STATUTORY CONSTRUCTION — AN ANNUAL SURVEY

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Judicial construction of statutes is, indeed, a vital force in the development of the law, particularly in a civil law country such as the Philippines where the laws are for the most part statutory. This finds verity in Article 8 of the new Civil Code which provides that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."

While it is true, as a sound legal proposition growing out of the need for preserving the tri-partite division of governmental powers, that "the first and fundamental duty of courts is to apply the law and that construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them,"[1] yet in actual practice the application of a statute is but a step in the interpretative process and that the two steps are often so closely connected that it is practically impossible to separate them.[2] Moreover, as pointed out by Dwarris[3] in his illuminating treatise, "all new laws, though penned with the greatest of technical skill and passed upon the fullest and most mature deliberation, are considered as more or less obscure and equivocal until their meaning be fixed and ascertained by a series of particular discussions and adjudications." This is so because, to quote Dwarris again, "no human wisdom can prepare a law in such form, and in such simplicity of language as that it shall meet every possible complex case that may afterward arise." As Justice Felix Frankfurter has succinctly observed: "The intrinsic difficulties of language and the emergence after enactment of situations not anticipated by the most gifted legislative

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[1] Justice Moreland in *Lizarraga v. Yap Tico*, 24 Phil. 504 (1913). This seems to be in accord with the extreme view, represented by such older writers as Coke, Hale and Blackstone, which asserted that "all that the judges did was to throw off the wrappings and expose the statute to our view", as opposed to the other extreme theory, expounded by such modern writers as Austin, Holland and Gray, which regards that statutes are not law until the courts had fixed their meaning, or as Jethro Brown tells us in his paper on "Law and Evolution" (29 Yale L. J. 394), "a statute, till construed, is not real law; it is only ostensible law." Cited in CARDOZO'S SELECTED WRITINGS, 158-159.

[2] The three steps in the interpretative process are: (a) finding the proper rule applicable; (b) interpreting the rule so found in its technical sense; and (c) applying the meaning so found to the case at hand. Austin, Jurisprudence (3rd ed.) Essay on Interpretation; De Sloovere, Steps in the Process of Interpreting Statutes, 10 N.Y.U. LAW Q. REV. 1.

[3] Dwarris (Potter), Statutes, 49, 50, cited in CRAWFORD, STATUTORY CONTRUCTION, 277 (1940).

imagination, reveal doubts and ambiguities in statutes that compel judicial construction."[4]

It would seem, therefore, that all statutes must be interpreted before they can be applied. This view is supported by the weight of authorities,[5] who argue that if the object of all construction or interpretation is to ascertain the intention of the lawmakers and to make it effective, can there be any valid reason why the court should be foreclosed from resorting to the necessary process to confirm an asserted meaning? Indeed, if the purpose of construction is the ascertainment of meaning, nothing that is intended towards this end should be excluded.

This brings us to the methods of construction, of which Dean Pound[6] discusses three, viz.: (a) the *historical* theory, under which existing law is considered as the continuation and development of pre-existing law, so that the court, after going into the history of the statute at hand, merely has to determine whether the case falls wihin the rule thus ascertained; (b) the *literal* school, which excludes the human element, or the discretion of the judge, and regards the process and the result as purely logical and scientific; and (c) the *equitable* school, by virtue of which the legislative rule is regarded as a general guide to the judge, leading him toward the just result. It insists that application of law is not purely mechanical process, and that the judge, within wide limits, should be free to deal with each individual case so as to meet the demands of justice between the parties, and accord with the reason and moral sense of ordinary men.

The trend in legal administration today is towards the equitable theory of interpretation where the court is not confined to the mere application of *legalistic formulas* or rules of construction[7] in order to find the proper "pigeonhole for each concrete case," but decides each case according to the "ethical considerations" involved through a method of "free decision" or "libre recherche scientifique," where "justice in the case at hand is the court's chief end."[8]

As we shall presently see, this same tendency is very evident in the cases involving construction decided by our Supreme Court in the past year. Witness the application of the equitable rule of "pari delicto"

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[4] Some Reflections on the Reading of Statutes, 47 COLUMBIA L. REV. 528-546 (1947).

[5] See CRAWFORD, *supra*, sections 174-175, pp. 276-284, and the authorities cited therein.

[6] Enforcement of Law, 20 Green Bag, 401, 404, cited in CRAWFORD, *supra*, S 176, pp. 284-285.

[7] Rules of construction are not rules of law. Justice Holmes refers to them as "canons of experience"; others call them "rules or axioms based on logic and common sense."

[8] This is the view of Geny, Ehrlich and Gmelin; see Cardozo, Selected Writings, p. 111. Max Radin, one of the leading exponents of this theory suggests the use of two methods as the only practical way of dealing with statutes, viz: consideration of purpose and consideration of results. Interpretation of Statutes, 43 HARV. L. REV. 863-885 (1930).

in the *Arambulo* case[9] and of the exception to the rule in the *De los Santos* case,[10] and the avoidance of unjust results in the *Manila Trading*[11] and *Bernardo*[12] cases, and of mischievous and unreasonable consequences in the *Smith Bell*[13] and *Pambujan*[14] cases, just to mention the more significant ones.

