# REVIEW OF 1954 DECISIONS IN CIVIL LAW

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Decisional rules, as formulations resulting from the application or enforcement of the written law, have authoritative and binding force in any legal system operating under the basic and pervasive principle of *stare decisis et non quieta movere*. Statutory recognition of the principle is found in article 8 of the new Civil Code which provides that "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

The conscientious and meticulous student of the law, whether in court, law office or class room, knows that familiarity with the latest decisions of the appellate courts is an indispensable equipment in the exposition of the law and in the adjudication of cases presented for judicial or administrative determination. All appellate court decisions, without distinction as to whether they announce new doctrines, modify old ones, or merely reaffirm settled rules, are important, insofar as they can be cited to support a viewpoint, in accordance with the time-honored maxim: *argumentum ab auctoritate est fortissimum in lege*.

After the elusive facts have been ascertained, the ultimate resolution of a case may hinge on what is called the "weight of authority" or on cases "squarely" or "on all fours" on the controverted legal issue. However, this does not mean that the judicial or administrative process relies exclusively on blind and idolatrous adherence to precedent in the disposition of cases. Precedents may, on occasions, be abandoned, disregarded, or ignored, and, just because there is a precedent to support a particular opinion, it does not always follow that the appellate court will sustain such opinion. Deviations from precedent rulings are not rare and are justified through the simple expedient of distinguishing the case under consideration from the previous cases resembling it.

Nevertheless, the virtues of certainty, stability and consistency in decisional law are maintained by following the rule of *stare decisis*, and, as has been aptly said, while the law is progressive and expansive, the progress must be by analogy to what is already settled. A lawyer cannot be certain as to what is settled in jurisprudence unless he is regularly up-to-date on recent cases. It is his lifelong task to keep himself abreast with current decisions which reflect the direction and shape that the law is taking. While the broad foundational aspect of jurisprudence remains unaltered for a long time, there are recurring changes in the legal landscape which should be observed and noted down.

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Since the cases are becoming more and more numerous and it is physically impossible for the busy lawyer to read in the original all the decisions of the appellate courts, it has become the fashion to summarize the rulings in recent cases so as to give the members of the profession an idea of current developments in the different branches of the law. Law publishers keep their subscribers posted on recent cases by means of periodic digests and supplements.

Some of the 1954 decisions of the Supreme Court in Civil Law digested in this review are particularly interesting and useful because they involve the application and interpretation of the provisions of the new Civil Code. The significance of these decisions will be discussed at the proper place.

## 1. Effect and Application of Laws

### A. *The Effectivity of the New Civil Code.*

There has been a controversy as to the date when the new Civil Code took effect. The Code Commission and Congress did not fix a specific date for the effectivity of the new Code. Article 2 of the new Code merely provides that the Code shall take effect "one year after" the completion of its publication in the Official Gazette.

The Code, which was approved on June 18, 1949, was published in a supplement to the Official Gazette for June 1949, which supplement was released for circulation on August 30, 1949. Three conflicting opinions were advanced as to the date of the effectivity of the Code. One view was that the Code took effect on June 30, 1950, or exactly one year from June 1949, the date of the Official Gazette wherein the Code was published.

Another view, upheld by former Justice Bocobo, chairman of the Code Commission, was that the Code took effect on July 1, 1950, and in support of this view he cited section 11 of the Revised Administrative Code which provides that for the purpose of the effectivity of statutes, the Gazette "is conclusively presumed to be published on the day indicated therein as the date of issue." It was argued that, by virtue of the provisions of section 11 of the Revised Administrative Code, the June 1949 Gazette should be conclusively presumed to have been published in June 1949 regardless of the actual date when it was released for circulation.

The third view was that the Code took effect on August 30, 1950, or exactly one year from the date the June 1949 Gazette, wherein it was published, was released for circulation.

Inasmuch as the Code created new rights and repealed some laws, it is a matter of crucial importance to determine the specific date of its effectivity. For example, the Code introduced changes in successional rights. The old Civil Code will govern the settlement of the estates of

persons dying before the effectivity of the new Code, but the estates of those dying on and after the new Code went into effect are governed by the new Code.

In two decisions rendered in 1953, *People v. Bonje*[1] and *Ilejay v. Ilejay*,[2] the Court of Appeals opined that the new Code took effect on August 30, 1950. However, inasmuch as the decisions of the Court of Appeals do not have primary authority, this opinion was not considered conclusive.

The question was bound to come up in the Supreme Court. In the case of *Laperal v. Katigbak*,[3] the Court did not make any categorical ruling as to when the new Code took effect. It merely incidentally observed that the new Code did not apply to transactions which occurred before June 1950. The same observation was made in *City of Naga v. Court of Appeals and Sales*,[4] a case involving a lease executed in January 1949. Since the new Code, according to the Supreme Court, "was approved on 18 June 1949, published in the Official Gazette in the June issue of that year, and took effect one year thereafter," the lease in question "must be governed by the provisions of the Civil Code of 1889."

The point was definitively set at rest in three 1954 decisions of the Supreme Court. In the case of *Lara v. Del Rosario*,[5] a workmen's compensation case, it was ruled that the new Code took effect on August 30, 1954. This ruling was followed in the cases of *Raymundo v. Peñas*[6] and *Casabar v. Cruz*.[7]

B. *Penal Regulations Must Be Published in the Gazette.*

A circular of the Central Bank, having the force of law and carrying with it a penalty for its violation, must first be published in the Official Gazette, just like any statute. The word "laws" in article 1 of the old Civil Code, now article 2, includes regulations and circulars issued in accordance with law. Unless the circular is so published, it has no legal effect and it binds no one. A person violating said circular before its publication in the Gazette is not amenable to its penal provisions.[8]

C. *Foreign Divorce not Granted by the Court of Spouses' Bona Fide Domicile Cannot Be Recognized Here.*

There is a settled rule in this jurisdiction that where a local resident went to a foreign country, not with the intention of permanently

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[1] CA. G.R. No. 9531-R, Feb. 16, 1953.
[2] 49 O.G. 4903, Aug. 11, 1953.
[3] G.R. No. L-4299, Jan. 31, 1952.
[4] 50 O.G. 5765, Nov. 26, 1954.
[5] G.R. No. L-6339, April 20, 1954, 50 O.G. 1975.
[6] G.R. No. L-6705, Dec. 23, 1954.
[7] G.R. No. L-6883, Dec. 29, 1954.
[8] People v. Que Po Lay, G.R. No. L-6791, March 29, 1954.

residing there, or of considering that place as his permanent domicile, but for the sole purpose of obtaining a divorce from his spouse, such residence is not sufficient to confer jurisdiction on the foreign court to grant divorce, and the divorce thus secured will not be considered valid by Philippine Courts. This rule was reiterated in the case of *Arca and Javier v. Javier.*[9]

Divorce is granted in accordance with the *lex domicilii*, and the competent court to grant it is the court of the matrimonial domicile of the parties.

The intimation in *Barretо Gonzales v. Gonzales*,[10] that a divorce secured abroad by a Filipino citizen cannot be recognized here, "except if it be for a cause, and under conditions for which the courts of the Philippines would grant a divorce" was strengthened in *Arca and Javier v. Javier, supra.* That dictum was based on the provisions of article 9 of the old Code, now article 15, that "the laws relating to family rights and duties, or to the status, condition, and legal capacity of persons, are binding upon Filipinos even though they reside in a foreign country," and on article 11 of the old Code, now article 17, that "prohibitive laws concerning persons, their acts and their property, and those intended to promote public order and good morals shall not be rendered without effect by any foreign laws or judgment or by anything done or any agreements entered into in a foreign country."

The abolition of absolute divorce in our internal law shows that there is pronounced public policy in this country against this kind of divorce. Under the present state of the law it is extremely doubtful if any absolute divorce secured by a Filipino abroad can ever be recognized by our courts, although the divorce was granted by the parties' *bona fide* domicile, since such a divorce would contravene our domestic law and fundamental public policy on divorce. Non-recognition of a foreign divorce, according to Justice Bautista Angelo, "is in keeping with our concept of moral values which has always looked upon marriage as an institution," and because of such concept we cannot but react adversely to any attempt to extend here the effect of a decree which is not in consonance with our customs, morals, and traditions."

In *Arca and Javier v. Javier, supra*, it appears that Alfredo Javier, a natural born Filipino citizen, married Salud Arca, another Filipino citizen. Before their marriage they had already one child, who was thereby legitimated. Javier enlisted in the United States Navy and later sailed for the United States, leaving behind his wife and child. In 1940 he filed an action for divorce in Alabama, alleging as a ground aban-

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[9] G.R. No. L-6768, July 31, 1954, 50 O.G. 3583; Ramirez v. Gmur, 42 Phil. Phil. 855, Aug. 5, 1918; Cousins Hix v. Fluemer, 55 Phil. 851, March 21, 1931; Gorayeb v. Hashim 50 Phil. 22; March 3, 1927; Barretto Gonzales v. Gonzales, 58 Phil. 67, March 7, 1933; Sikat v. Canson, 67, Phil. 207 April 10, 1939; People v. Schneckenburger, 73 Phil. 413.

[10] 58 Phil. 67, March 7, 1933.

donment by his wife. Having received a copy of the complaint, Salud Arca answered it, alleging among other things that Javier was a resident of Cavite and that it was not true that she had abandoned Javier but that they had separated because Javier had enlisted in the Navy. The Alabama court granted the divorce in 1941.

The validity of the divorce secured by Javier was questioned in an action for support filed by Salud Arca and their child. It was held that the divorce decree granted by the Alabama court cannot have a valid effect in this jurisdiction. The wife's answer to the complaint did not confer jurisdiction on the Alabama court over her. Such answer should be regarded as a special appearance for the purpose of impugning the jurisdiction of the Alabama court.

## 2. Citizenship and Naturalization

### A. *Citizenship Cannot Be Determined in an Action for Declaratory Relief.*

If there is no justiciable controversy as to the Philippine citizenship of a person and no one has questioned it, a petition for declaratory relief will not lie to confirm such Philippine citizenship.[11] The question of citizenship should be determined in a justiciable controversy. Thus, if a person claiming to be a Filipino citizen wants to acquire public agricultural lands and he is denied this right on the ground that he is not a Filipino citizen, the question of his citizenship may be resolved in a mandamus proceeding instituted against the officer refusing to recognize his citizenship.[12]

The Deportation Board may determine whether the person to be deported is a Filipino citizen and that, consequently, it has no jurisdiction to order the deportation.[13]

It was ruled in *Bata Lianco v. Deportation Board*,[14] that the passport and baptismal certificates are not conclusive evidence of Philippine citizenship.

The alleged error appearing in the birth certificates of the petitioner's children, relative to their citizenship, cannot be rectified by means of a petition to correct the alleged mistake but through an appropriate action.[15]

### B. *Digest of Recent Rulings on Naturalization.*

The following rulings are found in the 1954 decisions of the Supreme Court in naturalization cases:

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[11] Delumen v. Republic, 50 O.G. 578. G.R. No. L-5552, Jan. 28, 1954.

[12] Ortua v. Singson Encarnacion, 59 Phil. 440, Jan. 10, 1934.

[13] Bata Lianco v. Deportation Board, G.R. No. L-6272, Feb. 22, 1954; 50 O.G. 1596; Miranda v. Deportation Board, G.R. No. L-6784, March. 12, 1954.

[14] *Supra*, note 13.

[15] Ty Kong Tin v. Republic, G.R. No. L-5609, Feb. 5, 1954; 50 O.G. 1077.

1. Where the alien applicant for naturalization was living with a woman without being married to her, he is not fit to be naturalized, not being of good moral character. However, after he has mended his ways, he may again petition for naturalization.[16]

This procedure applies to a case where the applicant married his common-law wife after his application for naturalization was denied but before the decision became final. He should file another petition.[17]

2. If the applicant has not completed the secondary course, he is not exempt from making a declaration of intention.[18]

3. A declaration of intention is required in section 5 of the Revised Naturalization Law in order to enable the State to investigate the qualifications of the applicant.[19]

4. The requirement in paragraph 6, section 2, of the Revised Naturalization Law regarding elementary education is important. "The legislator evidently holds that all the minor children of an applicant for citizenship must learn Philippine history, government and civics, inasmuch as upon naturalization of their father, they *ipso facto* acquire the privilege of Philippine citizenship." To exempt the applicant from this requirement it must be shown that there was physical impossibility for him to bring to the Philippines his minor child abroad. Where one of the applicant's children is a minor who is abroad and of school age and has not been enrolled in any Philippine school, his petition for naturalization cannot be granted.[20]

However, the requirement will not apply to a case where the child of the petitioner was barely four years old when the petition was filed so that it was physically impossible to enroll him in any school because of his tender age.[21]

5. An applicant with a minor child born in Amoy, China, who has never set foot on Philippine soil, is not qualified to be naturalized, because he has not complied with the 6th requirement mentioned in section 2 of the law. It is not a valid excuse that the child is abroad. He must be brought to the Philippines to comply with the said requisite. Neither the death of the child nor his reaching the age of majority without having studied in Philippine schools will excuse non-compliance with said requisite. Compliance with paragraph 6 is not only for the good of the child but is a requisite necessary in order that the applicant may qualify for naturalization.[22]

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[16] Yu Lo v. Republic, G.R. No. L-4725, Oct. 15, 1952.

