] The condition was held dependent on the sole will of the debtor, and therefore facultative in nature, rendering the obligation void. It cannot be argued that the condition solely is void because it would have served to create the obligation to pay, unlike a case exemplified by *Osmeña vs. Rama*[91] wherein only the potestative condition was held void, because it referred merely to the fulfillment of an already existing indebtedness.

In *Patente vs. Omega*,[92] the litigation was over another potestative condition. In this case, the defendant executed a promissory note acknowledging the receipt from the plaintiff of the amount of ₱1,600.00, with the promise to pay "as soon as possible or as soon as I have money." The condition being void, because potestative, should the obligation be declared pure and unconditional? The court held not. If, by inadvertence or ignorance, the parties agree on a con-

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[88] G. R. L-5267, prom. October 27, 1953.
[89] G. R. L-5003, June 27, 1953.
[90] I will pay all after I have caught fiish.
[91] 14 Phil. 99.
[92] G. R. L-4433, prom. May 29, 1953.

dition of payment contrary to law, why, upon the annulment of the condition, should the principal obligation be converted into a pure one immediately demandable, when the original intention was to grant the debtor time for payment? The Court concluded that the remedy of the creditor in such case is to ask the court to fix the period of payment, and prior to this, the filing of the complaint is premature.

C. RIGHT TO RESCISSION

The injured party in contractual obligations may choose between two remedies; namely (1) specific performance with damages, or (2) rescission or resolution of the obligation, also with damages. The Civil Code provides that the power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.[93] The original rule, as announced in *Song Fo & Co. vs. Hawaiian-Philippine Co.*[94] is that rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are so substantial and fundamental as to defeat the object of the parties. This principle was affirmed in *Araneta vs. Tuason & Vidal*[95] where the court held that the non-payment of a portion, albeit big portion of the price was not such failure as would justify rescission under Articles 1124 (Article 1191 of the Civil Code of the Philippines) and 1505 (now Article 1595) of the Civil Code of Spain which was in force when the case was tried.

D. EXTINGUISHMENT OF OBLIGATIONS

1. *Payment in legal tender*

After the decision in *Haw Pia vs. China Banking Corp.*,[96] it was firmly settled that payments made with Japanese war notes during the occupation, of obligations contracted before the war, were valid. In *Hilado vs. De la Costa*,[97] it was held that contracts stipulating for payments presumably in Japanese war notes may be enforced in courts after liberation on the basis of the Ballantyne schedule which has been adopted to determine the value of Japanese war notes in terms of Philippine currency. These doctrines found reaffirmation in recent cases. In *Piñon vs. Yanga*,[98] a pre-war debt was held extinguished by payment made in June, 1944 in Japanese military notes.

[93] Article 1191.

[94] 47 Phil. 821. Here is a delay in payment for a small quantity of molasses for some twenty days was held to be not such a violation of an essential condition of the contract as to warrant rescission for non-performance.

[95] G. R. L-2886, prom. January 26, 1953.

[96] 45 O. G. Supp. to No. 9, 229.

[97] 46 O. G. 5472.

[98] G. R. L-5532, prom. May 13, 1953.

In *Araneta vs. Hill* [99] the Supreme Court held that the lower court had erred in holding that although the defendant had received ₱1,000 in Japanese military notes, such money was only equivalent to ₱80.00 in today's currency and therefore plaintiff is deemed to have paid only ₱80.00 on account of the purchase price of real estate sold before the war. The Court held said notes to be legal tender at the time of payment.[100] In *Anduiza vs. Quirona,* [101] it was contended that the payment of ₱9,000 in Japanese money made in October, 1944 should be reduced to ₱225 in Philippine pesos in accordance with the Ballantyne scale. The Court dismissed the contention, relying on previous decisions to the effect that payments made during the Japanese regime, without protest or reservation on the part of the creditor are valid.[102]

In *Ang Lam vs. Peregrina,*[103] the loan was contracted on Dec. 26, 1944 in the amount of ₱100,000 in Philippine currency prevailing on that date, payable within one year therefrom. Because the loan could have been paid on any date before liberation, in Japanese military notes, and the parties did not intend to subject their rights and obligations under the contract to the contingency of a change in the intrinsic value and purchasing power of the currency, the Court held that the fair and just rule to apply is for the debtor to pay the actual value of the loan at the time it was contracted in the currency in existence at the time of payment.[104]

In *Garcia vs. De los Santos* [105] the contract was different. Here defendants executed in favor of plaintiffs in September, 1944, a promissory note for ₱10,000 Philippine currency, payable "five years after date" with interest at 10% per annum, secured by real mortgage, with the stipulation that payment of the interests and the obligation shall be in full whatever legal tender and currency is pre-

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[99] G. R. L-3241, prom. October 29, 1953.

[100] Citing *How Pia vs. China Banking Corp.,* 45 O.G. Supp. No. 9, 229; *Lim vs. Reg. of Deeds of Rizal,* 46 O. G. 3665; *Fidelity & Surety Co. vs. Court of Appeals,* 47 O. G. 4084.

[101] G. R. L-5073, May 20, 1953.