TITLE AND SUBJECT MATTER—In the *Bar Flunkers'* case[15] Section 2 of Republic Act 972[16] which provides:

> "Section 2. Any bar candidate who obtained a grade of seventy-five per cent in any subject in any bar examination after July fourth, nineteen hundred forty-six shall be deemed to have passed in such subject or subjects and such grade or grades shall be included in computing the passing general average that said candidate may obtain in any subsequent examinations that he may take."

was declared void by the Court because its subject matter is not embraced in the title of the Act which reads:

> AN ACT TO FIX THE PASSING MARKS FOR BAR EXAMINATIONS FROM NINETEEN HUNDRED AND FORTY-SIX UP TO AND INCLUDING NINETEEN HUNDRED AND FIFTY-FIVE.

The Court held that this contravenes Section 21 (1), Article VI of the Constitution[17] because while the Act according to its title will have temporary effect only, from 1946 to 1955 (which is the subject matter covered by Section 1), the text of said Section 2 establishes a permanent system for an indefinite time. The Court also declared (quite erroneously) that inasmuch as Section 2 is inseparable from Section 1, its nullity affects the entire law. If Section 2 is inseparable from Section 1, the Court should not have proceeded, as it did, to inquire further into the validity of Section 1, on other constitutional grounds, and to hold afterwards that said Section 1 was only partially void,[18] inasmuch as the invalidity of an inseparable part of a statute would necessarily carry

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[9] *Benito Arambulo v. Chua So and Cha Po Chook*, G.R. No. L-5623, January 28, 1954.

[10] *De los Santos v. Roman Catholic Church of Midsayap*, G.R. No. L-6068, February 25, 1954.

[11] *Manila Trading and Supply Co. v. The Register of Deeds of Manila*, G.R. No. L-5623, January 28, 1954.

[12] *Bernardo et al. v. Bernardo et al.*, G.R. No. L-5872, November 29, 1954.

[13] *Smith Bell & Co., Ltd. v. The Register of Deeds of Davao*, G.R. No. L-7084, October 27, 1954; 50 O.G. 11, 5293 (1954).

[14] *Pambujan Sur United Mine Workers v. Samar Mining Co., Inc.* G.R. No. L-5694, May 12, 1954.

[15] Resolution, March 18, 1954; 50 O.G. 4, 1602-48 (1954).

[16] This act contains only two sections aside from its effectivity clause.

[17] Section 21 (1), Article VI of the Constitution provides: "No bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill."

[18] The Court resolved, "That, for lack of unanimity in the eight Justices, that part of section 1 which refers to the examinations subsequent to the approval of the law, that is from 1953 to 1955 inclusive, is valid and shall continue in force, in conformity with Section 10, Article VII of the Constituton."

with it the nullity of the remaining portion. The oft-cited rule on partial invalidity of a statute is found in *Barrameda v. Moir*:[19]

> "Where part of a statute is void, as repugnant to the organic law, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced. But in order to do this, the valid portion must be so far independent of the invalid portion that it is fair to presume that the legislature would have enacted it by itself if they had supposed that they could not constitutionally enact the other. Enough must remain to make a complete, intelligible and valid statute, which carries out the legislative intent. The void provisions must be eliminated without causing results affecting the main purpose of the act in a manner contrary to the intention of the Legislature."

CURATIVE STATUTES—To defend the Act (Republic Act No. 972) from being declared unconstitutional on account of its retroactivity,[20] the petitioners in the *Bar Flunkers'* case contended that the statute is curative and that in such form it is constitutional. In disposing of this argument, the Court ruled that the statute cannot be considered curative because what it attempts to amend and correct are not the rules promulgated,[21] but the will or judgment of the Court on a past act which is inherently a judicial function.

In his dissent, Chief Justice Paras criticized the majority opinion as erroneous. He claims that there is no legislative encroachment upon the judicial power inasmuch as the Court's resolutions on the rejection of bar candidates, unlike decisions on justiciable cases, have no character of finality[22] which affects the opposing litigants. He maintains that Republic Act No. 972 is a mere curative statute intended to correct certain obvious inequalities arising from the adoption by the Court of different passing general averages in the bar examinations in certain years,[23] and is perfectly valid despite its retroactivity inasmuch as retroactive laws such as this Act are not prohibited by the Constitution, except when they would be *ex post facto*, would impair obligations and contracts and equal protection of the law.

GENERAL AND SPECIAL LEGISLATION—It is a well-established principle in statutory construction that "where there are two acts or pro-

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[19] 25 Phil. 44 (1913).

[20] The act was enacted on June 21, 1953, without the executive approval, and was intended to affect past bar examinations starting from 1946.

[21] Section 13, Article VIII of the Constitution grants Congress the power "to repeal alter, or supplement" the rules for the admission to the practice of law. These rules must be prospective in effect. See SINCO, PHILIPPINE POLITICAL LAW, 10th ed., p. 344; *Winberry v. Salisbury*, 5 N.J. 240, 74 A. 2d 406 (1950) cited in 65 HARV. L. REV. 234-254 (1951).

[22] In accord, SUTHERLAND STATUTORY CONSTRUCTION, 3rd ed. Horack, S 2218, p. 147, and the cases cited in note 23: "Where a judgment is not final, it is generally held that the legislature may pass a curative act to affect such a judgment."