[17] Tian Lai v. Republic, G.R. No. L-5867, April 29, 1954.

[18] Tan v. Republic, G.R. No. L-5663, April 30, 1954; Uy Boco v. Republic, G.R. No. L-2247, Jan. 23, 1950.

[19] Tan v. Republic, G.R. No. L-2247, April 30, 1954.

[20] Chan Ho Lay v. Republic, G.R. No. L-5666, March 30, 1954; Quing Ku Choy v. Republic, G.R. No. L-5477, April 12, 1954; Hao Lian Chu v. Republic, 48 O.G. 1780; Ang Yee Sengkee v. Republic, G.R. No. L-3863, Dec. 27, 1951; Uy Boco v. Republic, 47 O.G. 3442; and cases cited therein.

[21] Tan v. Republic, G.R. No. L-1551, Oct. 31, 1949.

[22] Quing Ku Chay v. Republic, G.R. No. L-5477, April 12, 1954.

6. The war in China does not excuse the applicant from complying with the requirement in paragraph 6, section 2, of the Revised Naturalization Law relative to elementary education. Neither may the death of the petitioner's two children be set up as an excuse, since there was already non-compliance on his part with the requirement to have them enrolled in a local public or private school before their death, and during the entire period required of petitioner's residence in the Philippines prior to the hearing.[23]

7. If there is no declaration of intention, the petition for naturalization cannot be granted, although all the other requisites are present.[24]

8. The exemption from the requirement of making a declaration of intention has been strictly construed. Aliens who are otherwise qualified to become Filipino citizens but who have not completed the secondary course in a school which offers subjects equivalent to those taught in a government high school are not exempted from the requirement of making a declaration of intention. If there is no such declaration of intention their application for citizenship will not be entertained.[25]

Where the applicant finished the elementary course and the first and second year high school, and later finished the vocational course in a radio school, recognized by the government, he is not exempt from making the declaration of intention because he did not finish his secondary education in a public high school. The course in the radio school is not equivalent to the third and fourth years of high school.[26]

9. A petition for naturalization supported by an affidavit of two witnesses who swear that they have known the applicant for more than five years, instead of 10 years, is defective and cannot be granted. The defect cannot be cured by the testimony of two other witnesses to the effect that they have known the applicant for more than 10 years. Applicants falling under section 2 of the law must have a domicile in the Philippines of at least 10 years, as attested by two credible witnesses.[27]

10. Where the applicant is the cashier of a distillery earning ₱300 a month, this is sufficient to establish *prima facie* that he has a lucrative trade, although this fact was established by the testimony of another person and not by that of the applicant who was not asked about it.[28]

11. The testimony of the applicant and his witness that he had completed elementary education in the public schools, if uncontradicted, is sufficient. Failure to present the certificate of completion is not fatal if it is shown that the school records were lost during the last war.[29]

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[23] Chua v. Republic, G.R. No. L-6269, March 30, 1954; Anglo v. Republic, G.R. No. L-5104, April 20, 1953.

[24] Ng v. Republic, 50 O.G. 1599, Feb. 22, 1954; Uy Yap v. Republic, G.R. No. L-4270, Feb. 22, 1954.

[25] Ng v. Republic, 50 O.G. 1599, Feb. 22, 1954.

[26] *Ibid.*

[27] Yu Chong Tian v. Republic, G.R. No. L-6029, April 12, 1954.

[28] Yuchongtian v. Republic, G.R. No. L-6016, March 17, 1954.

[29] *Ibid.*

12. Although the applicant, who was employed in his father's business with an annual salary of ₱3,000 did not receive regular monthly pay but could get, when he needed, advances on account of his annual compensation, he is deemed to have a lucrative trade, profession or lawful occupation.[30]

13. If the petitioner does not speak and write English or Spanish and he cannot write in any dialect his application for naturalization should be denied.[31]

14. Section 1 of Republic Act No. 530 provides that an applicant, whose application for naturalization has been granted, cannot take the required oath until after two years from the promulgation of the decision granting naturalization and that during the two-year period the applicant should not have "committed any act prejudicial to the interest of the nation" or contrary to any Government announced policies. Under this section, it was held that it is not indispensable that the applicant had been convicted of acts prejudicial to the national interest. It is sufficient that he has committed them. So, where the applicant whose naturalization was already decreed, was accused of "frustrated malversation of public property through usurpation of public functions" and of "malversation of public property through falsification of public documents," he cannot be permitted to take the oath at the end of two years following the promulgation of the decree of naturalization. The court may postpone the taking of the oath until the criminal cases against the applicant have been decided.[32]

## 3. Domicile

### A. *Registration as Voter in Place Other Than Domicile of Origin Does Not Cause Loss of Said Domicile.*

The question of residence or domicile may arise in connection with election, naturalization, divorce, probate and tax cases. In election and suffrage laws the term "residence" (that is, "political residence"), has been construed as having the same meaning as "domicile," as contemplated in article 50 of the new Civil Code, formerly article 40, which provides that "for the exercise of civil rights and the fulfillment of civil obligations, the domicile of natural persons is the place of their habitual residence."[33]

Domicile "is the state or country where a party actually or constructively has his permanent home," while mere "residence" is the

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[30] Tiong v. Republic, 50 O.G. 1025, G.R. No. L-6274, Feb. 26, 1954.
[31] Ang Ke Choan v. Republic, G.R. No. L-6330, Aug. 25, 1954.
[32] Ching Leng v. Republic, G.R. No. L-6268, May 10, 1954.
[33] Quetulio v. Ruiz, 46 O.G. 155 June 6, 1948; Nuval v. Gursy, 52 Phil. 645; Tanseco v. Artecho, 57 Phil. 227, Sept. 13, 1932; Avelino v. Rosales, C.A. 48 O.G. 5308.

place "where a man resides but does not necessarily involve the idea or intention of permanently residing there."[34]

The case of *Faypon v. Quirino*[35] strengthens the rule laid down in previous cases[36] that a person will not lose his domicile of origin, which also used to be his political residence, by the mere fact that he went to another place to study, practice his profession or earn a living and that actual, physical presence in the domicile of origin is not necessary in order to retain such domicile, it being sufficient that there has been no change of domicile or no acquisition of a domicile of choice and that the intention to return (*animo revertendi*) to the domicile of origin exists.

The undisputed facts in the case of *Faypon v. Quirino* are that Eliseo Quirino, was born in Caoayan, Ilocos Sur in June, 1895; that he went to the United States in 1919 to study and he returned to the Philippines in 1923; that on his return, he taught as professor in the University of the Philippines for four years; that later he engaged in journalistic work in Manila, Iloilo and again in Manila; that from 1936 to December 31, 1951 he was executive secretary and general manager of the National Economic Protectionism Association; that in 1946 and 1947 he registered as a voter in Pasay City; and that he owns a house and resides actually in Quezon City.

Quirino ran for governor of Ilocos Sur in the 1951 elections and won. He was proclaimed governor-elect by the provincial board of canvassers. Perfecto Faypon, the defeated candidate, contested Quirino's election on the ground that the latter was not a *bona fide* resident of Ilocos Sur for at least one year prior to the election, within the contemplation of section 2701 of the Revised Administrative Code. The basis for this contention was Quirino's registration as a voter in Pasay. Parenthetically, it should be noted that there is also a residence qualification for a voter. To be eligible, a candidate must be a qualified voter.

Faypon's contention was rejected. Ilocos Sur was considered the domicile of Quirino, although he had been absent from that province since 1919 and presumably returned there only in 1951 to register as a voter and launch his candidacy for governor. The circumstance that he registered as a voter in Pasay in 1946 did not signify abandonment of his domicile of origin and the acquisition of a domicile of choice. The following reasons were advanced for this view:

> "A citizen may leave the place of his birth to look for greener pastures, as the saying goes, to improve his lot, and that, of course,

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[34] Avelino v. Rosales, *supra*, note 33.

[35] G.R. No. L-7068, Dec. 22, 1954; 51 O.G. 126.

[36] Yra v. Abaño, 52 Phil. 380; Vivero v. Murillo, 52 Phil. 494; Larena v. Teves, 61 Phil. 36; Gallego v. Vera, 73 Phil. 453; Pajo v. Borja, (C.A.) 47 O.G. 310; Quetulio v. Ruiz, (C.A.), *supra*; Avelino v. Rosales, (C.A.), *supra*.

> includes study in other places, practice of his avocation, or engaging in business. When an election is to be held, the citizen who left his birthplace to improve his lot may desire to return to his native town to cast his ballot but for professional or business reasons, or for any other reason, he may not absent himself from the place of his professional or business activities; so there he registers as voter as he has the qualifications to be one and is not willing to give up or lose the opportunity to choose the officials who are to run the government especially in national elections. Despite such registration, the *animus revertendi* to his home, to his domicile or residence of origin, has not forsaken him. This may be the explanation why the registration of a voter in a place other than his residence of origin has not been deemed sufficient to constitute abandonment or loss of such residence. It finds justification in the natural desire and longing of every person to return to the place of his birth. This strong feeling of attachment to the place of one's birth must be overcome by positive proof of abandonment for another."

Another point decided in the case of *Faypon v. Quirino* is that there is no difference in the nature of the residence qualification required of municipal and provincial officials. While the law requires that a candidate for provincial governor must have one year *bona fide* residence, whereas, for a municipal officer, it requires simply one year residence (without the word "bona fide"), the two requirements in reality amount to the same thing.

## 4. Marriage

### A. *Marriage Is an Institution.*

A lawyer, a married man, may be disbarred for preparing an affidavit wherein he makes it appear that he can take another woman as his legitimate wife, thereby virtually permitting himself to commit concubinage. The lawyer who notarized said affidavit may be suspended.[37] This holding is in consonance with article 52 of the new Civil Code which provides that "marriage is not a mere contract but an inviolable social institution" and that "its nature, consequences and incidents are governed by law and not subject to stipulation . . . ."

The concept of marriage as an institution has crystallized in a tangible manner in the new Civil Code which eliminated absolute divorce.[38]

### B. *No Summary Judgment for Annulment of Marriage.*

Article 88 of the new Code provides that "no judgment annulling a marriage shall be promulgated upon a stipulation of fact or by confession of judgment." Section 10, Rule 35, of the Rules of Court prohibits judgment on the pleadings in an action for annulment of marriage. These provisions have been construed to include a summary judgment.

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[37] Balinon v. De Leon, 50 O.G. 583, Jan. 28, 1954.
[38] Arca v. Javier, 50 O.G. 3583, July 31, 1954.

A marriage cannot be annulled by means of summary judgment. In a case where the wife sued the husband for legal separation, legal custody of the children, liquidation of the conjugal partnership and alimony and support of the children, defendant husband filed a counterclaim for annulment of his marriage to the plaintiff on the ground of plaintiff's prior marriage. Plaintiff wife did not deny the prior marriage but merely alleged that her first husband had been absent for fourteen years. The defendant filed a motion for summary judgment, which was granted.

The Supreme Court held that the summary judgment was improper. The avowed policy of the State is to prohibit annulment of marriages by summary proceedings.[39]

C. *Judicial Decree Is not Necessary to Invalidate Void Marriage.*

A controversial doctrine was announced in the case of *People v. Mendoza*,[40] regarding bigamous marriages. It was ruled in this case that "a subsequent marriage contracted by any person during the lifetime of his spouse is illegal and void from its performance, and no judicial decree is necessary to establish its invalidity. A prosecution for bigamy based on said void marriage will not lie."

The novel factual situation presented in the *Mendoza* case is that the accused contracted a first marriage in 1936; that in 1941, during the subsistence of the first marriage, the accused contracted a second marriage; that in 1943, his first wife died; and that in 1949 he contracted a third marriage. This last marriage gave rise to his prosecution for bigamy.

The majority held that the second marriage could not be the basis of a prosecution for bigamy because it was "illegal and void from its performance" being a bigamous marriage, and that, therefore, "no judicial decree is necessary to establish its invalidity, as distinguished from mere annullable marriages."[41]

Three justices dissented and opined that a judicial decree is necessary to declare a bigamous marriage invalid.