[102] *Larraga vs. Bañez,* 47 O. G. 696; *Philippine Trust Co. vs. Luis Araneta,* G. R. L-2734, prom. March 17, 1949; *La Orden de Padres Benedictinos vs. Philippine Trust Co.* G. R. L-2020, prom. December 29, 1949.

[103] G. R. L-4871, January 26, 1953.

[104] The Court said: "This is the spirit of the ruling of this Court in the leading case of *Hilado vs. de la Costa,* et al., 46 O. G. No. 11, 5472, which follows the doctrine laid down by the Supreme Court of the U.S. in the leading case of *Thorington vs. Smith,* 19 L. ed. 361. To the same effect is our ruling in the case of *Soriano vs. Abalos* et al., 47 O. G. No. 1, p. 168, where an award of ₱3,200 as yearly damages granted in the judgment rendered December, 1947, was reduced after liberation to its equivalent of ₱35.53 yearly."

[105] G. R. L-5054, prom. August 31, 1953.

vailing and in use at the time such interests or the obligation becomes due and payable. The Court held that the promissor must pay the Philippine currency and may not discharge his debt by paying only the equivalent of the Japanese currency he had received. The Court referred to the decision in *Roño vs. Gomez, et al.*[106] for authority.

Where a joint and several loan was contracted before the war and payment was made by one of the solidary debtors during the Japanese occupation in Japanese military notes, the Ballantyne schedule of values should be applied in determining the amount of the reimbursement to be made by the solidary co-debtors after liberation. On the premise that the payment by said debtor of the entire loan extinguished the whole obligation and created a new obligation on the part of his co-debtors to reimburse him, the Ballantyne scale should be applied because the obligation of said co-debtors was created during the Japanese occupation. This was the holding in the case of *Wilson vs. Berkentotter.*[107]

2. *Consignation*

The rule in consignation is that there must be two notices: one before the deposit of the thing to be consigned,[108] and another after the consignation.[109] The second notice may be accomplished by the service of summons and a copy of the complaint upon the defendant.[110] In *Valenzuela vs. Bakani,*[111] the plaintiff sold his rights to the land which he had previously conveyed to defendant Bakani in a contract with right to repurchase, to one Araullo, the intervenor herein. He bound himself at the same time to obtain cancellation of the *pacto de retro* sale made in favor of Bakani. He offered payment but Bakani rejected it and refused to reconvey the property. Valenzuela deposited the sum with the clerk of court. Defendant contends that the consignation was defective because he received no previous notice of the consignation as required by Article 1177 of the old Civil Code.[112] Citing the case of *Andres vs. Court of Appeals,*[113] the Supreme Court held that the consignation was valid, for "the service

[106] 46 O.G. Supp. No. 11, 339.
[107] G. R. L-4476, April 20, 1953.
[108] Article 1257, par. 1.
[109] Article 1258, par. 2.
[110] *Limkeko vs. Teodoro,* 74 Phil. 313 (1943); *Durigao vs. Roque,* G. R. Nos. L-4040 and 4141, prom. December 29, 1951.
[111] G. R. L-4689, prom. August 31, 1953.
[112] This notice of intention to consign is now provided for in Article 1297, par. 1, Civil Code of the Philippines.
[113] 47 O. G. 2876 (1949).

of the summons and copy of the complaint upon the appellee constituted sufficient notice." [114]

The doctrine that tender and consignation, to be valid, must be unconditional,[115] was reiterated in *Rustia vs. Aguinaldo* [116] with the observation that "conditional tender or consignation is a contradiction, self-nullifying, in the juristic sense."

3. *Impossibility of performance*

It is elemental that the law requires parties to do what they have agreed to do.[117] But the Civil Law does not recognize impossible things or services as proper object of contracts.[118] Corollary to this, the law also releases the obligor when the prestation becomes legally [119] or physically [120] impossible without the fault of the obligor.[121] Thus in *Tabora vs. Lazatin* [122] the lease contract entered into between the parties provided among other things that the lessee would rebuild certain apartments and rehabilitate a theatre within six months under penalty of liquidated damages. Despite lessee's efforts to secure the necessary building permit for reconstruction, he failed because of the disapproval or unfavorable attitude of the Urban Planning Commission toward constructions or reconstructions unless they conformed to the plan of widening the streets of the city. Appellant having done all he could to secure the permit and to comply with his obligation, but because of the refusal of the government authorities to issue said permit, he failed to fulfill his undertaking, the court held that he should be absolved and released from his obligation.

4. *Novation*

Novation is a way of extinguishing obligations. It is part of the freedom to contract to agree on a substitution of obligations. But there is such a principle, applied in *Macapinlac vs. Gutierrez Repide,*[123] called the "once a mortgage, always a mortgage" doc-

[114] It should be noted, however, that the case of *Andres vs Court of Appeals,* cited by the court, speaks of the second notice, *i.e.*, the notice after the consignation. The Supreme Court in effect has ruled that the two notices may be combined into one notice which may take the form of service of summons and copy of the complaint.