[23] By resolution, the Court, on July 15, 1948, allowed to pass all candidates who obtained a general average of 69 percent or more, and, on April 28, 1949, those who obtained a general average of 70 percent.

visions on the same subject, one of which is special and particular, and certainly includes the matter in question, and the other general, which if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision."[24] This is the rule involved in the maxim: "generalia specialibus non derogant" and was applied in *Butuan Sawmill v. Bayview Theater*.[25] The Court, in that case, held that the express condition provided in Republic Act No. 497, granting the plaintiff a franchise to operate an electric service in Nasipit, that he should commence operations within one and one-half years from the approval of the Act should control and prevail over the provisions of Sections 8 and 9 of Act No. 3636, as amended, otherwise known as the Public Service Law, under which operators of public service may not commence operations until they have been issued the corresponding certificate of public convenience by the Public Service Commission, for the reason that Republic Act No. 497 is a special legislation and should override the provisions of Act No. 3636, as amended, which is a general law.

PUBLICATION—In *People v. Que Po Lay*,[26] appellant was prosecuted for violating Central Bank Circular No. 20, issued in connection with Section 34 of Republic Act No. 265, in that, being in possession of foreign exchange consisting of U.S. dollars, he failed to sell the same to the Central Bank through its agents within one day following the receipt of such foreign exchange as required by said circular. He claimed that said Circular No. 20 was not published in the Official Gazette prior to the act or omission imputed to him, and that consequently, said circular had no force and effect. The Court, in sustaining this contention, held:

> "Circulars and regulations, especially like Circular No. 20 of the Central Bank which prescribes a penalty for its violation, should be published before becoming effective, this on the general principle and theory that before the public is bound by its contents, especially its penal provisions, a law, regulation or circular must first be published and the people officially and specifically informed of said contents and its penalties."

The Court further declared:

> "While Circular No. 20 of the Central Bank is not a statute or law but being issued for the implementation of the law authorizing its issuance, it has the force and effect of law according to settled jurisprudence (U.S. v. Tupasi Molina, 29 Phil. 119, and authorities cited therein), and must be published in the Official Gazette, pursuant to

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[24] *Lichauco & Co. v. Apostol and Corpus*, 44 Phil. 138 (1922).
[25] G.R. No. L-5619, November 22, 1954; 50 O.G. 11, 5219 (1954).
[26] G.R. No. L-6791, March 29, 1954; O.G. 11, 4850 (1954).

Section 11 of the Revised Administrative Code, and Article 2 of the new Civil Code."[28]

There are two types of administrative regulations: "one intended only for the internal government of an administrative office, and the other supplementing the general provisions of the statute with details necessary for its correct observance by the public. The statute may provide a penalty for the violation of the second type of regulations." (Sinco, V.G., Philippine Political Law, (10th Ed.), p. 539). The basis of the publication requirement is explained in the Notes in 62 Harv. L. Rev. (1948) pp. 79-80, thus: ". . . if a man is to be charged with knowledge of all his rights and duties under a statute regardless of whether he has read or understood it, fundamental fairness requires that he be given at least the opportunity to discover its existence, its applicability, and its meaning. (This is so in view of the indisputable presumption that "ignorance of the law excuses no one from compliance therewith.") Due process requirements of publication are designed to fill the first of these needs; due process requirements of definiteness are designed to fill the latter two. The publication requirement would seem to be met if the statute is readily available to all those to whom it applies even though there is little likelihood that such persons will in fact read it." (Words in parenthesis supplied).

REPEAL OF STATUTES—The repeal of the Civil Code of 1889 on August 30, 1950, when the new Civil Code went into effect, brought forth numerous cases involving the effect of such change on acts and transactions done under the old legislation. Two of such cases were *In re Will of Abadia*[28] and *Raymundo v. Peñas*.[29]

In the first case the rule that *a repealing act may not divest rights vested under the repealed law*[30] was followed by the Court. It appeared that the late Reverend Sancho Abadia, who died in 1943, executed a "holographic" will in 1923 wherein the petitioner was named as one of the legatees. The probate of this will was opposed by some cousins and nephews of the deceased who would inherit the estate left by the latter if he left no will or if the will in question were declared null and void. The opposition was based on the ground that when the will was executed in 1923, and at the time of the death of the deceased in 1943, "holo-

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[27] Cf. *Hatch v. U.S.*, 212 F. 2d 280 (9th Cir. 1954), cited in Recent Cases, 68 HARV. L. REV. 538 (1955), where defendant, a commercial fisherman, was convicted of violating a Department of Interior regulation by fishing in Alaskan waters after the prescribed closing hour. Neither notice of the proposed rule-making nor the regulation as issued was published in the Federal Register. On appeal, held, despite defendant's actual knowledge of the contents of the regulation, it is invalid for failure to comply with the Federal Register Act and the Administrative Procedure Act, requiring publication.

[28] G.R. No. L-7188, August 9, 1954; O.G. 9, 4185 (1954).

[29] G.R. No. L-6705, December 23, 1954; 51 O.G. 1, 139 (1955).

[30] *Mason v. Nastri*, 125 Conn. 144, 3 A (2d) 839 (1939); *Henry v. McKay*, 164 Wash. 526, 3 P. (2d) 145, 77 A.L.R. 1025 (1931) cited in Sutherland, *supra*, S 2205.

graphic" wills were not permitted[31] and that it did not comply with certain requirements imposed by law at the time it was executed. The Court held that the provisions of the new Civil Code which allow the execution of "holographic" wills should not be given retroactive effect so as to validate a void will because to do so would impair and divest rights vested under the old legislation. The Court declared:

> "Upon the death of the testator, if he leaves a will, the title of the legatees and devisees under it becomes a vested right, protected under the due process clause of the Constitution against a subsequent change in the statute adding new requirements of execution of wills which would invalidate such a will. By parity of reasoning, when one executes a will which is invalid for failure to observe and follow the legal requirements at the time of its execution, then upon his death he should be regarded and declared as having died intestate, and his heirs will then inherit by intestate succession, and no subsequent law with more liberal requirements shall be allowed to validate a defective will and thereby divest the heirs of their vested rights in the estate by intestate succession."[32]

In the *Raymundo* case, the Court held that divorce proceedings instituted under the old law (Act No. 2710) and which were pending when the new Civil Code took effect was not affected by the change from absolute divorce to legal separation,[33] since the transitional provisions of the new Civil Code (Articles 2253 and 2258) expressly prescribe the subsistence of rights derived from acts that took place under the prior legislation.