## 5. Legal Separation

A. *Provisions on Legal Separation Have no Retroactive Effect.*

The history of divorce in this country reveals a recurring conflict between the conservative and liberal schools of thought. The conservative school, dominated by Catholic thinking, is opposed to divorce *a vinculo matrimonii*. Prior to the enactment of Act No. 2710 in 1917 only

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[39] Roque v. Encarnacion, G.R. No. L-6505, Aug. 23, 1954, 50 O.G. 4193.
[40] G.R. No. L-5877, Sept. 28, 1954, 50 O.G. 4767.
[41] Arts. 80, 83, New Civil Code.

divorce *a mensa et thoro* was recognized in the Philippines. The law then applied was found in the Partidas.[42] Act No. 2710 allowed absolute divorce and abrogated relative divorce.[43]

During the Japanese occupation another divorce law, liberalizing the grounds for absolute divorce was in force, but this law[44] ceased to have effect after liberation. Act No. 2710 became effective again after liberation. The new Civil Code, in repealing Act No. 2710, abolished absolute divorce and revived relative divorce.

Do the provisions of the new Civil Code on legal separation have retroactive effect? This question was answered in the case of *Raymundo v. Peñas*,[45] where it was ruled that the new Code "did not intend its provisions on legal separation to apply retroactively; *and that the change from absolute divorce to legal separation was not designed to affect cases of which the courts had already taken cognizance at the time the reform was introduced.*"

The facts of *Raymundo v. Peñas* are that Doroteo Peñas, husband of Patrocinia Raymundo, committed concubinage in 1949 and in that same year, he was prosecuted for concubinage by his wife and was convicted on May 25, 1950; that this judgment of conviction was affirmed by the Court of Appeals in 1951; that on July 14, 1950 (shortly before the new Code took effect), while the concubinage case was pending in the Court of Appeals, the wife filed an action for absolute divorce under Act No. 2710; and that the trial court dismissed her action on the ground that, since under article 2254 of the new Civil Code, "no vested or acquired right can arise from acts or omissions which are against the law which infringe upon the rights of others," the concubinage committed by the husband did not confer a vested right upon the wife to secure an absolute divorce from him under the new Code, which allows only legal separation.

The Supreme Court did not sanction this obviously fallacious and absurd reasoning of the trial court. If article 2254 could ever apply to the case, it should be construed as meaning that the husband as the wrongdoer could not claim any vested right based on his acts of concubinage.

In support of the ruling that the provisions on legal separation do not have retroactive effect, the Supreme Court cited (a) article 4 of the new Code which embodies the well established principle that "laws shall have no retroactive effect unless the contrary is provided"; (b) article 2253 also of the new Code which provides that the old Code and prior laws shall govern rights originating under said laws, from acts done or events which took place under their regime, even though the new Code may regulate them in a different manner, or may not recognize them;

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[42] Benedicto v. De la Rama, 3 Phil. 34, Dec. 8, 1903.
[43] Garcia Valdez v. Soterraña Tuason, 40 Phil. 943, March 16, 1920.
[44] Ex. O. No. 141, March 25, 1943.
[45] G.R. No. L-6705, Dec. 23, 1954.

(c) article 2258 which provides that actions and rights which came into being but were not exercised before the effectivity of the new Code shall remain in full force in conformity with the old legislation; and (d) article 2267, which enumerates the articles of the new Code which are to apply to pending actions, and the enumeration does not include those on legal separation.

The decree of absolute divorce sought by the wife was, therefore, granted.

## 6. Property Relations Between Husband and Wife

### A. *Property Must Have Been Acquired Through Joint Efforts.*

Article 144 of the new Civil Code, a new provision, provides that "when a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on coownership." The situation contemplated in article 144 has been passed upon by the Supreme Court in some cases.

In *Villanueva v. de Leon*,[46] *De Leon v. Villanueva*,[47] and *Marata v. Dionio*,[48] it was held that if during the period when a man and woman lived as husband and wife, they acquired property through their joint labor, efforts and industry, their rights to the property thus acquired should be governed by the rules of partnership. In the absence of proof that the property in dispute was acquired through their joint efforts, the rules of partnership will not apply.

In the case of *Flores v. Rehabilitation Finance Corporation*,[49] it was ruled that where the common law husband during the period of cohabitation acquired two lots in his own name, and it was stated in the deeds of acquisition and in the corresponding Torrens titles that he was single, the claim of the woman that said lots were acquired through their joint efforts and that she had an interest therein could not be given any credence.

### B. *Conjugal Property Redeemed by Wife Becomes her Paraphernal Property.*

The rule in article 1396 of the old Civil Code, now article 148, that property acquired by one spouse by right of redemption or that which is purchased with exclusive money belonging to him or her becomes his or her separate property was applied in the case of *Rosete v. Provincial*

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[46] 47 Phil. 780, Aug. 27, 1925.
[47] 51 Phil. 676, March 13, 1928.
[48] G.R. No. L-24449, Dec. 31, 1925.
[49] G.R. No. L-5798, Feb. 26, 1954, 50 O.G. 1029.

*Sheriff of Zambales.*[50] The facts of this case are that four parcels of land, belonging to the conjugal partnership, were sold on execution to satisfy the civil indemnity imposed on the husband who was convicted of murder; that the wife redeemed two of the said four parcels of land with money which she borrowed from her father; that after the redemption, the sheriff levied once more on two of the said four parcels, in order to satisfy the balance of the indemnity still unpaid; and that the wife contested the right of the sheriff to make the levy. The question was whether lands redeemed by the wife became her paraphernal property which cannot be reached to satisfy the balance of her husband's personal liability.

The Supreme Court held that the lands were paraphernal property of the wife because she redeemed them as her husband's successor in interest and because property redeemed by the wife or acquired by her with her own money becomes her separate property.

C. *Liquidation of Conjugal Partnership in Ordinary Action for Partition.*

In connection with the rule that the conjugal partnership dissolved by the death of one spouse should be liquidated (1) in the intestate or testamentary proceedings for the settlement of the estate of the deceased spouse; or (2) in an ordinary partition proceeding; or (3) by means of an extrajudicial partition under Rule 74 of the Rules of Court,[51] the Supreme Court observed in the case of *Angeles Vda. de Macalinao v. Valdes Vda. de Angeles*[52] that, if a court proceeding cannot be avoided, an ordinary action for accounting, liquidation and partition of the community property is preferable to an intestate proceeding which is always long and costly.

## 7. Paternity and Filiation

A. *Action for Compulsory Recognition.*

Article 131 of the old Civil Code provides that the voluntary recognition of a natural child may be effected "in the record of birth, by will, or by any other public instrument," while compulsory recognition may be based on an "indubitable writing," wherein the father expressly recognizes his paternity. Article 278 of the new Code has modified article 131 by providing that the voluntary acknowledgment may be effected "in the record of birth, a will, *a statement before a court of record*, or in any authentic writing." Article 283 of the new Code liberalized the grounds for compulsory recognition and allowed investigation

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[50] G.R. No. L-6335, July 31, 1954, 50 O.G. 3579.
[51] Act No. 3176.
[52] G.R. No. L-5705, June 30, 1954, O.G. 3041.

of paternity by providing that the father may be compelled to recognize the child when the latter *"has in his favor any evidence or proof that the defendant is his father."*

In *Pareja v. Pareja*,[53] a case arising under the old Code, four persons, already of age, claimed in certain intestate proceedings that they were the acknowledged natural children of the deceased. They presented a birth certificate, three baptismal certificates, and the decedent's "Information For Membership Insurance" in the Government Service Insurance System as proofs that they were the children of the deceased. The question was whether said documents are sufficient to prove the claimants' status as acknowledged natural children. The Supreme Court held that "public document" in article 131 of the old Code means notarial document.

Baptismal certificates are not public documents nor public writings. Parochial records of baptism are not public or official records because they are not kept by public officers and they are not proofs of relationship or filiation of the children baptized.[54]

A certificate of birth, copied from official records, although issued by a public officer, is not the record of birth nor the notarial document contemplated in article 131 of the old Code. "Record of birth" in article 131 refers to that provided for in article 326 of the same Code, which was not put into effect here and, consequently, that form of acknowledgment does not exist in this country.[55] The birth certificate cannot be a notarial document because it is not sworn to before a notary.

The decedent's "Information for Membership Insurance" filed with the Government Insurance System is likewise not a "public document" within the meaning of article 131 because it was not notarized. However, it may be regarded as an authentic document or indubitable writing on which compulsory recognition may be based. Since this writing was discovered only after the death of the deceased, the claimants, although already of age, could still ask for compulsory recognition after their natural father's death. Article 137 of the old Code provides that "if after the death of the father or mother, some document, before unknown, should be discovered in which the child is expressly acknowledged," the action for compulsory recognition should be brought "within the six months next following the discovery of such document." To be entitled to compulsory recognition, the claimants must prove that they brought their action for recognition within six months following the discovery of the said "Information for Membership Insurance." The case was remanded to the lower court to enable the claimants to prove that their

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[53] G.R. No. L-5844, May 31, 1954.

[54] Adriano v. De Jesus, 23 Phil. 350, Nov. 5, 1912; Madridejo v. De Leon, 55 Phil. 1, Oct. 6, 1930.

[55] Samson v. Corrales Tan, 48 Phil. 401, Dec. 5, 1925.

action was seasonably filed. Under article 285 of the new Code the period for bringing the action is four years, not six months.

B. *Admission of Filiation.*

Where, in an action for support brought by a minor child against her father, the latter filed an answer containing a general denial, thereby admitting in effect that the child was his own child, as alleged in the complaint, defendant father cannot refuse to give support on the ground that the child was not proved to be his acknowledged natural child. According to the Supreme Court in the case of *Jove Lagrimas v. Lagrimas*[56] defendant's admission in his answer is a sufficient showing that the child is at least an illegitimate child. Under the old Code, as under the new, an illegitimate child is entitled to support.

In the *Lagrimas* case the Supreme Court ruled that plaintiff child was entitled to demand support from her father as his illegitimate child and that the decision was without prejudice to the institution by the child of another action wherein she may prove that she is an acknowledged natural child. Justice Pablo, concurring in the same case ventured the opinion that, following the doctrine of the Spanish Supreme Court, the child should be presumed to be a natural child, and not merely a spurious child, until the contrary is proved.

C. *Action for Recognition Must Be Brought by Child.*

An action for support brought by the mother of the child against the supposed father, cannot be treated as an action for recognition. A complaint for recognition must expressly ask for recognition of the natural child and should be brought in the name of the child. "Litigations for recognition are between parent and child," according to articles 283, 284, and 285 of the new Civil Code.[57]

D. *Other Evidences of Filiation.*

1. A birth certificate filed with the local civil registrar, showing that a child is legitimate, would be *prima facie* evidence of the child's legitimacy, as provided in article 265 of the new Civil Code, but when the complaint for support of the same child alleged that the child was illegitimate, the probative value of the birth certificate was destroyed.[58]

2. A "book of memoirs" in the handwriting of a deceased person, wherein he stated that a certain child was his son, is evidence of the acknowledgment of said child as his natural child, notwithstanding that said book was not signed by the deceased.[58a]

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[56] G.R. No. L-6462, May 28, 1954.
[57] Crisolo v. Macadaeg, G.R. No. L-7017, April 29, 1954.
[58] Crisolo v. Macadaeg, G.R. No. L-7017, April 29, 1954.
[58a] Varela v. Villanueva, G.R. No. L-3052, June 29, 1954, 50 O.G. 4242.

## 8. SUPPORT

### A. *No Support for Unacknowledged Natural Children.*

There is a prevailing impression that the new Civil Code, like the old, adheres to the rule that an unacknowledged natural child has no rights whatsoever — not even support or successional rights. Articles 293 and 887 of the new Civil Code do not mention the unacknowledged natural child as being entitled to support or successional rights. Article 287 of the new Code speaks of illegitimate children, other than natural children who can be legitimated, thus inferentially excluding unacknowledged natural children, from the category of "other illegitimate children." In *Crisolo v. Macadaeg*,[59] there is a dictum that "under the Civil Code and the new Civil Code a natural daughter, as such, has no right to maintenance, unless she has been recognized."[60] In justification for this dictum, Justice Bengzon, speaking for the Court, said:

> "It is earnestly urged that an unrecognized natural child would thus be in worse condition than other illegitimate children, who are admittedly entitled to support. But such was the juridical situation under the Civil Code for sixty years. It was criticised on that score — it was defended too. The Congress in the New Civil Code (art. 291) elected not to alter the situation. Ours is not the duty nor the power to amend the statute, which by the way, presents no interstitial space wherein to insert, in the words of Cardozo, 'judge-made innovations.'"

## 9. PARENTAL AUTHORITY

### A. *Habeas Corpus Is Remedy to Recover Custody of Child.*

The rule that "a writ of habeas corpus is the proper legal remedy to enable parents to regain the custody of a minor daughter, even though the latter be in the custody of a third person of her own free will," was reaffirmed in the case of *Chu Tian v. Tan Niu*.[61] In this case the parents delivered to the respondents their seven-year-old daughter under a written agreement that said daughter would be adopted by the respondents. It was also agreed that the child would stay in Manila. However, the respondents brought her to Isabela. The writ of habeas corpus was granted because the respondents violated the agreement. It was also noted that the respondents could not legally adopt the child under the new Civil Code because they have already a legitimate child.

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[59] G.R. No. L-7017, April 29, 1954.