[115] *Philippine National Bank vs. Relativo,* G. R. L-5298, prom. October 29, 1952.

[116] G. R. L-4005, prom. September 16, 1953.

[117] *Castro et al. vs. Longa,* G. R. L-2152 and 2153, prom. July 31, 1951.

[118] Article 1348, Civil Code.

[119] *Theaters' Supply Corp. vs. Libangan Malolos,* 48 O. G. 1803.

[120] *Labayen vs. Talisay-Silay Milling Co.,* 52 Phil. 440.

[121] Article 1266, Civil Code.

[122] G. R. L-5245, prom. May 29, 1953.

[123] 43 Phil. 770.

trine.[124] This doctrine, however, should not prevent a mortgage from being validly novated if the positive acts of the parties so indicate. Thus a sale with right to repurchase [125] may be converted into a lease with option to buy. This holding was made under the facts of *Cojuangco vs. Gonzales*.[126] Here, the plaintiffs sought to recover the rentals of a parcel of land leased to defendant. The land had been conveyed by defendant to Jose Cojuangco, Sr. as security for a loan of ₱20,000. The contract of conveyance was made to appear as a sale with right to repurchase and lease. The defendant paid neither the rentals nor the taxes to the government. Due to the failure to pay taxes, the land was declared forfeited to the government. The heirs of the vendee notified the defendant of these facts. Upon silence of defendant, the heirs of the vendee consolidated ownership in themselves and title was issued in their favor. A new contract of lease was executed between the parties. Defendant was given various extensions for repurchasing the land at ₱60,000, but failed to redeem it. The issue was whether the new contract upon which plaintiff sues is a mortgage, as defendant contends, or a lease, as plaintiff maintains. The court, upholding the plaintiff, held there was an "incompatibility" between the original and the subsequent contracts, principally in the price of the repurchase, and the holder of the title. Ruling that there has been a novation, the Court observed in comment on the "once a mortgage, always a mortgage doctrine":

> "The principle * * * prohibits the parties from making stipulations that would tend to destroy the contract of its essence as a mortgage and deprive the debtor of the equitable right of redemption. The stipulations that are prohibited are those executed or made simultaneously with the original contract, not those subsequently entered into. The principle does not prohibit modification of the original contract by subsequent agreements such as the parties may see fit to adopt."

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[124] In this case, the Supreme Court, quoting Pomeroy, said: "The doctrine has been firmly established from an early day that when the character of a mortgage has attached to the commencement of the transaction, so that the instrument, whatever be its form, is regarded in equity as a mortgage, that character of mortgage must and always continue. If the instrument is in its essence a mortgage, the parties cannot by any stipulations however express and positive, render it anything but a mortgage, or deprive it of essential attributes belonging to a mortgage in equity * * *. The equitable right of redemption, after a default is preserved remains in full force, and will be protected and enforced by a court of equity, no matter what stipulations the parties may have made in the original transaction purporting to cut off this right."

[125] Here treated as a mortgage.

[126] G. R. L-5228, prom. September 15, 1953.

V. CONTRACTS

A. PERFECTION OF THE CONTRACT

Contracts rest on consent. And consent in the eyes of the law must be one based on a "meeting of the minds," [127] that is, a meeting of the offer and the acceptance.[128] Without this, there is no contract in law. In *Trillana vs. Quezon College Inc.*, already cited,[129] Damasa Crisostomo sent a letter dated June 1, 1948 to the Board of Trustees of the Quezon College, which read in part:

> "Please enter my subscription to *dalawang daan* (200) shares of your capital stock with a par value of P100 each. Enclosed you will find (*Babayaran kong lahat pagkatapos na ako ay makapaghuli ng isda*) pesos as my initial payment, and the balance payable in accordance with law and the rules and regulations of the Quezon College. I hereby agree to shoulder the expenses connected with said shares of stock * * *."

Damasa Crisostomo died in October, 1948. A claim was presented in her testate proceeding for the value of the subscription. This claim was dismissed, and the Supreme Court affirmed the order. It appears that the application sent by Damasa was written on a general form indicating that an applicant will enclose an amount as initial payment, and will pay the balance in accordance with the laws and regulations of the College. On the other hand, in the letter actually sent by her, she did not enclose any initial payment and stated that "babayaran kong lahat pagkatapos na ako ay makapaghuli ng isda." There is nothing in the record to show that Quezon College Inc. accepted the term of payment suggested by Damasa, or that if there was any acceptance, the same came to her knowledge during her lifetime. The Court held that as the application is obviously at variance with the terms evidenced in the form letter issued by the Quezon College Inc., there was absolute necessity on the part of the College to express its agreement to Damasa's offer in order to bind the latter. The need for an express acceptance becomes more imperative in view of the fact that the counter-offer proposed payment with a facultative condition.

B. DOLO INCIDENTE DOES NOT VITIATE CONSENT

The Civil Code [130] distinguishes between two kinds of (civil) fraud in obligations: the causal fraud, which may be a ground for the annulment of the contract, and the incidental deceit, which only

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[127] Article 1305, Civil Code.

[128] Article 1319.

[129] *Supra* note 89.