As a general rule, inchoate rights and proceedings which have arisen under the repealed statute, and pending at the time of the enactment of the repealing act, and not yet reduced to final judgment, like the proceedings in the *Raymundo* case, are lost and destroyed by repeal of the statute, unless they are exempted or saved from immediate interference or destruction by a *saving clause*, as in the case of the transitional provisions of the new Civil Code.[34]

An instance of absolute repeal, or one without a saving clause, was the abrogation of the divorce law enacted during the Japanese occupation in the Philippines by the Proclamation of General MacArthur on

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[31] Under Article 810 of the new Civil Code, a "holographic" will, which must be entirely written, dated and signed by the testator himself and need not be witnessed, may now be made.

[32] Article 2252, par. 1 of the new Civil Code provides: "Changes made and new provisions and rules laid down by this Code which may prejudice or impair vested or acquired rights in accordance with the old legislation shall have no retroactive effect." According to the Code Commission Report, p. 166, "This article contains the basic principle of the transitional law. What constitutes a vested or acquired right will be determined by the courts as each particular case submitted to them. The judiciary with its enlightenment and high sense of justice, will be able to decide in what cases the old Civil Code should be applied, and in what cases the present Code will be binding."

[33] Absolute divorce may be granted under Act No. 2710 which was repealed and superseded by the new Civil Code which allows only legal separation.

[34] See Crawford, *supra*, S 296, pp. 599-600.

October 23, 1944, where the Supreme Court, in *Peña v. Court*,[35] ruled that proceedings instituted under the occupation divorce law and which were pending at the liberation of the Islands on October 23, 1944, must be dismissed.

INTERPRETATION OF PARTICULAR WORDS AND PHRASES—The meaning of the word "land" as used in section 99 of the Land Registration Act (Act No. 496) was the question involved in the case of *Manila Trading v. Register*.[36] Petitioner, as owner of the buildings erected on the land it has leased from the Government in Port Area, Manila, brought this petition-consultation upon the refusal of respondent to enter and annotate its ownership of the buildings on the Government's certificate of title without first paying its contribution to the assurance fund as required under section 99 which provides in part:

> "Upon the original registration of *land* under this act, and also upon the entry of a certificate showing title as registered owners in heirs or devisees, there shall be paid to the register of deeds one-tenth of one percentum of the assessed value of the *real estate* on the basis of the last assessment for municipal taxation, as an assurance fund . . . " (underscoring supplied).

Petitioner claimed that this section is inapplicable because the matter sought to be registered relates only to buildings and improvements which he argued are not "land." In resolving the question the Court examined the whole statute;[37] referred to the judicial construction of this word by Courts in the United States from where the statute was adopted;[38] considered the purpose of the Act[39] and the effect and consequences as of a contrary interpretation,[40] and held that "land" as used in section 99 of the Land Registration Act includes buildings.

In the cases of *Sogovia v. Garcia* and *Sogovia v. Villapando*,[41] respondents sought to repurchase from petitioner, pursuant to section 119 of Commonwealth Act No. 141, which provides:

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[35] 43 O.G. 4102 (1947).

[36] See note 11.

[37] It is a well-settled rule of construction that the intention of the legislator must be ascertained, not from the consideration of a simple word or a particular phrase of the law, but from the context of the whole law, or from a portion thereof as compared with the whole. This is sometimes referred to as "comparative interpretation". BLACK INTERPRETATION OF LAWS, 2nd ed. p. 317 (19—).

[38] The Land Registration Act having been adopted from similar laws in force in the United States, the construction placed upon it by American courts is highly persuasive, if not controlling, following the rule that "the adoption of a statute of another country will also carry with it the interpretation or construction placed upon such statute by the courts of the country from which the statute was adopted. Crawford, *supra*, S 234 pp. 440-441 and the authorities cited therein.

[39] The purpose of the Land Registration Act is to provide for an effective system of registration of titles, not only to land, but also interests therein, improvements and buildings.

[40] The Court declared that "it would be unfair for the petitioner to enjoy the protection of the assurance fund and the land registration even as it refuses to contribute to its maintenance."

[41] G.R. Nos. L-5984-85, which were jointly heard.