[60] Citing Concepcion v. Untaran, 38 Phil. 736, Oct. 7, 1918; Potot v. Ycong, 40 O.G. 748, March 22, 1941.

[61] G.R. No. L-7509, Aug. 25, 1954; Salvaña and Saliendra v. Gaela, 55 Phil. 680, Feb. 21, 1931; Reyes v. Alvarez, 8 Phil. 723; and Celis v. Cafuir, 47 O.G. Dec. Supp., p. 179, June 12, 1950.

## 10. ADOPTION

### A. *Those with Legitimate Children Cannot Adopt.*

The prohibition in article 335 of the new Civil Code that those with legitimate children cannot adopt was applied in the case of *Santos-Yñigo v. Republic*,[62] where a married couple with two children were barred from adopting, notwithstanding that before the new Civil Code went into effect said couple and the natural parents of the child to be adopted had executed a written agreement for the child's adoption; that their legitimate children were born after the adoption agreement; and that under the Rules of Court, in force prior to the new Code, persons with legitimate children could adopt.

The extrajudicial adoption agreement had no legal effect because, even under the Rules of Court, adoption had to be made in the appropriate judicial proceeding.

According to Justice Bautista Angelo, speaking for the Court, the purpose of adoption is to "afford persons who have no child of their own the consolation of having one by creating, through legal fiction, the relation of paternity and filiation where none exists by blood relationship. This purpose rejects the idea of adoption by persons who have children of their own for otherwise, conflicts, friction, and differences may arise from the infiltration of foreign element into a family which already counts with children upon whom the parents can shower their paternal love and affection."

The prohibition in article 335 is consistent with the purpose of adoption which is to console those who have no children.

The same ruling was announced in *Chu Tian v. Tan Niu*.[63]

### B. *Stepfather with Legitimate Child Cannot Adopt Stepchild.*

The rule in *Ball v. Republic*[64] that a stepfather with a legitimate child cannot adopt the children of his wife (his stepchildren) was reaffirmed in *McGee v. Republic*.[65] Article 338 of the new Code, in allowing the adoption of a stepchild by a stepparent should be construed as appyling to stepparents with no children of their own. Article 338 is subordinate to article 335 of the same Code, which bars adoption by persons with legitimate, legitimated, acknowledged natural children or natural children by legal fiction. The purpose of article 335 is to avoid conflicts and resentments between the legitimate children and the adopted children and to prevent any prejudice to the successional rights of the legitimate child.

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[62] G.R. No. L-6294, June 28, 1954, 50 O.G. 3030.
[63] G.R. No. L-7509, Aug. 25, 1954.
[64] 50 O.G. 142, Dec. 21, 1953.
[65] G.R. No. L-5387, April 29, 1954.

## 11. CIVIL REGISTRY

A. *Correction of Clerical Errors Is Contemplated.*

Article 412 of the new Civil Code which provides that "no entry in a civil register shall be corrected or changed without judicial order," contemplates "corrections of mistakes that are clerical in nature and not those which may affect the civil status or the nationality of the persons involved." If the purpose of the petition is merely to correct a clerical error, then the court may order that the error or mistake be corrected. If it refers to a substantial change, such as one which affects the citizenship of a party, the matter should be threshed out in a proper action depending upon the nature of the issue involved. The procedure contemplated in article 412 is "summary in nature which cannot cover cases involving controversial issues."[66]

In *Ty Kong Tin v. Republic*,[66a] the petitioner, a lawyer, claimed that he was a Filipino citizen; that the doctor or midwife who attended the birth of his children mistakenly reported to the civil registrar, that his citizenship was "Chinese"; and that he became aware of said mistake only when he asked for certified copies of the birth certificates of his children. He filed a petition asking the Court of First Instance that the civil registrar be ordered to correct the civil register by making it appear therein that he himself as well as his children are Filipino citizens and not Chinese. The civil registrar did not oppose the petition. The Solicitor General opposed it.

The Supreme Court held that the correction cannot be allowed in a mere petition for correction because the citizenship of the petitioner and his children is an important controversial matter that should be threshed out in an appropriate action.

Formerly, correction of clerical errors in the civil register rested in the discretion of the civil registrar. This was found by Congress to be unwise and risky in view of the fact that the books of civil register are public documents and all documents relating thereto are *prima facie* evidence of the facts therein contained. If the errors are not clerical, the correction cannot be effected in a summary procedure but should be done in an appropriate action. To rule otherwise would be to "set wide open the door to fraud or other mischief the consequences of which might be detrimental and far-reaching."

## 12. CLASSIFICATION OF PROPERTY

A. *Machinery Immobilized by Landowner Is Realty Which Cannot Be Recovered by Replevin.*

The provisions of article 415 of the new Civil Code that "everything attached to an immovable in a fixed manner, in such a way that

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[66] Ty Kong Tin v. Republic, G.R. No. L-5609, Feb. 5, 1954.
[66a] *Ibid.*

it cannot be separated therefrom without breaking the material or deterioration of the object" and that machinery "intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works," are real property were applied in the case of *Machinery & Engineering Supplies, Inc. v. Pecson.*[67]

Plaintiff in that case sold machinery and equipment to defendant, which the latter installed in its lime factory. Plaintiff instituted against defendant a replevin action for the recovery of the machinery and equipment. The court issued an order for the seizure of the property. When the sheriff and his deputies, accompanied by plaintiff's representative, appeared in defendant's factory for the purpose of seizing the machinery and equipment, defendant's counsel admonished them to desist from executing the warrant of seizure because the objects in question were real property, but plaintiff's representative insisted on dismantling the same and they were seized by the sheriff after cutting the wooden supports to which they were attached. The question was whether replevin was the proper remedy for the recovery of the disputed machinery and equipment.

The Supreme Court held that it was not the proper remedy. It relied on the rule that "replevin will not lie for the recovery of real property," or of "articles so annexed to the realty as to be part thereof, as, for example, a house or a turbine pump constituting part of a building's cooling system." The objects seized were attached to the land, particularly to the concrete foundation of the factory, in a fixed manner, in such a way that they could not be separated from the latter "without breaking the material or deterioration of the object." In order to remove them, it was necessary, not only to unbolt the same, but, also, to cut some of their wooden supports. Moreover, they were intended by the landowner for an industry carried on the land and tended "directly to meet the needs of said industry." They were, therefore, immovable property.

The plaintiff was ordered to re-install the dismantled machinery and equipment at its own expense.

B. *Materials Used in Construction of Buildings.*

Building materials which were used in the construction of a house and hotel and became a part of the two buildings as posts, frames, floor, partition, roof, etc. are real property because they had been permanently annexed to immovable property in such manner that they cannot be separated therefrom without breakage of material or injury to the object. It cannot be said, therefore, that the unpaid supplier of said materials

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[67] G.R. No. L-7057, Oct. 29, 1954.

has a preferential lien on the theory that he is a creditor for the purchase price of "personal property" in the debtor's possession. He is not such a creditor because the materials have been converted into real property, as provided in paragraph 3, article 415 of the new Civil Code, formerly 334. This was the ruling in *Luzon Lumber and Hardware Company, Inc. v. Quiambao and RFC.*[68]

This case differs from that of *Unson v. Urquijo, Zuloaga & Escubi*[69] where it was ruled that the right of preference for the purchase price, established in favor of the vendor of personal property sold and in the possession of the purchaser, is not lost by the mere fact that such personal property is converted into real property by destination, whenever its form and substance are not changed and it has not lost its identity.

The Supreme Court in the *Luzon Lumber* case pointed out that the personal property involved in the *Unson* case, consisting of machinery and grinder, "did not lose their form and substance and they preserved their identity," and "besides, they could easily be removed from the building." In the instant case, however, the construction materials had "lost their form and identity and had become part of the buildings which are real property."

It should be noted that under paragraph 3, article 2241 of the new Code "claims for the unpaid price of movables sold" are preferred "on said movables" "so long as these are in the possession of the debtor, up to the value of the same," and that "*this right is not lost by the immobilization of the thing by destination,* provided it has not lost its form, substance and identity."

C. *"Land" May Include Buildings.*

For purposes of section 99 of Act 496, dealing with the assurance fund, the word "land" as used therein may include buildings. Other provisions of Act 496 indicate that "land" may include buildings. Although the said law specifically deals with land registration, yet it allows the registration of buildings. In American jurisprudence, "land" is sufficiently broad to include buildings of a permanent character.[70]

It may be noted that articles 1646 *et seq.* dealing with lease of rural and urban lands, include leases of *buildings,* although buildings are not specifically mentioned in the law.

## 13. OWNERSHIP

A. *Ascertainment of Just Compensation in Eminent Domain Proceedings.*

The law of eminent domain is a part of civil law as well as political law and remedial law. The constitutional guarantee on expropriation

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[68] G.R. No. L-5638, March 30, 1954.

[69] 50 Phil. 160.

[70] Manila Trading & Supply Co. v. Register of Deeds of Manila, 50 O.G. 575; Republic v. Cenira, G.R. No. L-4169, Dec. 17, 1951.

for public use and upon just compensation is repeated in article 435 of the new Civil Code, formerly article 349.

The case of *Republic of the Philippines v. Lara*,[71] involved the expropriation of a large area of land, which during the Japanese occupation used to be a Japanese campsite and airfield and which was later occupied by the U.S. Army as an airbase and turned over to the Philippine Army on July 4, 1946. The following rulings were announced in this case in connection with the ascertainment of the fair market value of land in condemnation proceedings:

1. In the determination of whether the land in question is residential or agricultural, "the important consideration is the use to which the land was dedicated before the war and the use to which it could have been dedicated thereafter if it had not been taken by the U.S. Army," and, inasmuch as before the war the land in question was used for residential purposes, it should be regarded as residential, although at the time the U.S. Army occupied it, the area was devastated and unfit for residential purposes. This was the holding in a previous case, *Republic v. Garcia*.[72]

2. If the filing of the complaint for expropriation *coincides with or precedes* the occupation of the land sought to be condemned, the payment of just compensation must be determined as of the date of the filing of the action, following the rule laid down in section 5, Rule 69 of the Rules of Court. On the other hand, if the actual taking or occupation of the land with the consent of the landowner, *long preceded the filing of the complaint* for expropriation, the rule to be followed is that "the value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings." This rule was laid down in the case of *Provincial Government of Rizal v. Caro*,[73] and it has not been affected by the provisions of section 5, Rule 69 of the Rules of Court. In the instant case, since the land in question was occupied in 1946 and the action for expropriation was filed in 1949, the value of the land in 1946 should be the one taken into consideration and not the value in 1949.

3. The reliable standard for determining the reasonable worth of the land under expropriation may be found in the *bona fide* sales of nearby parcels at times sufficiently coeval to the taking as to exclude general changes of value. This is an old ruling laid down in the cases of *Manila Railroad v. Mitchel*,[74] and *Municipality of Tarlac v. Besa*.[75] Following this ruling, the sales of nearby lands executed during the period from 1936 to 1941 are not competent evidence in the determina-

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[71] G.R. No. L-5080, Nov. 29, 1954, 50 O.G. 12, p. 5778.
[72] G.R. No. L-3526, March 27, 1952.
[73] 58 Phil. 308.
[74] 49 Phil. 801.
[75] 55 Phil. 483.

tion of the market value in 1946 because said sales are not sufficiently contemporaneous with the occupation of the land. Pre-war prices of land had risen considerably in 1946 due to postwar inflation. The sales of nearby lands in 1945 and 1947 were held to be competent evidence because of their contemporaneous character.

4. In view of the fact that the lands of the different owners were only partially expropriated, consequential damages were awarded in accordance with the rule that "where only a part of a parcel of land is taken by eminent domain, the owner is not restricted to compensation for the land actually taken; he is also entitled to recover for the damage to his remaining land. And there is no requirement that this damage be special and peculiar, or such as would be actionable at common law; it is enough that it is a consequence of the taking."

5. Speculative and uncertain consequential benefits allegedly resulting from the expropriation of certain parcels of land cannot be deducted from the compensation to be awarded to the landowners.

5. Speculative and uncertain consequential benefits allegedly result- the test of what should be paid, nor should the fact that the land is desired or needed for a particular public use be considered when it is taken for that use. The necessities of the public or of the party seeking to condemn land cannot be taken into consideration in fixing the value.

7. The defendants, whose lands were expropriated, cannot demand rentals because such demand is inconsistent with the claim for interest on the compensation awarded to them, which interest is reckoned from the date the lands were occupied.

8. The inconvenience resulting from the loss of a home, or its sentimental value to the owner is not a proper element of damage. "If the loss be merely the cost of moving from one place to another, that is made up to the owner by the use of the money which the corporation must pay to him before he is required to move; and any other inconvenience of a more sentimental nature he is required to suffer for the public benefit."

In *Republic v. Gonzales*,[76] it was held that where the expropriation proceeding started in 1947, the assessed value of the land in 1927 cannot be used as a basis for the determination of its market value. The assessment in 1947 and the sale of a portion of said land one month before the expropriation are relevant evidence as to its fair market value. However, the purchase of adjoining land from a realty subdivision is not a safe guide because prices in realty subdivisions are higher due to the improvements therein.