[130] Article 1270 of the Spanish Civil Code; Article 1344 of the Civil Code of the Philippines.

renders the party who employs it liable for damages. The Supreme Court has held that in order that fraud may vitiate consent, it must be causal (dolo causante) and not merely incidental (dolo incidente) inducement to the making of the contract.[131] When is fraud incidental? *Woodhouse vs. Halili* [132] furnishes an illustration. In this case, plaintiff entered into written agreement with defendant to organize a partnership for the bottling and distribution of Mission soft drinks, plaintiff to act as industrial partner or manager, and defendant as capitalist. Plaintiff was to secure a Mission Soft Drinks franchise for the proposed partnership and was to receive 30% of the net profits of the business. In an action to compel execution of the contract of partnership, accounting of profits and damages, defendant argued that his consent was secured by false representation of ownership of exclusive bottling franchise. Actually, plaintiff no longer had the exclusive franchise or the option thereto, at the time the contract was perfected. But while he had already lost his option thereto (when the contract was entered into) the principal obligation that he assumed or undertook was to secure said franchise for the partnership, as the bottler and distributor for Mission Dry Corporation. Hence, the court held, if he was guilty of false representation it was not the causal consideration or the principal inducement that led plaintiff to enter into the partnership agreement. The court ruled further that because the supposed ownership was actually the consideration which plaintiff gave in exchange for the share of 30% granted him in net profits, there was dolo incidente. This dolo incidente was used to get the other party's consent to a big share in the profits, an incidental matter in the agreement.[133] Concluding that the agreement cannot be declared null and void, the Court however declined from ordering the partnership agreement to be carried out or executed, being a very personal act the compliance of which the courts cannot compel.[134]

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[131] *Hill vs. Veloso*, 31 Phil. 160.

[132] G. R. L-4811, prom. July 31, 1953.

[133] The Court quoted from MANRESA: "El dolo incidental no es el que puede producirse en el cumplimiento del contrato, sino que significa aquí, el que concurriendo en el consentimiento, o precediendolo, no influyó para arrancar por si solo el consentimiento ni en la totalidad de la obligacion, sino en algun extremo o accidente de ésta, dando lugar tan solo a una accion para reclamar indemizacion de perjuicios." (8 Manresa 602)

[134] "Defendant may not be compelled against his will to carry out the agreement nor execute the partnership papers. Under the Spanish Civil Code, the defendant has an obligation *to do* not to give. The law recognizes the individual's freedom or liberty to do an act he has promised to do, or not to do it, as he pleases. It falls within what Spanish commentators call a *very personal act* (acto personalismo) of which courts may not compel compliance as it is considered an act of violence to do so."

C. VOID AND VOIDABLE CONTRACTS: THE DOCTRINE OF PARI DELICTO

Whoever goes to court must do so with clean hands. This is a rule of equity. It is an equally well-known rule of law that he who has capacity to contract may not invoke the incapacity of the party with whom he contracted as a defense against performance.[135] Thus in *Bastida vs. Dy Buncio & Co. Inc.*,[136] it was contended that a certain lease with option to buy a certain lard and oil factory given by Dy Buncio to Bastida had no valid effect because Bastida, being a Spanish citizen, has no right to buy the factory under the Constitution. The Supreme Court did not sustain the contention by virtue of Article 1397 of the Civil Code.

Similarly, a party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out. The law will not aid either party to an illegal agreement; it leaves the parties where it finds them. This is the doctrine of *pari delicto*,[137] entertained by the court in *Gonzaga de Cabauatan vs. Uy Hoo*.[138] Under authority of this decision, the Supreme Court in *Caoile vs. Yu Chiao Peng* [139] refused to annul the sale of a parcel of land to a Chinese citizen. With three justices writing separate opinions,[140] the Supreme Court held, through Justice Bautista Angelo that the plaintiff-vendor is prevented from maintaining the action either under the principle of *pari delicto* or under the doctrine of estoppel which creates an illegal impediment to recover property sold to an alien.

To the same effect are the rulings in *Rellosa vs. Gaw Chee Hun* [141] and *Talento vs. Makiki* [142] decided the same day. In the *Talento* case, the sale of a homestead was made to a Japanese civilian and his wife. The Court refused to annul the sale, and said:

> "Assuming that the sale is null and void either because it was entered into between enemies in time of war, or in violation of the letter and spirit of our Constitution, we are of the opinion that petitioners are now

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[135] Article 1397, new Civil Code.

[136] G. R. L-5145, prom. May 27, 1953.

[137] The rule is expressed in the maxim: "Ex dolo mala non oritur actio", and "In pari delicto potior est conditio defendentis."

[138] G. R. L-2207, citing *Bough & Bough vs. Contiveros and Hanopol*, 40 Phil. 210.

[139] G. R. L-4068, prom. September 29, 1953.

[140] Justice Reyes concurs in the result, it appearing that the sale in question took place when the Constitution was not in force. Justice Pablo, dissenting, noted that there is no law punishing the sale of land to aliens, and believes that Article 1306 of the Spanish Civil Code is inapplicable to avoid contracts. Justice Padilla, also dissenting, believes that sales of urban lands before the promulgation of the *Krivenko* decision were made in good faith.