> "Sec. 119. Every conveyance of land acquired under the free patent or homestead provisions, *when proper*, shall be subject to repurchase by the *applicant*, his widow, or legal heirs, for a period of five years from the date of the conveyance." (Underscoring supplied)

the homesteads which they and their predecessors in interest had sold to him in 1941. Petitioner claimed that respondents are not entitled to repurchase the homesteads because they are not applicants as that word is used in the afore-quoted section, arguing that had the Legislature intended to extend the right to repurchase to a patentee (like the respondents) the word *patentee* would have been used in the law instead of *applicant*. The Court, overruling this contention, held that the term "applicant" as used in said section 119 should be interpreted to mean the holder of a patent, whether homestead or a free patent. It declared that to adopt the construction urged by petitioner "would be to render said section of the law a dead letter, as it would have no possible application at all" inasmuch as under the preceding section (section 118 of Com. Act No. 141) no conveyance can be made "from the date of the approval of the application and for a period of five years from and after the date of issuance of the patent or grant." If a mere applicant is not allowed to sell the land applied for, the Court argued, "how can he (applicant), therefore repurchase a property he may not sell?" To bolster up its construction, the Court considered the obvious purpose of the law in extending the right to repurchase to a patentee, cited in *Abendaño v. Hao*,[42] thus:

> "The term 'applicant' in the section involved is evidently descriptive and purports to identify the one in whose name the patent was issued. The plain intent of the law is to give the homesteader or patentee every chance to preserve for himself and his family the land that the state granted him as a reward for his labor in cleaning and cultivating it; and this purpose would be defeated by the construction proposed by the appellant." (Pascua v. Talens, G.R. No. L-348, April 30, 1948).

In the *Bernardo* case, *supra*, the question before the Court was the meaning of "bona fide tenant or occupant" as that phrase is used in section 1 of Com. Act No. 539. In that case, respondent applied to the Rural Progress Administration for the purchase of one of the lots in the Tambobong Estate which the Government had purchased in 1947 under the provisions of section 1 of Com. Act No. 539 which authorizes the acquisition by the Government of private lands and their subdivision into lots for resale at reasonable price to their "bona fide tenants or occupants." Petitioner contested the application and claimed preferential right to such purchase. The Rural Progress Administration resolved to recognize the petitioner as entitled to preference, and respondent appealed to the Court of First Instance of Rizal which upheld his claim, and was affirmed by the Court of Appeals. It appears from

[42] 47 O.G. 6359 (1951).

the record that respondent has held the land under lease from its former owners since 1912, paying the rents and taxes thereon, and is the owner of the house standing on said lot since 1944; and that petitioner has been allowed by respondent, out of deference and charity, to gratuitously occupy the lot and live thereon since 1918. Upon these facts, the Court held that petitioner does not come under the description "bona fide tenant or occupant." It referred to the well-settled meaning of the term "bona fide" in law, both here and in the United States, and declared that "the essence of 'bona fides' or *good faith* lies in the honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another." In reply to petitioner's contention that the words "bona fide occupants" are equivalent to "actual occupants" inasmuch as the policy of the Government had been to acquire landed estates for the benefit of their actual occupants, the Court said:

> "Two powerful reasons nullify this contention. The first is that section 7 of Act 1170 of the old Philippine Legislature employs the terms "actual bona fide settlers and occupants", plainly indicating that "actual" and "bona fide" are not synonymous, while the Commonwealth Acts deleted the term "actual" and solely used the words "bona fide" occupants", thereby emphasizing the requirement that the prospective beneficiaries of the Acts should be endowed with legitimate tenure. The *second* reason is that in carrying out its social readjustment policies, the government could not simply lay aside moral standards, and aim to favor usurpers, squatters, and intruders, unmindful of the lawful or unlawful origin and character of their occupancy. Such a policy would perpetuate conflicts instead of attaining their just solution. It is safe to say that the term "bona fide occupants" was not designed to cloak and protect violence, strategy, double-dealing or breach of trust."[43]

It is evident that in arriving at its decision the Court had to lean heavily on the "ethical considerations" arising from the "peculiar facts" involved in order to effect justice to the litigants.[44]

Chief Justice Paras, who dissented from the majority opinion, maintained that the words "bona fide occupants" should be interpreted to mean the person actually occupying the lot irrespective of any former lease contract with the previous owners of the land, in order to give effect to the purpose of the law which was conceived to solve a social problem. He further declared that "certainly, the Government would have no reason to worry about those who, like the respondent, were already home and land owners, much less to encourage absentee lessees, and the means of allowing the accumulation of landholdings."

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[43] "In construing statutes, it is not reasonable to presume that the legislature intended to violate a settled principle of neural justice, and the Courts, therefore, should endeavor to give such an interpretation to the language used to make it consistent with reason and justice." BLACK, *supra*, p. 122; Article 10 of the new Code: "In case of doubt in the interpretation or application of laws, it is presumed that the law-making body intended right and justice to prevail."

[44] This exemplifies the view of the "ethical" school of interpretation, *supra*.

EJUSDEM GENERIS—Otherwise stated, the rule prescribes that "where general words follow specific words in an enumeration describing the legal subject, the general words will usually be construed to include only those persons or things of the same class or general nature as those specifically enumerated." [45]

This doctrine was applied in the *Smith Bell* case,[46] where the Court held that the phrase "any others specially disqualified by law" used in paragraph 6 of Article 1491 of the new Civil Code does not include aliens but covers only the other persons similarly situated as those enumerated in the preceding paragraphs, 1 to 5, who because of the special relationship they have with certain things are disqualified to become lessees of the same.[47] It is clear that the Court in applying the rule of *ejusdem generis* had given the legal provision a restrictive interpretation. This seems to be in accord with the prevailing view that the rule of *ejusdem generis*, like that of *expressio unius est exclusio alterius*, is used only in cases in which the doctrine of "strict construction" applies.[48] The Court may have been impelled to resort to "strict construction" in this case in view of the fact that the provisions of Article 1646 in relation to Articles 1490 and 1491 of the new Civil Code are *restrictive of the right of ownership*, imposing as they do restrictions on the use or alienation of private property.[49] The Court also considered the economic set-up prevailing in the Philippines and the adverse consequences of a contrary interpretation upon such state of affairs.[50]

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[45] Also known as "Lord Tenderdon's Rule". This rule, like the maxim "expressio unius est exclusio alterius", has been criticised for not being necessarily in accord with the habits of speech of most people.—Max Radin, *op. cit.* p. 875.