The settled rule is that "the Government, in eminent domain proceedings, must pay just compensation or the fair market value; that such value represents the price which the property will bring when offered

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[76] G.R. No. L-4918, May 14, 1954.

for sale by one who desires, but is not obliged, to sell and is bought by one who is under no imperative necessity of having it; and that, in determining such value, evidence is competent of *bona fide* sales of other nearby parcels at times sufficiently near to the proceedings to exclude general changes of values due to new conditions in the vicinity.[77]

B. *Expropriation of Small Estates Is not Contemplated.*

The rule in Article XIII of the Constitution, that only big landed estates or haciendas may be expropriated,[78] was applied to the expropriation authorized under Republic Act No. 267, which allows cities and municipalities to expropriate homesites for subdivision into lots. A parcel of land with an area of 12,068 square meters cannot be expropriated under Republic Act No. 267, which was construed as applying only to big landed estates and not to relatively small parcels of land.[79]

C. *Expropriation Is not the Remedy Against Alien Who Holds Land in Violation of Krivenko Ruling.*

If a corporation is disqualified to purchase private lands under the rule laid down in the case of *Krivenko v. Register of Deeds*[80] because its stock is owned by aliens, the exercise of the power of eminent domain is not the remedy to divest it of its title to the land. Condemnation proceedings are instituted upon the postulate that the defendant owns the property to be expropriated. "It is an inconsistency to recognize and at the same time deny the ownership or title of the person to the property sought to be expropriated."[81]

D. *The Rules of Industrial Accession Do not Regulate the Property Relations Between Private Persons and Sovereign Belligerent.*

One question raised in the case of *Republic v. Lara*[82] is whether the rules of industrial accession found in the Civil Code govern the property relations between private persons and a sovereign belligerent. This question arose because the land sought to be expropriated by the Government in that case was previously occupied by the Japanese Army as a campsite and airbase. The Japanese had built a concrete airstrip, runaway and taxiway. The private owners contended that the Japanese were

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[77] Manila Railroad Company v. Alano, 36 Phil. 500; Manila Railroad Company v. Velarquez, 32 Phil. 286.

[78] Municipality of Caloocan v. Manotok Realty, Inc., G.R. No. L-6444, May 14, 1954; Guido v. Rural Progress Administration, 47 O.G. 1848; City of Manila v. Arellano Law School, 47 O.G. 4197; Le Tay & Lee Chay v. Choco, G.R. No. L-3297, Dec. 29, 1950.

[79] Municipal Government of Caloocan v. Chuan Huat & Co., Inc., G.R. No. L-6301, Oct. 30, 1954; 50 O.G. 5309.

[80] 44 O.G. 471.

[81] Municipal Government of Caloocan v. Chuan Huat & Co., Inc., *supra*, note 79.

[82] *Supra*, note 71.

possessors in bad faith and they claimed said improvements by right of accession; they wanted the value thereof to be included in the indemnity which the Government should pay as compensation for expropriating their lands.

This argument was held to be untenable because "the rules of the Civil Code concerning industrial accession were not designed to regulate relations between private persons and a sovereign belligerent, nor intended to apply to constructions made exclusively for prosecuting war, when military necessity is temporarily paramount."

It was also noted that the Japanese were allowed under the rules of international law to use temporarily private lands for all kinds of purposes demanded by the necessities of war. Consequently, the Japanese occupant is not regarded as a possessor in bad faith of the lands in question. The Republic of the Philippines succeeded to the ownership of said improvements, made by the enemy for war purposes, unless the treaty of peace should provide otherwise; and it is under no obligation to pay indemnity for such constructions and improvements in expropriation proceedings of the lands where the improvements were constructed.

E. *Illustration of Commixtion.*

The rule now found in article 472 of the new Civil Code, formerly article 381, that "if by the will of their owners two things of the same or different kinds are mixed, or if the mixture occurs by chance, and in the latter case the things are not separable without injury, each owner shall acquire a right proportional to the part belonging to him, bearing in mind the value of the things mixed or confused," was applied in the case of *Montelibano v. Bacolod-Murcia Milling Co., Inc.*[83]

It was held in the *Montelibano* case that, where sugar belonging to different owners, including that of the sugar central, was commingled in the central's warehouse and a portion thereof was withdrawn and sold, the sugar remaining in the warehouse belonged to the depositors in proportion to the part belonging to each of them. If the sugar sold remained in the seller's warehouse and was never actually delivered to the alleged purchasers, the seller remained the owner thereof, in accordance with the rule that "ownership of personal property sold is not transferred until actual delivery" — *non nudis pactis, sed traditione dominia rerum transferuntur.*[84]

It may be noted that the rule on commixtion in the civil law is substantially the same as the rule in common law as shown in the following rulings cited in the *Montelibano* case:

> "If goods of the same kind owned by various persons are so mixed with the mutual consent of the owners that the portions or

[83] G.R. No. L-5416, July 26, 1954. See Santos v. Bernabe, 54 Phil. 19; Tarnate v. Tarnate, 46 O.G. 4397.

[84] Fidelity and Deposit Co. v. Wilson, 8 Phil. 51; Crusado v. Bustos, 34 Phil. 170.

> shares of the various owners in the mixture are indistinguishable, the owners become tenants in common of the mixture, each having an interest in common in proportion to his respective share. This is the rule of the civil law. The doctrine finds its most frequent application where several owners deposit grain in a warehouse, although it of course exists wherever the goods of two or more parties are indistinguishably mingled by common consent, as where quantities of oil belonging to different persons are stored in a tank. In such cases, in the event of partial loss, there will be prorated distribution of the loss. Where such a confusion arises it seldom causes inconvenience, embarrassment, or dispute, for the separation of the intermingled goods into the aliquot shares of the owners is merely a matter of measuring, weighing, counting, or selecting, and in all such cases it is certain that he is entitled to receive back a like quantity. Since they are tenants in common, however, the co-owners are subject to stand their *pro rata* share of any loss which may accrue to the general property from diminution, decay, or other causes."[85]
>
> "There can be no doubt that, where the volume of grain, stored in an elevator, or of oil stored in a tank, is made up of contributions from different owners, and becomes 'common stock', its partial destruction by fire, resulting from lighting or other fortuitous cause, must necessitate a *pro rata* distribution of the loss."[86]

F. *Coheir's Possession Is not Adverse.*

Article 494 of the new Civil Code allows a coowner to acquire the thing owned in common by prescription if he repudiates the coownership. An allegation in the complaint that the defendants, as coheirs, by themselves and through their predecessors in interest have been in possession of the land since 1910 and that in 1946 they promised to deliver to the plaintiff his share in the land, excludes the idea of adverse possession and the acquisition by prescription of the property owned in common.[87]

## 14. Possession

A. *The Concept of Good Faith.*

Commonwealth Acts Nos. 20 and 539 provide that expropriated lands may be subdivided into lots for resale at reasonable prices to "*bona fide* tennnts or occupants" thereof. This provision, therefore, requires that the tenant or occupant of the subdivided lots must be possessors in good faith, in order to be entitled to purchase the lots occupied by them. In the case of *Bernardo v. Bernardo*,[88] the meaning of good faith in the said laws, as applied to the tenants or occupants of subdivided lots, was explained by the Supreme Court. The court's explanation may be helpful

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[85] Am. Jur. 532-533, cited in Montelibano v. Bacolod-Murcia Milling Co., Inc., G.R. No. L-5416, July 26, 1936.

[86] Jennings-Heywood Oil Syndicate v. Houssiere-Latrelle Oil Co., et al. Ann. Cas. 1913 E. 679, 690.

[87] Francisco v. Robles, 50 O.G. 1071, G.R. No. L-5388, Feb. 15, 1954.

[88] G.R. No. L-5872, Nov. 29, 1954, 50 O.G. No. 12, p. 5719.

in understanding the meaning of good faith in article 526 of the new Civil Code, formerly article 433.

"Bona fide occupant" is "one who supposes he has a good title and knows of no adverse claim; one who not only honestly supposes himself to be vested with true title but is ignorant that the title is contested by any other person claiming a superior right to it." The essence of 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.

This concept is substantially the same as that found in article 526 that a possessor in good faith is one "who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it" and a possessor in bad faith is one "who possesses contrary to the foregoing."

In the *Bernardo* case, the respondent and his predecessors, as lessees, had continuously occupied the disputed lot from 1912 to 1947, whereas the petitioner, upon tolerance and charity of the respondent, occupied the same lot from 1918 up to 1944, when the respondent bought from the petitioner the latter's house standing on the lot. It was held that the *bona fide* occupant of the lot was the respondent and not the petitioner.

B. *Illustration of Bad Faith.*

Where a triangular portion of the lot bought by plaintiff's predecessors-in-interest was erroneously included in the lot bought by one of the defendants, and the latter, having actual or constructive knowledge of such mistake, never claimed any right of ownership or of possession of said portion until after the issuance of the certificate of title in their favor, they cannot claim to be purchasers in good faith of the portion in question even if they had paid the consideration therefor with the sanction of the Bureau of Lands.[89]

But where the purchaser was ignorant that the land he was buying from the children of the second mariage was acquired during the first marriage and where it appears that the Torrens title for said land shows that the land was owned in part by the children of the second marriage, said purchaser acted in good faith.[90]

C. *Bona Fide Possessor Should Make a Counterclaim for Value of Improvements.*

In the case of *Camara v. Aguilar*[91] the plaintiffs as possessors in good faith made improvements on a parcel of land. A reivindicatory action was brought against them by the owner of the land and they were

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[89] De Jesus v. Belarmino, G.R. No. L-6665, June 30, 1954, 50 O.G. 3064.
[90] Campo v. Campo, G.R. No. L-5178, Feb. 17, 1954.
[91] G.R. No. L-6337, March 12, 1954, 50 O.G. 1549.

required to restore the possession of the land to the owner. After the judgment in the action had become final, the plaintiffs sued the owner for the recovery of the value of the improvements which they had made on the land.

It was held that the action for recovery of the value of the improvements was barred, because the plaintiffs, as defendants in the reivindicatory action should have set up, alternatively, that they were entitled to the land, or assuming hypothetically that they were not the owners of the land, that at least they were entitled as possessors in good faith to the improvements on the land or their value. The claim for the value of the improvements not having been set up in the reivindicatory action, it was barred under the rule of *res judicata*.

This ruling in the *Camara* case is consistent with the doctrine of *Berses v. Villanueva*[92] that in action for the recovery of a parcel of land, defendant's failure to set up a counterclaim for improvements bars such counterclaim.

### D. *The Question of Possession Should Be Decided Without Unnecessary Delay.*

In connection with the rule in article 539 of the new Civil Code that "every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court," it was observed in the case of *Bohayang v. Maceren*[93] that "an action for recovery of possession is an urgent matter which must be decided promptly to forestall breaches of peace, bodily injury to person, mayhem, or perhaps loss of life," and that it is, therefore, "the duty of the Court to act swiftly and expeditiously in cases of that nature."

So, where, as in that case, the plaintiff, who had possessed a homestead from 1935 to 1941, brought an *accion publiciana* or *plenaria de posesión* against the defendants, who had usurped his homestead after he had abandoned the same during the Japanese occupation and evacuated to another place, and the trial court, on learning that the respective rights of the parties to the homestead were under consideration by the Director of Lands, ordered that the hearing of the case be held in abeyance until the Director of Lands had finally determined the conflict between the parties, the Supreme Court issued a writ of mandamus compelling the trial court to set a date for the hearing of the case. The reason is that the postponement might embrace a long stretch of time since it was made to depend upon the action to be taken by the Director of Lands. The Director would decide, not the issue of possession, but the question of who among the parties is entitled to the homestead.

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[92] 25 Phil. 473.
[93] G.R. No. L-7290, Dec. 29, 1954.

The above holding is in consonance with the doctrine of the case of *Fabian v. Paculan*[94] that the lawful possessor of a homestead is entitled to the protection of the law and the courts.

E. *Accion Publiciana.*

When the illegal deprivation of real property has lasted more than one year, the action ceases to be one for forcible entry or detainer and becomes one for the recovery of possession or *accion publiciana*, which properly falls within the jurisdiction of the Court of First Instance.[95]

## 15. DONATIONS

A. *Donations Mortis Causa Are not Real Donations but Are Legacies That Should Take the Form of Testamentary Dispositions.*

One question which now and then crops up in the law of donations in this jurisdiction involves the distinctions between *inter vivos* and *mortis causa* gifts. A correct understanding of the distinctions is important because the validity of a donation, as to form, may depend in some cases on the issue of whether the disputed instrument evidences an *inter vivos* or a *mortis causa* donation. Donations *mortis causa* must be effected in a testament and they are void if not embodied in that form. *Inter vivos* donations take the form prescribed in articles 748 and 749 of the new Civil Code, depending upon whether the property donated is personal or real property.