[141] G. R. L-1411, prom. September 29, 1953.

[142] G. R. L-3529, prom. September 29, 1953.

prevented from pressing its nullification, because of their presumptive knowledge that the transaction was tainted with invalidity."

One month later, the same question was raised in the Supreme Court. In *Cortes vs. O Po Poe* [143] the action was for the reconveyance of real state sold in 1938 to a Chinese couple, the vendor invoking for this purpose the *Krivenko* decision.[144] At the time of the sale neither of the parties was aware that the same was prohibited by the Constitution, the parties having entered into the transaction in good faith, and it was only after the promulgation of the *Krivenko* decision that they learned for the first time of such constitutional prohibition. The Court, in view of the decision in the *Rellosa* and *Caoile* cases, held that although the sale was null and void, plaintiff may not recover his land. The fact that both parties to the contract did not know the law, does not, according to the court, alter the situation.[145] This *pari delicto* doctrine was affirmed again in *Alberto vs. Tan Sing.*[145a]

D. ESTOPPEL

The principle of estoppel is rudimentary in the law of obligations. It is now defined in Article 1431 of the new Civil Code.[146] According to the Code Commission, estoppel is a "source of many rules which work out justice between the parties." A new chapter on estoppel has been incorporated in the new Civil Code in the belief that it will enrich Philippine law and recognize estoppel as a "separate and distinct branch of the legal system." [147]

The doctrine was defined anew in *Vinluan vs. Merrera.*[148] The facts are as follows: Respondent Teodora Merrera is the only child of Arcadio Merrera, who inherited with his brother Pedro one-half undivided interest in a fishpond from their father. The entire fishpond was sold by Pedro Merrera to the petitioners without authority from Arcadio. The petitioners, claiming exclusive ownership over

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[143] G. R. No. L-2943, prom. October 30, 1953.

[144] The *Krivenko* decision (44 O. G. 471) construed the term "agricultural land" in the Philippine Constitution to include residential lot, and therefore aliens are disqualified to acquire or own real estate.

[145] Prof. Padilla observes that prior to the promulgation of the *Krivenko* decision on November 15, 1947, the contracting parties could not have had "guilty knowledge" or intent to violate the Constitution. According to him, they were acting in good faith, citing Article 526 of the Civil Code. III PADILLA, CIVIL CODE ANNOTATED 663.

[145a] G. R. L-6336, prom. November 27, 1953.

[146] "Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."

[147] Report of the Code Commission, p. 59.

[148] G. R. L-4949, prom. February 13, 1953.

the entire fishpond, by virtue of the sale, invoked the principle of estoppel on the theory that when the entire fishpond was sold, Arcadio filed no objection and led petitioners to believe that he had no interest in the fishpond and so they bought the said fishpond with the understanding that it belonged to the vendor Pedro. On two grounds, the Supreme Court rejected this claim. In order to establish estoppel against Arcadio it must be proven that (1) he was present at the sale of the fishpond in 1929, or that he knew of the sale and that he not only kept silent but led other parties to believe that he had no right or interest in the property sold, and (2) that the vendees were ignorant of the truth or of the facts and were misled into buying the fishpond. These two requisites were found lacking in the present case.

VI. SALE

A. SUBJECT MATTER

A sale requires for its object determinate property,[149] particularly designated or physically segregated.[150] It may be an interest in an inheritance.[151] Thus in *Guanzon vs. Jalando & Ramos* [152] the Supreme Court upheld a sale made by an heir of his interest in certain properties left by his deceased parents, which were still in course of administration, although it was held subject to the result of the administration proceedings. Citing *Cea et al. vs. Court of Appeals*,[153] the Supreme Court noted that there is no law that prohibits an heir from selling his interests in an inheritance, except that any such sale must be deemed subject to the result of the administration proceedings.

B. SALE BY INSTALLMENTS

To remedy abuses committed in the foreclosure of chattel mortgages,[154] the Legislature adopted Act No. 4122 (incorporated as Article 1454-A in the Spanish Civil Code, and now embodied in Article 1484 of the Civil Code of the Philippines), the constitutionality of which has been upheld in *Manila Trading & Supply Co. vs. Reyes*.[155] Thus the vendor in a sale of personal property payable in

[149] Article 1458, Civil Code.

[150] Article 1460, Civil Code.

[151] Successful rights are vested from the moment of death. Article 777, Civil Code.

[152] G. R. L-5048 & 5049, October 31, 1953.

[153] G. R. L-1376, prom. October 27, 1949. Here the sale by a devisee of a half interest bequeathed to him in a specific property pending settlement of the estate in course of administration, was held void as a conveyance of property in the custody of the law but valid as an assignment of his interest therein as a devisee.

[154] *Bachrach Motor Co. vs. Millan*, 61 Phil. 409.