[46] This decision is under reconsideration.

[47] Article 1646: "The persons disqualified to buy referred to in Articles 1490 and 1491, are also disqualified to become lessees of the things mentioned therein." Prof. Ambrosio Padilla, cites as instances of "other persons specially disqualified by law to buy" in Article 1491, par. 6, the following:" (a) The officer holding the execution, or his deputy, who cannot become a purchaser, or be interested directly or indirectly in any purchase at an execution sale (Sec. 19, Rule 39, Rules of Court); (b) The unpaid seller who resells the goods under Article 1533 of the new Civil Code, relating to the resale of the goods effected by said unpaid seller having a right of lien or having stopped the goods in transitu." Comments on the New Civil Code (1951 ed.) Vol. II, p. 730; Dean Francisco Capistrano on the other hand, mentions as an example under this par. of Article 1491, "the case of aliens who are disqualified by the Constitution from buying agricultural lands (Krivenko v. Register of Deeds)." Civil Code, (1951 ed.) Vol. IV, p. 44.

[48] See Max Radin, *op. cit.*; "Statutes or ordinances which restrain the exercise of property rights, or impose restrictions upon the use of private property will always be strictly construed, and the scope of such statutes or ordinances cannot be extended to include limitations not therein prescribed." *State ex rel Ice and Fuel Co. v. Kreienwelser*, 120 Ohio St. 352, 166 N.E. 228 (1929); It is especially applicable to penal statutes where the rule of strict construction is applied. Crawford, *supra*, S 191, p. 327.

[49] 59 C.J.S. S 332, pp. 658-666.

[50] According to the Court, "it is no exaggeration to say that more than fifty percent of urban and commercial property in the Philippines are leased to aliens, and if we prohibit the lease of such property to aliens, much of it will become vacant and unproductive, causing disruption in the economy of the country."

The decision has been criticized in that it allows the lease of agricultural lands to aliens which is prohibited by the Constitution.[51] It is believed, however, that the remedy is not with the Court, which has no power to legislate, but with the Congress. As pointed out by the Court, if it was the intention of the law to include aliens as among those who are prohibited to lease agricultural lands in the Philippines, the Code Commission that drafted the new Civil Code as well as the Congress who were well aware of the constitutional prohibition and the *Krivenko* doctrine, should have drafted Article 1646 in such a way as to read: "The persons disqualified to buy agricultural lands, according to the Constitution, are also disqualified to become lessees of the same."[52]

EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS—This is another canon of "strict construction" which prescribes that—"the express mention of one person, thing, or consequence is tantamount to an express exclusion of all others."[53] This was applied in *Vega v. Municipal Board of Iloilo*[54] where the Court declared that "municipal corporations in the Philippines are mere creatures of Congress, and the powers granted to them are to be *strictly construed*."[55] In that case, an ordinance was passed by the Municipal Board of Iloilo which required the inspection of motor vehicles using the streets of the city; imposed fees for such inspection, and provided penalties for its violation. The plaintiffs, who were affected by the ordinance, challenged its validity, contending that the respondent had no power to pass said ordinance. The Court found, after examining the pertinent provisions of section 21 of the Charter of Iloilo (Com. Act No. 158) in virtue of which the disputed ordinance was enacted that the inspection of motor vehicles and the collection of fees therefor are not included among the powers *expressly* granted to the respondent, and, consequently, declared that the power to authorize the same must be considered denied under the principle of "expressio unius est exclusio alterius."

DOCTRINE OF IMPLICATIONS—One of the most useful rules of construction is the doctrine of implication which states that "that which is implied in a statute is as much a part of it as that which is expressed."[56] It is intended to fill up the so-called "gaps in the law" which are unavoidable in every legislation.[57] As a corollary of this principle, where

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[51] The Manila Chronicle, January 10, 1955, page 14—"Recto Fights Court Rulings on Lease of Lands to Aliens."

[52] This is a construction "ex silencio".

[53] Black, *supra*, pp. 219-220.

[54] *Fulgencio Vega and Leon Gellada v. The Municipal Board of Iloilo*, G.R. No. L-6765, May 12, 1954; 50 O.G. 2456 (1954).

[55] See cases of *Co Unjieng*, 42 Phil. 818 (1922); *Pacific Commercial*, 49 Phil. 917 (1927); *Batangas Transportation*, 52 Phil. 190 (1928); *Icard*, 46 O.G. Supp. No. 11, 320 (1950).

[56] Black, *supra*, p. 84.