If personal property, the donation may be made orally or in writing. An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated. But if the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance thereof shall be made in writing; otherwise, the donation shall be void. Donation of real property, to be valid, must be made in a public document, and accepted by the donee in the same deed of donation or in a separate instrument during the lifetime of the donor. If accepted in a separate instrument, the donor shall be notified thereof in an authentic form and this step shall be noted in both instruments.

Under article 632 of the old Civil Code, a donation of personal property in writing, if not accepted in writing, is void, regardless of the value of the personalty.[96] Article 748 of the new Code is silent as to how a donation in writing of personal property valued at less than ₱5,000 should be accepted.

The codal distinction is that a donation *inter vivos* takes effect during the donor's lifetime, while a donation *mortis causa* takes effect upon his

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[94] 25 Phil. 26.

[95] Lagumen v. Abasolo, 50 O.G. 1028; Firmeza v. David, G.R. No. L-5832; Baguioro v. Barrios, 43 O.G. 2031.

[96] Ramos v. Cacibes, 50 O.G. 1082.

death. The difficulty in applying the distinction to controversial cases lies in the ascertainment of whether a particular donation was intended to take effect during the donor's lifetime or upon his death. Experience has shown that donors usually want to make a donation effective and binding during their lifetime, but at the same time they retain possession of the donated property and enjoy its fruits as long as they are alive, and actual delivery of the property is postponed to the period following the donor's death. The fact that after the execution of the instrument of donation, the donor is still in possession of the donated property may create the impression that the donation is not yet effective and that it will become effective only upon the donor's death, coincidental with the delivery of possession to the donee. As Manresa says, "when the time fixed for the commencement of the enjoyment of the property donated be at the death of the donor, or when the suspensive condition is related to his death, confusion might arise."

The use in the instrument of donation of conflicting provisions as to its effectivity may generate doubt as to the intention of the donor and as to the true nature of the donation. Justice Montemayor confesses in one case that "the distinction between a donation *inter vivos* and a donation *mortis causa*, in spite of the comments of legal writers and the doctrines laid down by the courts is not always sharp and clear, especially when the donation is couched in language which admits of possible different interpretations."[97]

One rule is that the body of the instrument of donation and the statements contained therein, and not the title, should be considered in ascertaining the intention of the donor. Although a deed of donation is labelled *mortis causa*, it will be construed as an *inter vivos* donation if its contents indicate that it is effective during the donor's lifetime.

Generally in a donation *inter vivos* the ownership of the property donated passes to the donee upon the execution of the deed of donation and without awaiting the donor's death.[98]

Where the father, after his daughter's marriage, donated to her and her husband ₱14,000, as dowry, chargeable against her legitime and demandable only after his death, and at the same time he bound himself to pay them the sum of ₱1,200 annually, as revenue from or interest upon said dowry of ₱14,000, it was held that the dowry partook of the nature of a donation *mortis causa*, while the payment of the sum of ₱1,200 was in the nature of donation *inter vivos*.[99]

To avoid confusion, a distinction should be made between the *disposition* and the *execution* of the donation, or between transfer of the title to the donated property and the actual *delivery* of the property itself. *That the donation is to have effect during the lifetime of the donor*

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[97] Concepcion v. Concepcion, G.R. No. 4225, Aug. 25, 1952.
[98] Lopez v. Olbes, 15 Phil. 540.
[99] Gonzales and Fuster Fabra v. Gonzales Mondragon, 35 Phil. 105.

*or at his death does not mean that the delivery of the property must be made during his life or after his death.*[100]

The new Code has to some extent dispelled the confusion surrounding the two kinds of donations by providing in article 729 that "when the donor intends that the donation shall take effect during the lifetime of the donor, though the property shall not be delivered till after the donor's death, this shall be a donation *inter vivos*"; in article 730, that "the fixing of an event or the imposition of a suspensive condition, which may take place beyond the natural expectation of life of the donor, does not destroy the nature of the act as a donation *inter vivos*, unless a contrary intention appears"; and in article 731, that "when a person donates something, subject to the resolutory condition of the donor's survival, there is a donation *inter vivos*."

The rule in article 729, appears to be a crystallization of the doctrine laid down in certain decided cases, which define the criteria followed by the Supreme Court in determining whether a donation is *inter vivos* or *mortis causa*. In the case of *Laureta v. Mata*[101] the deed of donation provided that the donor was donating *mortis causa* certain properties as a reward for the donee's services to the donor and as a token of the donor's affection for him, under the condition that *"the donee cannot take possession of the properties donated before the death of the donor,"* that the donee would cause to be held annually masses for the repose of the donor's soul, and that he would defray the expenses for the donor's funeral.

This donation was held to be *inter vivos* and not *mortis causa*, despite the statement in the deed that it was *mortis causa*. The Supreme Court construed the donation as in *praesenti* because it conveyed to the donee the title to the properties donated "subject only to the life estate of the donor," and the conveyance took effect upon the making and delivery of the deed. The acceptance of the deed also signified that the donation was *inter vivos*. The deed evidenced *"a present grant of a futuro interest."*

In the case of *Balaqui v. Dongso*[102] the deed of donation involved was more confusing than that found in the case of *Laureta v. Mata, supra*. In the *Balaqui* case, it was provided in the deed that the donation was made in consideration of the services rendered to the donor by the donee, that "title" to the donated properties would not pass to the donee during the donor's lifetime, and that it would be only upon the donor's death that the donee would become the "true owner" of the donated properties. However, there was a stipulation that the donor bound herself to answer to the donee for the property donated and she warranted that nobody would disturb or question the donee's right.

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[100] 5 Manresa, Codigo Civil, 6th Ed., 1951, p. 108.
[101] 44 Phil. 668.
[102] 53 Phil. 673.

Notwithstanding the provision in the deed of donation that it was only after the donor's death when the "title" to the donated properties would pass to the donee and when the donee would become the true owner thereof, it was held in the *Balaqui* case that the donation was *inter vivos*. The reason advanced by the Supreme Court was that the donor, in guaranteeing the right granted to the donee, thereby implied that such right had already been conveyed to the donee upon the execution of the deed of donation and that the donor merely reserved to herself the "possession and usufruct" of the donated properties.

Our Supreme Court cited a *sentencia* of the Spanish Supreme Court holding *inter alia*, that a donation *inter vivos* is one made in consideration "of the donor's pure generosity and the recipient's deserts." This dictum is not quite correct, as noted in the later case of *Heirs of Bonsato v. Court of Appeals*,[102a] because donations *mortis causa* may also be made in consideration of the donor's generosity and the donee's deserts. Said dictum was later misused in some cases as a decisive criterion distinguishing *inter vivos* from *mortis causa* donations, and it obscured the true nature of these two kinds of donations and produced confusion in the case law regarding this matter.

A clear case where the donor made an *inter vivos* donation is found in *De Guzman v. Ibea*.[103] In this case, the deed provided that the donor donated to the donee certain properties so that the donee "may hold the same as her own and always" and that the donee would administer the lands donated and deliver the fruits thereof to the donor, as long as the donor was alive, but upon the donor's death said fruits would belong to the donee. It was held that the naked ownership was conveyed to the donee upon the execution of the deed of donation and, therefore, the donation became effective during the donor's lifetime.

In the case of *Sambaan v. Villanueva*[104] the deed of donation, as in the case of *Balaqui v. Dongso*, contained conflicting provisions. The deed provided that the donation was made "en consideracion al afecto y cariño" of the donor for the donee but that the donation "surtirá efectos después de ocurrida mi muerte" (donor's death). The donation was held to be *inter vivos* because death was not the consideration for the donation but rather the donor's love and affection for the donee. The stipulation that the donated properties would be delivered only after the donor's death was held to be a mere modality of the contract which did not change its nature as an *inter vivos* donation. The donor had stated in the deed that he was donating, ceding and transferring the donated properties to the donee. In this case, as in *Balaqui v. Dongso*, importance was attached to the fact that the donation was made in consideration of the donor's affection for the donee.

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[102a] G.R. No. L-6600, July 30, 1954, 50 O.G. 3568.
[103] 67 Phil. 633.
[104] 71 Phil. 303.

In the case of *Joya v. Tiongco*,[105] the Supreme Court again adhered to the criterion that a donation is *inter vivos* if the consideration is the liberality of the donor and not his death, although the property would be delivered to the donee only after the donor's death. The donor's death was regarded as merely a term suspending the immediate effectivity of the donation.

The line of decisions holding that if the consideration for the donation is not the donor's death but the donee's services or the donor's affection for the donee, or both, the donation is *inter vivos* and not *mortis causa*, culminated in the case of *Concepcion v. Concepcion*.[106] In this case the deed of donation, styled as *mortis causa*, provided that the donation was made in consideration of the "buenos servicios" rendered by the donee to the donor and of the donor's affection for the donee; that the donor had "reservado lo necessario para mi (su) mantenemiento"; and that the donation "ha de producir efectos solamente por muerte de la donante."

The donation was held to be *inter vivos*, following the doctrine of the cases already cited. The Supreme Court concluded that the provision that the donation should take effect only after the donor's death "simply meant that the possession and enjoyment of the fruits of the properties donated should take effect only after the donor's death and not before." The fact that the donation was accepted in the same instrument was considered as another indication that it was *inter vivos*, since only this kind of donation needs acceptance during the donor's lifetime.

The distinctions between donation *mortis causa* and *inter vivos*, which according to Justice Montemayor in the *Concepcion* case are not "always sharp and clear" were clarified in the case of *Heirs of Bonsato v. Court of Appeals*.[107] The deed of donation in this case, as in previous cases, contained conflicting provisions which rendered the intention of the donor obscure and made it possible to interpret the donation either as *mortis causa* or *inter vivos*. In one part of the deed the donor stated that he was executing "una donacion perfecta e irrevocable consumado" in favor of the donee, but in the latter part of the same deed, he stated that it would be only after his death that the donation "entrara en vigor" and that the donee "tendra todos los derechos de dichos terrenos . . . ."

Justice J. B. L. Reyes, speaking for the Court, started with the proposition, obvious but overlooked in previous decisions, that the Spanish Civil Code in its article 620, now article 728 of the Philippine Civil Code, broke away from the Roman Law tradition and followed the French doctrine that no one may both donate and retain. Donations *mortis causa*

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[105] 71 Phil. 379.
[106] G.R. No. L-4225, Aug. 25, 1952.
[107] *Supra*, note 102a.

were merged with testamentary dispositions and ceased to be an independent legal concept.

Justice Reyes then carefully enunciated the following characteristics of a donation *mortis causa*: (1) the transferor retains the ownership (full or naked) and control of the property while alive;[108] (2) the transfer is revocable, before his death, by the transferor at will, *ad nutum*, but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed;[109] and (3) the transfer would be void if the transferor survived the transferee.[110]

In the decided cases where it was held that the donations were *mortis causa* and were declared invalid for not having been executed with the formalities of wills, the circumstances clearly indicated the transferor's intention to defer the passing of title until after his death.[111]

Thus a donation is *mortis causa* and is void for not having been executed with the formalities of a will (1) if it was provided that the donated properties would be given to the donees after the expiration of 30 days from the donor's death and the deed of donation used the word "inherit";[112] (2) if the donor reserved expressly the right to dispose of the properties conveyed at anytime before his death and limited the donation to "whatever property or properties left undisposed by me during my lifetime";[113] and (3) where the donor not only reserved for herself all the fruits of the property allegedly conveyed but also prohibited the disposition of the donated properties without the donor's consent.[113]

If the donor in the deed of donation conveys the ownership of the donated properties and reserves for himself during his lifetime a share of the fruits or produce and the deed expressly declares the act to be irrevocable, the act is a donation *inter vivos* and not *mortis causa*, although the deed of donation provides that it shall take effect only after the donor's death. This provision simply means that the absolute ownership over the donated property would be vested in the donee upon the donor's death. In the *Bonsato* case the donation was, therefore, held to be *inter vivos*.

Justice Reyes, by way of rectification of the holding in previous cases, concluded that the fact that the donation was made in consideration of the affection of the donor for the donee and the services rendered by the latter is of no particular significance in determining whether the donation is *inter vivos* or *mortis causa*, because such consideration may exist in both true donations and legacies. However, such con-

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[108] Vidal v. Posadas, 58 Phil. 108; De Guzman v. Ibea, 67 Phil. 633.
[109] Bautista v. Sabiniano, 49 O.G. 549.
[110] *Supra*, note 102a.
[111] Cariño v. Abaya, 70 Phil. 182; Bautista v. Sabiniano, *supra*, note 109.
[112] David v. Sison, 76 Phil, cited in Heirs of Bonsato v. Court of Appeals, *supra*, note 102a.
[113] Cariño v. Abaya, *supra*, note 111; Bautista v. Sabiniano, *supra*, note 109; David v. Sison, *supra*, note 112.

sideration may indicate that the donation is *inter vivos* in the sense that it is irrevocable.