[155] 62 Phil. 461.

installments may exercise one of three remedies; namely, (1) exact fulfillment of the obligation should the vendee fail to pay; (2) cancel the sale, should the vendee's failure to pay cover two or more installments; (3) foreclose the chattel mortgage on the thing sold should the vendee's failure to pay cover two or more installments. In the third remedy, the vendor has no further action against the purchaser to recover unpaid balance of the price, agreement to the contrary being void. This provision applies to contracts purporting to be leases of personal property with option to buy, when the lessor has deprived the lessee of the possession or enjoyment of the thing.

In *U.S. Commercial vs. Halili* [156] the contracts under which plaintiff sues were veritable leases of personal property with option to purchase. They provided among other things that "in the event the contracts were terminated on account of the lessee's default in the performance of his obligations, then all the payments theretofore made should remain the property of the lessor and not be recoverable from the lessee, the latter also waiving the benefits of section 1454-A, Philippine Civil Code." After paying several installments or rentals, lessee defaulted and after such default, lessor requested return of all the eight vehicles subject of the contracts. Lessee voluntarily complied but thereafter refused to pay rents in arrears. In an action to recover the unpaid rentals, the Court held that plaintiff has in fact chosen to deprive the lessee of the enjoyment of the property leased and therefore could not recover rents in arrears. Article 1454-A (now Article 1484) does not require that the deprivation of the enjoyment of the property be brought about through court action. And in this case court action was not essential because the contracts authorized the lessor to repossess when lessee defaulted. The waiver of the benefits of the article is without effect being contrary to both the letter and policy of the law. Plaintiff could have recovered all the rentals due by suing for them in the courts. In choosing the alternative remedy of depriving the defendant of the enjoyment of the vehicles leased with option to purchase, the court held that the plaintiff waived thereby his right to bring such action.

C. THE PACTO DE RETRO

The Code Commission realizes that the evils arising from the contract of sale with right to repurchase, or pacto de retro, "have festered like a sore on the body politic," [157] like the circumvention of the usury law of the prohibition imposed by the Civil Code upon the creditor from appropriating the things given in pledge or mort-

[156] G. R. L-5535, prom. May 29, 1953.

[157] Report of the Code Commission, p. 61.

gage and ordering that said things be sold or alienated when the principal obligation becomes due.[158] Thus the new Civil Code provides that, among other cases, when the price of the sale with right to repurchase is unusually inadequate, the contract shall be presumed to be an equitable mortgage.[159] There was no reference to this provision when the Supreme Court decided *Dapiton vs. Veloso.*[160] In this case, a parcel of land assessed at ₱370.00 was sold for ₱178.00 redeemable within five years. The Court construed the document executed by the parties as clearly revealing the intent to enter into a pacto de retro and not an equitable mortgage. As to inadequacy of price, the Court affirmed the rule in *Askay vs. Cosalan* [161] to the effect that mere inadequacy is not sufficient ground for the rescission or resolution of a contract when both parties were in a position to form an independent judgment concerning the transaction, and that in *Manalo vs. Gueco* [162] it was held that the purchase price of ₱3,728 whereas the value of the property was estimated at ₱7,000, was not grossly inadequate or unconscionable to indicate that it was a mortgage and not a pacto de retro sale.

Another innovation in the new Civil Code provides that after final judgment rendered in a civil action holding that the contract was a sale with right to repurchase [163] and not an equitable mortgage,[164] the vendor may still exercise the right to repurchase within thirty days from the time of such final judgment.[165] Where the transaction is admittedly one of sale with pacto de retro, this privilege of redemption should not be granted, as held in *Feria vs. Suva.*[166] The Supreme Court quoted from one of the members of the Code Committee thus:

> "Paragraph 3 of the article (Article 1606) is a new provision formulated by the Code Commission. It is intended to cover suits where the seller claims that the real intention was a loan with equitable mortgage but the court decides otherwise." [167]

D. LEGAL REDEMPTION

The Civil Code recognizes the right of legal redemption in certain instances. One of these is the right of the co-owner of a thing

[158] Report of the Code Commission, p. 63.
[159] Article 1602, par. 1.
[160] G. R. L-4716, prom. May 15, 1953.
[161] 46 Phil. 179.
[162] 42 Phil. 925.
[163] Article 1601, Civil Code.
[164] Article 1602, Civil Code.
[165] Article 1606, last par.
[166] G. R. L-5515, prom. April 24, 1953.
[167] IV CAPISTRANO ON THE CIVIL CODE 1507.

to redeem the shares of all the other co-owners or of any of them in case they are sold to a third person.[168] Is there any need of making a previous tender of the redemption money before the right of redemption can be exercised? The Court held not in *Torio vs. Rosario.*[169] Relying on the previous decision in *De la Cruz vs. Marcelino* [170] the Court concluded:

> "An offer or tender is not an essential condition precedent to the co-owner's right to redeem. The important thing is to assert it in time and in proper form. This action and the consequent consignation must be held proper."