[57] Statutes are seldom framed with such minute particularity as to give directions for every detail which may be involved in their practical application.

a statute prohibits anything to be done, an act done in contravention of the prohibition shall be adjudged void and inoperative, and this is so because the statute must be made effectual to accomplish the object intended by its enactment.[58] The fundamental principle of public policy on which this rule rests is expressed in the maxim: "ex dolo malo non oritur actio."[59] This principle has become known in the law of contracts as the doctrine of "pari delicto," which prescribes that a contract made in violation of law is void, and if such contract has been executed, the law will leave the parties where it finds them.[60]

Thus, in *Arambulo v. Chua*,[61] the Court, in denying the plaintiff the right to recover a landed property he sold to the alien defendants in 1943, ruled that the sale having been made in violation of a constitutional prohibition, both the vendor and the vendee are deemed to be in "pari delicto" and the courts will not afford protection to either party.[62]

In his dissenting opinion, Justice Pablo contended that the principle of "pari delicto" is inapplicable in this case because both parties had acted in "good faith," and that, even admitting that the parties are in "pari delicto," they should be allowed by the Court to mutually return what they had given or parted under the contract of sale *on the ground that public policy will be advanced thereby, this being an exception to the "pari delicto" rule*. He claimed that to apply the doctrine and leave the parties where they are would be contrary to public policy as that would, in effect, permit a party "to benefit by his own wrong." "On the other hand," he argued, "if the plaintiff is allowed to recover back the land because the sale is void, the verity of the constitutional prohibition would be reestablished."

An *exception* to the rule of "pari delicto" was applied in *De los Santos v. Roman Catholic Church*,[63] where plaintiff sought to set aside a sale of a portion of land covered by homestead patent made to the defendant before the expiration of the period of five years from the date of the issuance of the patent. Defendant claimed that the action can not be maintained because the plaintiff was in "pari delicto." In overruling this contention, the Court declared:

> "The principle underlying *pari delicto* as known here and in the United States is not absolute in its application. It recognizes certain

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[58] See Black, *supra*.

[59] Translated literally: "From an illegal act or contract, no cause of action shall arise."

[60] See Black, *supra*, pp. 84-94.

[61] See note 9; This is an aftermath of the *Krivenko decision*, 44 O.G. 471 (1948); which prohibits aliens from buying lands.

[62] See Articles 1411 and 1412, par. (1), of the new Civil Code. The same question was decided in: *Cabauatan v. Uy Hoo*, L-2207, Jan. 23, 1951; *Cecilio v. Yu Chiao*, 49 O.G. 4321 (1953); *Talento v. Makiki*; 49 O.G. 4331 (1953); *Bautista v. Uy*, 49 O.G. 4336 (1953); *Relloso v. Gaw Chee*, 49 O.G. 4345 (1953); *Mercado v. Go Bio*, 49 O.G. 530 (1953); and in the more recent case of *Vasquez v. Li Seng Giap*, 51 O.G. 717 (1955).

[63] See note 10.

> exceptions, one of them being when its enforcement or application runs counter to an avowed fundamental policy or to public interest. As stated in the Relloss case, 'This doctrine is subject to one important limitation, namely, whenever public policy is considered advanced by allowing either party to sue for relief against the transaction. (Relloss v. Gaw Chee Hun, G.R. No. L-1311)" [64]

Accordingly, it was held that the plaintiff can maintain the present action it being in furtherance of the fundamental prupose of the homestead law which is to "preserve and keep in the family of the homesteader that portion of public land which the State has gratuitously given to him." [65]

EFFECT OF THE STATUTE—Inasmuch as the basic and underlying purpose of all legislation, at least in theory, is to promote justice,[66] there is a presumption, in the absence of a contrary intent as disclosed by plain and unambiguous language,[67] that the statute was intended to operate reasonably, justly and equitably so as to promote the best interest of the people. Consequently, in case there is any ambiguity, that construction should be avoided which will tend to make the statute unjust, oppressive, absurd, mischievous, or detrimental to the public interest, it being contrary to the presumed will of the legislature.

In *Pambujan* v. *Samar Mining Company*,[68] the question before the Court was whether in creating the Court of Industrial Relations, Congress had intended to confer upon it exclusive jurisdiction over controversies between employer and employees. The statute (Com. Act No. 103) does not explicitly, or in so many words, confer exclusive jurisdiction, but the Court, nevertheless, after considering the effect and consequences that would follow from construing it one way or the other, *held* that it was the intention of Congress to grant it exclusive jurisdiction. It declared that public convenience will best be served if controversies likely to cause strikes or lockouts, which will produce unrest and paralyzation of industrial production, be brought exclusively before the Court of Industrial Relations which has been given special powers not ordinarily possessed by the regular courts, such as the power to enjoin a strike or lockout during the pendency of the case.[69] On the other hand, the Court observed, "objectionable consequences are apt to follow

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[64] Other exceptions are: (a) contracts which are prohibited for the protection of one of the parties, e.g. usurious contract; statutes for the protection of laborers, and Sunday contracts; (b) when one of the parties to an illegal contract is a minor; (c) contracts in fraud of creditors. 17 C.J.S. S 278, pp. 665-668.

[65] Cases of *Segovia*, note 41.

[66] Crawford, *supra*, S 177, pp. 286-287.

[67] Where the language is plain and without ambiguity and is susceptible to only one possible construction, that meaning should be accepted by the Court without regard to the result or consequences of such construction, following the rule—*Dura lex sed lex*. Crawford, op. cit.

[68] See note 14.

[69] "It is more of an administrative board whose function is more active, affirmative and dynamic than a court of justice." *Ang Tibay* v. *Court of Industrial Relations*, 69 Phil. 635 (1940).

from a ruling that reserves coordinate jurisdiction to the regular courts. The employees who desire to keep, aloft and threatening, labor's peculiar weapon (strike) or who contemplate the eventual use thereof, will elect recourse to the judiciary—not to the Industrial Court. The same choice will be made by the employer who plans dismissal of some employees in the heat of the contest. And, to complicate the situation, one party might invoke the intervention of the Industrial Court to forestall the 'strategic' move or hidden motives of the adversary." As a confirmation of its construction of the legislative will to confer exclusive jurisdiction upon the Court of Industrial Relations, the Court pointed to the passage of Rep. Act No. 875, entitled An Act to Promote Industrial Peace, which conferred exclusive jurisdiction upon the Industrial Court "to prevent unfair labor practices."