The *Bonsato* case has clarified the confusion in our jurisprudence regarding donations *inter vivos* and *mortis causa*. It should be emphasized, as noted by Manresa, that *inter vivos* donations are true donations, while the so-called *mortis causa* donations are in reality *legacies*. The legal profession has not understood the true nature of *mortis causa* donations, and this may account for the fact that some lawyers, as revealed in the decided cases, embodied donations *mortis causa* in the form of a public instrument, rather than in the form of a testament.

Some donors have a psychological fear of making a will and may insist that all that they want is to make a donation effective upon their death, and that it is not their intention to make a will. To accommodate donors thus inclined, a lawyer may commit the mistake of preparing a donation *mortis causa* in a public instrument. This should not be done. In every case where the donation is to take effect upon the donor's death, it should be explained to the donor that a will, holographic or notarial, is necessary, and it should not be called *mortis causa* donation; the instrument should be called a testament. It need not embrace all the property of the donor, who may want to die intestate with respect to his other property.

On the other hand, where the donor intends to transfer the naked ownership to the donee upon the execution of the deed of donation, to enjoy during his lifetime the beneficial ownership or usufruct of the donated property, and to deliver the possession thereof *postmortem*, whether unconditionally, with a term, or under certain conditions, the act should be properly called a donation *inter vivos*.

B. *Widower Can Donate His One-half Conjugal Share.*

A widower can donate only his one-half *proindiviso* share of the conjugal assets. The donation would be void as to the other half pertaining to the heirs of his deceased wife.[114]

C. *Donation for Valuable Consideration.*

A donation to an agent of personal property made in writing could not be considered as one for valuable consideration if no services or valuable consideration were involved. The mere fact that the agent collected the principal's claim from the War Damage Commission would not be such a service as to require compensation. And where the alleged donation was made in writing but was not accepted in writing, it is void under the old Civil Code.[115]

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[114] *Supra*, note 102a.
[115] Ramos v. Caoibes, G.R. No. 5142, Feb. 26, 1954.

D. *A Corporation Can Make a Valid Remunerative Donation of its Assets.*

Illuminating rulings regarding remunerative donations and the capacity of a corporation to make such donations were laid down in *Maria Carla v. De la Rama Steamship Co., Inc.*,[116] a case of first impression in this jurisdiction. The salient facts of the case may be briefly recounted as follows:

The defendant corporation in 1941 insured with various insurance companies for one million pesos the life of Enrico Pirovano, its president. The corporation was the beneficiary under the policies. Pirovano was killed by the Japanese in 1944 and was survived by his wife and four minor children. In 1946 the Board of Directors and stockholders of the corporation decided that, out of the proceeds of the policies, the sum of ₱400,000 should be set aside for the minor children of Pirovano, as a reward for his past services, which sum should be converted into shares of stock of the corporation at par value.

However, when it was realized that the donation in the form of shares would amount to ₱1,440,000, in view of the increased market value of the shares, it was decided in 1947 to change the form of the donation. Instead of donating shares of stock to them, the Board of Directors resolved that the proceeds of the policies should be awarded to the Pirovano minors, under the condition that the amount thereof would be retained by the corporation as a loan with interest and would be paid to the children after the corporation had settled in full its bonded indebtedness of ₱5,000,000 to the National Development Company. The widow, Mrs. Pirovano, as judicial guardian of the children, accepted the donation pursuant to the authority granted to her by the court. In 1949 the stockholders approved the donation.

But in 1951, after the Securities and Exchange Commission had rendered the opinion that the donation was allegedly *ultra vires* and, therefore, void because the corporation was supposedly not empowered to dispose of its assets by gift, the donation was revoked by the Board of Directors. The revocatory resolution alleged that the conditions of the donation had not been complied with.

The minor children, through their mother, sued the corporation for the recovery, in the alternative, of the sum donated plus interest, or the interest alone, for the time being, and the principal after the debt to the National Development Company had been paid. The Supreme Court resolved the issues raised by the parties in this wise:

1. A remunerative donation is made in consideration for the services rendered by the donee to the donor. The donor is moved by acts which directly benefit him. The motivating cause is gratitude, acknowledgment of a favor, a desire to compensate. A donation made to one who saved

[116] G.R. No. L-5377, Dec. 29, 1954.

a donor's life, or to a lawyer who renounced his fees for services rendered to the donor, would fall under this class of donations.

In the instant case, the donation in question is clearly remunerative because it was given out of gratitude to Pirovano, who was largely responsible for the rapid and successful development of the activities of the corporation and because he left practically nothing to his children.

2. The donation was perfected and could not, therefore, be rescinded. It was perfected because the corporation transferred the ownership of the sum donated to the children. Its Board of Directors and stockholders approved the donation; the representatives of the National Development Company, the only creditor affected by the donation, also approved it in their capacity as members of the Board of Directors; and the donees, through their mother, accepted the donation. No legal grounds existed for revoking it.

3. The donation was not *ultra vires*. It was a valid corporate act because the corporation under its articles was empowered to deal with its moneys "not immediately required," and "to aid in any other manner any person, association, or corporation of which any obligation or in which any interest is held by the corporation or in the affairs or prosperity of which this corporation has a lawful interest." If the corporation could donate ₱100,000 to the Liberal Party, it stands to reason that it could make a compensatory donation to the heirs of its late president.

The validity of the donation was upheld, but the amount donated should be paid after the debt to the National Development Company had been fully paid by the donor.

## 16. Succession

### A. *Administration Proceeding Should Be Dispensed with if Estate Has no Debts.*

One of the important principles in the law of succession is found in article 777 of the new Civil Code, which provides that "the rights to the succession are transmitted from the moment of the death of the decedent." From this basic principle, several corollary or subsidiary rules emanate, such as the settled rule in probate law that "when a person dies without leaving pending obligations to be paid, his heirs, whether of age or not, are not bound to submit the property to judicial administration, which is always long and costly, or to apply for the appointment of an administrator by the court, for in such a case the judicial administration and the appointment of an administrator are superfluous and unnecessary proceedings." This well established rule was reaffirmed in the case of *Javier v. Magtibay*.[117]

Under article 777, "the heirs succeed immediately to all the property of the deceased ancestor completely as if the ancestor had exe-

[117] G.R. No. L-6829, Dec. 29, 1954.

cuted and delivered to them a deed for the same before his death." Withholding the inheritance from the heirs, by subjecting it to an administration for no useful purpose, would only unnecessarily expose it to the risk of being wasted or squandered as not infrequently happens. The rationale of the rule was lucidly stated by Justice Moreland in the case of *McMicking v. Sy Conbieng*:[118]

> "It is the undisputed policy of every people which maintains the principle of private ownership of property that he who owns a thing shall not be deprived of its possession or use except for the most urgent and imperative reasons and then only so long as is necessary to make the rights which underlie those reasons effective. It is a principle of universal acceptance which declares that one has the instant right to occupy and use that which he owns, and it is only in the presence of reasons of the strongest and most urgent nature that that principle is prevented from accomplishing the purpose which underlies it. The force which gave birth to this stern and imperious principle is the same force which destroyed the feudal despotism and created the democracy of private owners."

The case of *Javier v. Magtibay*, although it merely strengthens an old rule, has more than transitory significance because in the course of the decision in that case Justice A. Reyes made a clarification of the cases of *Orozco v. Garcia*,[119] *Rodrigues v. Tan*[120] and *Monserrat v. Ibañez*,[121] which apparently deviated from the old rule.

B. *Legal Heirs May Annul Void Contracts Executed by Deceased.*

Following the principle that the decedent's estate includes all the rights and obligations not extinguished by his death and that successional rights are vested as of the moment of death, the intestate heirs of a deceased, without compulsory heirs, may exercise the right of the deceased to annul contracts entered into by the deceased during his lifetime which are vitiated by fraud. In *Reyes v. Court of Appeals*,[122] it appears that one Benedicta de los Reyes conveyed various parcels of land to Ismaela Dimagiba; that the consideration for the conveyance was not paid; and that the transferee Dimagiba exercised undue influence on Benedicta de los Reyes.

Four justices concurred in the opinion that the legal heirs of the deceased Benedicta de los Reyes, although not forced heirs, succeeded to her right to annul the transfer on the ground of fraud and undue influence, which right was subsisting at the time of her death and was, therefore, transmitted to them. In other words, the legal heirs, although not forced heirs, could annul the transfer because the decedent herself was defrauded and could have annulled the transfer if she were alive.

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[118] 21 Phil. 211, 219.
[119] 50 Phil. 149.
[120] G.R. No. L-6044, Nov. 24, 1952.
[121] G.R. No. L-3367, May 24, 1950.
[122] G.R. No. L-5620, July 31, 1954.

The case was distinguished from *Concepcion v. Sta. Ana*,[123] where it was ruled that a brother of the deceased could not annul an alleged fictitious transfer made by the deceased during her lifetime because the brother was not a forced heir. In the *Concepcion* case, it was the deceased who allegedly perpetrated the fraud, whereas, in the *Reyes* case, it was the deceased who was defrauded.

C. *Other Illustrations of Article 777.*

The principle in article 777 of the new Civil Code that successional rights are vested as of the moment of death has varied applications. Thus from the moment of the testator's death, "the title of the legatees and devisees under his will becomes a vested right, protected under the due process clause of the Constitution against a subsequent change in the statute adding new legal requirements for execution of wills which would invalidate such a will."[124]

A child, as the sole intestate heir of his deceased parents, who had extrajudicially adjudicated to himself the property left by his parents under Rule 74 of the Rules of Court, he being of age and the estate not being burdened with debts, may bring an action for the recovery of said property against the persons in possession thereof, without previous judicial declaration of heirship.[125]

No rule imposes the necessity of a previous judicial declaration regarding the status of heirs to an intestate estate, who being of age and with legal capacity, consider themselves the legal heirs of a person, in order that they may maintain an action arising out of a right belonging to their deceased ancestor.[126]

But no successional rights can be transmitted by the deceased to an alleged heir if the deceased had alienated the property in dispute during his lifetime by valid title.[127]

D. *Law at Time of the Execution Governs Formalities of Wills.*

Article 795 of the new Civil Code provides that "the validity of a will as to its form depends on the observance of the law in force at the time of its execution." This provision, which embodies the doctrine announced in *Bona v. Briones*[127a] and *In Re Will of Riosa*[127b] was applied in the case of *Vda. de Enriquez v. Abadia*,[127c] where it was ruled that a holographic will executed in Cebu in 1923 by a Filipino citizen, who

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[123] G.R. No. L-2277, Dec. 29, 1950.
[124] Vda. de Enriquez v. Abadia, G.R. No. L-7189, Aug. 9, 1954, 50 O.G. 4185.
[125] Cabuyao v. Casgbay, 50 O.G. 3541; G.R. No. L-6636, Aug. 2, 1954.
[126] Hernandez v. Padua, 14 Phil. 194.
[127] Vera v. Acoba, G.R. No. L-5973, March 20, 1954.
[127a] 38 Phil. 276.
[127b] 39 Phil. 23.
[127c] *Supra*, note 124.

died in 1943, cannot be probated as a holographic will under the new Civil Code. Article 810 of the new Code is not retroactive. The law governing the formalities of domestic wills in 1923 is found in the Code of Civil Procedure which does not allow holographic wills.

Article 795 "is but an expression or statement of the weight of authority to the effect that the validity of a will is to be judged not by the law in force at the time of the testator's death or at the time the supposed will is presented for probate or when the petition is decided by the court but at the time the instrument was executed. One reason in support of this rule is that, although the will operates upon and after the death of the testator, the wishes of the testator about the disposition of his estate among his heirs and among the legatees is given solemn expression at the time the will is executed, and in reality the legacy or bequest then becomes a complete act." It may be added that if the decedent had executed an invalid will, his intestate heirs acquire a vested right to their legal shares and a subsequent law validating the will would impair such right.[128]

E. *Formalities in Execution of Wills.*

1. In *Barrera v. Tampoco*,[129] it was ruled that it is not necessary that the will be read to the witnesses upon its signing. It was also noted in the same case that the fact that the attesting witnesses are related to some of the beneficiaries thereunder is not sufficient to make them biased witnesses. This holding should be understood in the light of what is provided in articles 823 and 1027 of the new Civil Code.

2. Where a will consists of three folios or sheets, the testamentary dispositions being written on five pages, but "the back pages of the first two folios of the will were not signed by any one, not even by the testator, and they were not numbered, and as to the three front pages, they were signed only by the testator," the will is void.[130]

F. *Proceedings for Allowance of Wills.*

In *Vaño v. Vaño Vda de Garces*,[131] it was observed that the rule prevailing in this jurisdiction with respect to the probate of wills is the old common law issue of *devisavit vel non*. Is the instrument presented for probate the last will and testament of the testator? Under this issue every ground on the validity of the will may be employed. Conformably with this rule, an oppositor objecting to the probate of a will on one or two specific grounds may, during the hearing, *add other grounds* and submit evidence in support of the same. If the objection alleged

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[128] *Ibid.*

[129] G.R. No. L-5263, Feb. 17, 1954.