VII. Lease: Lessor's Obligation to Minimize Damages

The nature and effects of a lease contract are defined by law. In a proper case, the court will resolve the rights of the parties under an agreement of lease. This it did in *Ng Young vs. Villa.*[171] In this case, respondents were the assignees of a three-year lease contract of a certain building. Weeks having elapsed from the assignment without any payment from the lessee, the respondents demanded payment of ₱1,200 monthly rental. Lessee replied that he was willing to pay only ₱700 as monthly rental and that he has decided to surrender the premises because his business was losing. Finding the building vacant, the respondents brought action to recover unpaid rentals and rentals for the unexpired portion of the lease. The Villas also placed a "for rent" sign on the premises and later rented it to another company for ₱400 a month. On these premises, the Supreme Court ruled that the act of the Villas in advertising the building for rent after the lessee had unlawfully vacated it, did not constitute an acceptance of the lessee's original offer, and that said action of the lessors was justified since as owners of property, they should not allow the same to depreciate in value by permitting it to be abandoned; furthermore, it was the lessor's obligation to minimize the resulting damages as much as possible through the exercise of due diligence.[172]

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[168] Article 1620.

[169] G. R. L-5536, prom. September 25, 1953.

[170] 42 O. G. 1761, October 12, 1949. Here the Court held that the articles of the Civil Code on legal redemption do not postulate any previous notice to the new owner nor a meeting between him and the redemptioner, much less a previous formal tender before any action is begun in court to enforce the right. Considering that the co-owner has nine days only (30 days in the new Civil Code), the requirement of a previous tender might in some instance frustrate the assertion of the co-owner's prerogative. He might not know the third person's whereabouts. The latter might even conceal himself to prevent redemption..

[171] G. R. L-5331, prom. May 31, 1953.

[172] The rule is now expressed in Article 2203, Civil Code.

VIII. PARTNERSHIP: RIGHTS OF A PARTNER

There must be a general liquidation before a member of a partnership may claim a specific sum as his share of the profits. Thus, a complaint seeking to recover ½ of the purchase price of certain deliveries of lumber made by the partnership states no cause of action in the absence of an allegation that there has been a liquidation of the partnership business and the said sum has been found to be due the plaintiff as his share of the profits. This is the ruling in *Sison vs. Mcquiad.*[173]

IX. AGENCY: REVOCATION

In *Infante vs. Cunanan,*[174] petitioner, as owner of certain property, contracted the services of respondents to sell the property for ₱30,000 agreeing to pay a commission of 5% on the purchase price plus whatever overprice they may obtain for the property. Respondents found a buyer but when they introduced him to petitioner the latter informed them that she was no longer interested in selling the property. Petitioner succeeded in making them sign a document cancelling the written authority she had previously given, and a few days later, sold the property to the same buyer for ₱31,000. In the action brought to recover their commission, petitioner contended that the authority has already been withdrawn. The Supreme Court held that the respondents are entitled to the commission originally agreed upon. While recognizing the principal's right to withdraw the authority given to an agent at will,[175] the court held that the principal must act in good faith, and said:

> "That petitioner had changed her mind even if respondents had found a buyer who was willing to close the deal, is a matter that would give rise to a legal consequence if respondents agree to call off the transaction in deference to the request of the petitioner. But the situation varies if one of the parties takes advantage of the benevolence of the other and acts in a manner that would promote his own selfish interest. This act is unfair and would amount to bad faith. This act cannot be sanctioned without according to the party prejudiced the reward which is due him. This is the situation in which the respondents were placed by petitioner."

X. QUASI-DELICTS

The liability for a quasi-delict [176] is entirely distinct from the civil liability arising from negligence under the Penal Code,[177] but

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[173] G. R. L-6304, prom. December 29, 1953.
[174] G. R. L-5180, prom. August 31, 1953.
[175] Article 1733, Civil Code.
[176] Article 2166, Civil Code.
[177] Article 365, Revised Penal Code.

the plaintiff cannot recover damages twice for the same act or omission of the defendant.[178] Criminal negligence is a violation of the criminal law, while the latter is a "culpa aquiliana" or quasi-delict, of ancient origin, having always had its own foundation and individuality, separate from criminal negligence.[179]

In *Diana vs. Batangas Transportation Co.*[180] the distinction was restated thus: A quasi-delict or culpa aquiliana is a separate legal institution under the Civil Code, with a substantivity all its own, and individuality that is entirely apart and independent from a delict or crime. The same negligent act causing damages may produce civil liability arising from a crime under Article 100 of the Revised Penal Code or create an action for quasi-delitos or culpa extra-contractual under Articles 1902-1910 of the Civil Code.[181] The other differences pointed out between crimes and culpa aquiliana are:

> "(1) That crimes affect the public interest, while quasi-delitos are only of private concern.
>
> "(2) That, consequently, the Penal Code punishes or corrects the criminal act, while the Civil Code, by means of indemnification, merely repairs the damage.
>
> "(3) That delicts are not as broad as quasi-delicts, because the former are punished only if there is a penal law clearly covering them, while the latter, quasi-delitos, include acts in which any kind of fault or negligence intervenes."