MANDATORY AND DIRECTORY STATUTES—The classification of statutes as mandatory or directory is useful in analyzing and solving the problem of what effect should be given to their mandate.[70] There is no absolute formal test for determining whether a statutory direction is to be considered mandatory or directory. As with other questions of statutory construction, the decisive factor is the meaning and intention of the legislature, to be ascertained from a consideration of the entire act, its nature, its object, and the consequences that would follow from construing it one way or the other.[71]

In the *De los Santos* case, *supra*, the provision of section 118 of Com. Act No. 141 (Public Land Act), which prohibits the sale of land acquired by homestead or free patent within the period of five years from the date of the issuance of the patent, was considered mandatory in order to give effect to the purpose of the homestead law.[72]

Another aid, that of considering the previous legislation on the same subject,[73] was applied in *Guiao v. Figueroa*,[74] where the Court, after referring to the provisions of the statute (Act No. 2709) from which they had been adopted, held that the provisions of the Rules of Court[75] which prescribe that criminal actions shall be brought "against all persons who appear to be responsible therefor" are mandatory on the fiscals and prosecuting officers such that they may be compelled by *mandamus* to comply with such statutory direction.

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[70] See Black, *supra*, p. 526.

[71] See Sutherland, *supra*, S 5803, pp. 77-80; Black, *supra*, pp. 534-540.

[72] "The conservation of a family home is the purpose of homestead laws. The policy of the state is to foster families as the factors of society and thus promote general welfare. The sentiment of patriotism and independence, the spirit of free citizenship, the feeling of interest in public affairs, are cultivated and fostered more readily when the citizen lives permanently in his own home, with a sense of its protection and durability." Wapples on Homestead and Exemptions, p. 3 cited in *Jocson v. Soriano*, 45 Phil. 375 (1923).

[73] Sutherland, *supra*, S 5805, p. 81.

[74] G.R. No. L-6481, May 17, 1954.

[75] Section 1, Rule 106 and Section 9, Rule 115 of the Rules of Court were taken, respectively from Sections 1 and 2 of Act 2709.

The Court also considered the object of the law as disclosed by its context, and declared:

> "A perusal of Act 2709 discloses the legislative intent to require that all persons who appear to be responsible for an offense should be included in the information. The use of the word 'shall' and of the phrase 'except in the cases determined' shows that section 1 is mandatory, not directory merely. The mandatory nature of the section is demanded by a sound public policy, which would deprive prosecuting officers of the use of their discretion, in order that they may not shield or favor friends, proteges, or favorites. The law makes it a legal duty for them to file the charges against whomsoever the evidence may show to be responsible for an offense."

In statutes relating to procedure, such as the Rules of Court, the usual test employed is to inquire whether or not the rule or provision confers upon a litigant a substantial right, the denial of which would injure him or prejudice his case.[76] Thus, in the *Estate of Naval*,[77] it was held that the requirements prescribed by the Rules of Court, in section 4, Rule 90, namely: (a) that the administrator shall file a written petition stating forth facts showing that the sale is necessary, and (b) the Court shall fix a time and place for hearing such petition, and cause notice therefor to be given to the persons interested, are mandatory because the requirements were intended to protect the right of the heirs and other persons interested in the property sought to be sold.[78]

STRICT AND LIBERAL CONSTRUCTION—It has been claimed, and quite rightly, that in the final analysis the problem of interpretation boils down to the sole question whether the statute involved shall be strictly or liberally construed—that is whether the case before the Court, or what has been aptly referred to as the *determinate*[79] shall be included or excluded from the statute's operation. If it is to be included, then the statute will be liberally construed; if it is to be excluded, then it should be strictly construed.[80] In every case, the decisive factor is the legislative intent as disclosed in each particular statute.

The rule of strict construction of penal or criminal statutes[81] was followed in *People v. Garcia*[82] where the accused was prosecuted for violation of Act No. 4130, as amended by Com. Act No. 301, which

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[76] See Black, *supra*, pp. 553-561; Crawford, *supra*, S 268, p. 534.

[77] G.R. No. L-6736, May 4, 1954.

[78] See cases of *Ortalis v. The Register of Deeds*, 55 Phil. 33 (1930); *Hashim v. Bautista Vda. de Nolasco*, 56 Phil. 788 (1931); and *The Estate of Carpizo v. Florensa*, 12 Phil. 191 (1908).

[79] Max Radin, *op. cit.*

[80] Crawford, *supra*, S 238, p. 453.

[81] Penal and criminal statutes are those that impose fine or imprisonment at the instance of the state; or provide forfeitures either to the state or in favor of the offended party; or impose disability or disqualification; or impose damages by way of punishment. Black, *supra*, pp. 463-470.

[82] G.R. No. L-5631, April 27, 1954.

penalizes with imprisonment "any person who, without being a duly authorized agent of the Philippine Charity Sweepstakes, sells tickets of said corporation, or being such agent, sells tickets, fractions or coupons thereof not issued by the corporation, representing or tending to represent an interest in tickets issued by said corporation." In acquitting the accused, the Court held that the act of selling tickets for "llave" races of the Philippine Charity Sweepstakes is not prohibited and punishable under said act, the tickets involved being different from and not tickets issued by said corporation.