A. DAMAGES

The right to damages for wrongful death is governed by law, but the assessment of the amount recoverable is largely addressed to judicial discretion. Precedents are almost invaluable in arriving at pecuniary estimations. In this jurisdiction the civil liability arising from crime is governed by the Revised Penal Code. Under Article 104, this liability includes restitution, reparation of the damage caused and indemnification for consequential damages. And under Article 107, indemnification for consequential damages includes not only those caused by the injured party, but also those suffered by his family or by a third person by reason of a crime. Commonwealth Act No. 284 fixed a minimum of ₱2,000 as recoverable civil liability for the death of a person. This policy has been liberalized, and the amount of indemnity awarded in criminal cases as a matter of right and without the necessity of proof was generally fixed at ₱6,000.[182]

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[178] Article 2177, Civil Code.

[179] Report of the Code Commission, p. 162.

[180] G. R. L-4920, prom. June 29, 1953.

[181] *Barredo vs. Garcia & Almario*, 73 Phil. 607.

[182] *People vs. Amansec*, G. R. L-927.

Cases may be cited also wherein the court has awarded certain indemnity for patrimonial and moral damages to the injured persons considering their physical condition and their social standing.[183] The new Civil Code has extended further the Law on Damages by incorporating a new title [184] on Damages, applicable to all obligations.[185] It fixes ₱3,000 as minimum amount of damages for death caused by crime or quasi-delict, specifying at the same time the factors to be considered in the assessment.[186]

There can be no exact or uniform rule for measuring the value of human life; the amount must depend on the particular facts of each case. Thus in *Alcantara vs. Surro*,[187] the following factors considered by the lower court were approved by the Supreme Court as reasonable and within the realm sanctioned by law and precedents: (1) the tender ages of the plaintiff heirs at the time of death, ranging from 5 to 13 years; (2) the age and life expectancy of the deceased; (3) the state of health of the deceased at the time of his death; (4) the earning capacity of the deceased; (5) the actual pecuniary damages; (6) the pain and suffering of the deceased and the plaintiffs; and (7) the pecuniary situation of the party liable. The Court also ruled that the introduction of mortality tables is not absolutely essential in determining the life expectancy of the deceased, and if introduced they are not conclusive.[188]

XI. Application of the Transitional Provisions

The question of how far the new Civil Code should be made applicable to past acts and events is attended with the utmost difficulty.[189] Where the decedent whose succession is in question died before the effectivity of the new Civil Code, what are the successional rights of the surviving spouse and illegitimate children? This was answered in *Uson vs. Del Rosario*.[190] The action was for the recovery of certain property constituting the estate of the deceased Faustino Nebrada, filed by the lawful wife of the decedent against his common-law wife and four illegitimate children by the latter. Plaintiffs claim that when Nebrada died in 1945, his property passed from the moment of his death to his only heir, the widow Maria

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[183] *Lilius vs. M. R. R. Co.*, 59 Phil. 758; *Castro vs. Acro Taxicab Co. Inc.*, G. R. L-49155; *Layda vs. Court of Appeals et al.*, G. R. L-4487, January 29, 1952.

[184] Title XVIII, Book IV.

[185] Article 2195, referring to Article 1157.

[186] Article 2206.

[187] G. R. L-4555, prom. July 23, 1953.

[188] Citing 25 C. J. S. 1299-1300.

[189] Report of the Code Commission (1948) p. 165.

[190] G. R. L-4963, prom. January 29, 1953.

Uson.[191] Defendants contended that while it is true that the four minor defendants are illegitimate children of the late Nebrada, and under the Spanish Civil Code are not entitled to any successional rights, however, under the Civil Code of the Philippines, which went into effect in June, 1950,[191a] they are given the status and rights of natural children and are entitled to the successional rights which the law accords the latter.[192] Because these successional rights are declared for the first time in the new Code, they should, defendants argued, be given retroactive effect even though the event which gave rise to them may have occurred under prior legislation.[193] The Court, relying on *Ilustre vs. Alaras Frondosa*,[194] ruled that the rights of inheritance of Maria Uson over the lands in question became vested when her husband died in 1945. Justice Bautista Angelo, speaking for the court, said:

> "* * * Article 2253 above referred to provides indeed that rights which are declared for the first time shall have retroactive effect even though the event which gave rise to them may have occurred under the former legislation, but this is so only when the new rights do not prejudice any vested or acquired right of the same origin * * *. The rights recognized by the new Civil Code in favor of the illegitimate children of the deceased cannot therefore be asserted to the impairment of the vested right of Maria Uson over the lands in dispute."[195]

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[191] Article 657, Spanish Civil Code.

[191a] *Editor's Note*: A decision of the Supreme Court promulgated subsequent to the writing of this article (*Lara v. del Rosario*, G. R. No. L-6339, prom. April 20, 1954) ruled that the New Civil Code took effect on August 30, 1950.

[192] Article 2264 and Article 287 of the Civil Code of the Philippines.

[193] Article 2253, *id.*

[194] 17 Phil. 321 (1910).

[195] The author submits, however, that Article 2264 of the Civil Code should have been allowed to control the case. Under this article, the "status of natural children by legal fiction and illegitimate children shall also be acquired by children borne before the effectivity of this Code." See Notes on Recent Decisions in Civil Law, 28 *Phil. Law Journal* 4.