[130] Enriquez v. Abadia, *supra*, note 124 citing In Re Will of Saguimsin, 41 Phil. 785.

[131] 50 O.G. 3044.

is that the signature of the testator was secured through fraud, the opositor may change his stand and allege that the signature is a forgery. This change of stand will not, however, strengthen his position.

The factors to be considered in determining the genuineness of the testator's signature were also discussed in the *Vaño* case. The Court said that, when the genuineness of the testator's signature is put in issue, his age, infirmity and state of health should be given due consideration. Where the testator, at the time the contested will was made, was 78 years old suffering from apparently advanced pulmonary tuberculosis and rheumatism, it is natural that his signature should lack the firmness, rhythm, and continuity of motion that it had before he became quite ill and infirm.

Where the three subscribing witnesses to the will, who were in no way related to the testator, had no interest in the execution of the will and stood to gain nothing by its probate, under oath assured the court that the testator voluntarily signed the will, their disinterested testimony cannot be taken lightly.[132]

G. *Conflict in Testimony of Attesting Witnesses.*

Rule 77 of the Rules of Court requires the production of the attesting witnesses at the hearing on the probate of the will whose formal validity is contested. The fact that the witnesses do not all testify in favor of the regularity of the execution of the will is not an insuperable obstacle to its probate. In *Barrera v. Tampoco*,[133] two attesting witnesses testified that the will was signed by the testatrix and by the three attesting witnesses in the presence of each other, while the third attesting witness testified to the contrary. The court gave weight to the testimony of the first two, one of whom was an attorney and justice of the peace who drafted the will. It was noted that even the witness who testified against the due execution of the will signed the attestation clause stating that the will was signed by the testatrix and the witnesses in the presence of each other.

H. *Effect of Transfer of Hereditary Shares.*

The fact that the proponent of the will had allegedly transferred his right and interest in the decedent's estate to another person, who in turn transferred the same to the oppositor of the probate of the will, is not an obstacle to the hearing of the petition for probate, because the validity of the transfer cannot be threshed out in the probate proceeding, which is concerned only with the determination of the formal validity of the will.[134]

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[132] *Ibid.*
[133] G.R. No. L-3263, Feb. 17, 1954, 50 O.G. 1085.
[134] Suntay v. Suntay, G.R. No. L-3087 and 3088, July 31, 1954.

I. *Allowance of Will Executed Abroad.*

Article 815 of the new Civil Code provides that "when a Filipino is in a foreign country, he is authorized to make a will in any of the forms established by the law of the country in which he may be" (*lex loci celebrationis*) and that "such will may be probated in the Philippines." Article 816 of the same Code provides that "the will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the law of the place in which he resides, or according to the formalities observed in his country."

These provisions should be read in conjunction with section 635 of the Code of Civil Procedure, which provides that "a will made out of the Philippine Islands which might be proved and allowed by the laws of the state or country in which it was made, may be proved, allowed and recorded in the Philippine Islands, and shall have the same effect as if executed according to the laws of these Islands" and with section 1, Rule 78, of the Rules of Court, which provides that "wills proved and allowed in a foreign country, according to the laws of such country, may be allowed, filed, and recorded by the proper Court of First Instance in the Philippines."[135]

All the above-cited provisions are conflicts rules which involve the proof in Philippine courts of the due execution of a foreign will, executed by a Filipino citizen or a foreigner.

In the case of *Suntay v. Suntay*[136] a petition was filed for the allowance of a will executed in China by a Filipino citizen and allegedly probated in the municipal district court of China.

It was held that, in order that said will may be allowed and probated in the Philippines, the proponent should prove the following: (a) that the municipal district court is a probate court; (b) the Chinese procedural law governing the probate or allowance of wills; and (c) the legal requirements for the execution of a valid will in China at the time said will was executed. Since these matters were not proved, the alleged Chinese will was not admitted to probate.

The Court further noted that the alleged proceedings in the municipal district court of Amoy, China, were similar to a deposition or to a perpetuation of testimony and were not really probate proceedings, inasmuch as the interested parties in the Philippines were not notified, personally or by publication, of the pendency of such proceedings.

The ruling in the *Suntay* case implies that, under Rule 78 of the Rules of Court, construed in relation to article 815 of the new Civil Code, it is not sufficient, for the allowance in our courts of a will already probated abroad, to present the certified copies of the will and of the decree of probate, duly authenticated, as required by section 41, Rule

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[135] Dalton v. Giberson, 48 O.G. 2657.

[136] G.R. Nos. L-3087 and 3088, July 31, 1954; 50 O.G. 5321.

123 of the Rules of Court. The requirements already mentioned must also be proved. The *Suntay* ruling has, therefore, rendered difficult and cumbersome the probate of a foreign will. The justification of course for the stringent requirements in the probate of a foreign will is the policy to prevent fraud and imposition from being practised in our courts.

In the case of *Yu Chengco v. Tiaoqui*[137] which involved likewise the probate of a will alleged to have been executed and allowed in China probate was denied because the requisites for the proof of foreign judicial records were not satisfied. That case seemed to imply that, as long as the record of the probate of the foreign will was properly proved, the foreign will could be allowed and recorded here.

In another case, that of *Fluemer v. Hix*,[138] it was held that, in order that a foreign will probated abroad may be allowed and recorded in the Philippines it is necessary to prove the following: (a) the law of the place where the will was executed; (b) the due execution of the will in accordance with such foreign law; (c) that the testator was domiciled in the place where he executed the will; and (d) that the will was probated abroad.

As the law now stands, in order to comply with the provisions of Rule 78 on the allowance of a will executed and proved outside of the Philippines, all the different requirements prescribed in the three cases already cited must be strictly adhered to.

J. *Proof of Contents of Lost Will.*

Article 830 of the new Civil Code provides that if a will was burned, torn, cancelled, or obliterated by some other person, without the express direction of the testator, "the will may still be established, and the estate distributed in accordance therewith, if its contents, and due execution, and the fact of its unauthorized destruction, cancellation, or obliteration are established according to the Rules of Court."

The pertinent provision of the Rules of Court on the proof of the contents of a lost will is found in section 6, Rule 77, which requires that the contents of a lost will must be "clearly and distinctly proved by at least two credible witnesses," a requirement somewhat similar to the two-witness proof in treason cases.

The two-witness requirement for proving the contents of a lost will was construed for the first time in this jurisdiction in the case of *Suntay v. Suntay*,[139] where it was held that "credible witnesses mean competent witnesses and not those who testify to facts from or upon hearsay." If the testimony of a witness on the contents of the lost will is hearsay, it is inadequate to establish the contents of the lost will.

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[137] 11 Phil. 598.
[138] 54 Phil. 610.
[139] *Supra*, note 134.

The Court noted that the requirement in section 623 of the Code of Civil Procedure, the law in force prior to the Rules of Court, that the contents of the lost will must be proved "by full evidence to the satisfaction of the Court" seems more strict and exacting than the two-witness rule provided in section 6, Rule 77. In either case the underlying reason for such exacting evidentiary requirements, which are the product of experience and wisdom, "is to prevent impostors from foisting, or at least to make for them difficult to foist, upon probate courts alleged last wills or testaments that were never executed."

K. *Meaning of False Accusation.*

Under articles 303 and 921 of the new Civil Code, the wife forfeits her husband's support after "she has accused (him) of a crime for which the law prescribes imprisonment for six years or more, and the accusation has been found to be false." If bigamy is such a crime, and if the accusation had been found to be false, the wife would lose her right to claim support from the husband. But where the accused husband was acquitted on the ground of reasonable doubt, it cannot be said that the accusation for bigamy made by the wife is false. In such a case, it cannot be said that the wife had given cause for disinheritance and that she cannot demand support from the husband.[140]

L. *Renunciation of Condition in Will.*

In the case of *Ynza v. Rodriguez*[141] it appears, that Dionisio Ynza left a will naming his three adulterous children, Julia, Jose and Maria, as legatees to his whole estate located in Iloilo and Negros. He provided in his will that if anyone of his legatees should die without succession, then his or her portion would accrue to the surviving legatees. Maria sold her 1/3 share to Julia and Jose, who thereby became the co-owners of the whole estate. Later Jose sold to Julia his share of the assets located in Iloilo. Julia died and in her will she bequeathed her properties in Iloilo to the Staub sisters, ¼ of her properties in Negros to her brother Jose, and the ¾ to other legatees. With the conformity of all the legatees, including Jose, a project of partition of Julia's estate was submitted and approved by the court. Jose later contended that, by virtue of the condition imposed in his father's will he became the owner of all the properties left by his sister Julia.

*Held*: The condition imposed in the will of Dionisio Ynza "might possibly be regarded as a charge or trust limiting the ownership and disposition of the 1/3 portion allotted to each of the legatees. The intention of the testator might have been to prevent the property from going to strangers and at the same time to give to the surviving legatee

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[140] Javier v. Lucero, G.R. No. L-6706, March 29, 1954.
[141] 50 O.G. 3054, June 30, 1954.

the right to receive intact the 1/3 share of the legatee who died without issue. This right may naturally be renounced or waived by any of the legatees who stand to benefit by it." The acts of Jose Ynza show that he had renounced the condition imposed in his father's will.

M. *Right of Natural Brother or Sister to Succeed.*

Article 994 of the new Civil Code allows a natural brother or sister, nephew or niece to succeed the deceased. Under article 945 of the old Code, the counterpart of article 994, there is no succession between unacknowledged natural brothers and sisters. Article 945 of the old Code allows succession only between acknowledged natural brothers and sisters. Thus, it was held under the old Code that a woman, who was an unacknowledged natural child, could not inherit from her deceased sister, who was also not acknowledged.[142]

N. *Illegitimate Children Exclude Brothers.*

In the old as well as the new Civil Code, an acknowledged natural child excludes the collateral relatives, such as a brother, half-sister and nephew in the intestate succession to the estate of the deceased.[143]

O. *Meaning of "Sin Sucesion."*

The case of *Ynza v. Rodriguez*[144] concerns a will which provided that the share of legatee would accrue to his surviving co-legatees if the former died "sin sucesion." The majority opinion construed this as meaning that the legatee should die "without issue." However, according to a concurring justice, the phrase "sin sucesion" does not mean dying "sin descendiente." If the legatee left a will, wherein he disposed of the legacy, it cannot be said that he died "sin sucesion" although he had no descendants.

P. *When Final Decree of Distribution Cannot Be Set Aside.*

A decree of the probate court declaring that a child is an acknowledged natural child and as such was the sole intestate heir of his deceased putative father, to the exclusion of an absent full blood brother and the decedent's half-sister and nephew, who agreed to such a decree, cannot be set aside on the ground of intrinsic fraud. Assuming that the court erred in finding that the child was an acknowledged natural child, such error would only be intrinsic fraud. Said final decree can only be annulled on the ground of extrinsic or collateral fraud, meaning fraud that "has prevented a party from having a trial or from pre-

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[142] Mise v. Rodriguez, 50 O.G. 3025; Puron v. Ortega, 55 Phil. 756.
[143] Varela v. Villanueva, G.R. No. L-3053, June 29, 1954, 50 O.G. 4242.
[144] *Supra*, note 141.

senting all of his case to the court." The decree of adjudication binds the absent full blood brother because the decree was made in a proceeding *in rem*. This is the holding in *Varela v. Villanueva*.[145]

In that case it appears that the deceased was survived by an acknowledged natural child, a full blood brother, a half-sister and a nephew, the child of a deceased half-brother. At the time of the institution of the intestate proceedings, the full blood brother was in the United States, his exact address being unknown, and efforts to contact him proved futile. The acknowledged natural child, the half-sister and nephew entered into a compromise agreement whereby the entire estate of the deceased was adjudicated to the child, while the half-sister and nephew were given ₱6,000 each, and the sum of ₱12,000 was allocated to the absent full blood brother. The Court approved the agreement.

Three years after the termination of the intestate proceedings, the full blood brother appeared and wanted to set aside the partition. *Held*: The partition could not be set aside. No extrinsic fraud was proved.

Q. *Repudiation of Inheritance.*

Under article 1051 of the new Civil Code, formerly article 1008, the repudiation of an inheritance must be express. But in one case, where an absent brother of the deceased had failed to notify the latter during the latter's lifetime of his whereabouts in the United States, his silence or inaction was construed as "an abandonment of his hereditary rights in the Philippines." [146]

## 17. Prescription

A. *Case Under Old Law.*

In *Del Campo v. Del Campo*,[147] a case decided under the law in force prior to the new Civil Code, it appears that Leon del Campo acquired in 1900 a parcel of land. The purchase was made during his marriage with Isabel Balante. Leon had four children in his marriage with Isabel, among whom was Emilio. After Isabel's death in 1902, Leon married Esperanza Catata with whom he had six children among whom was Francisco. Esperanza died in 1920. In 1923 the parcel of land in question was registered under the Torrens system, ½ being registered in Leon's name and the other half in the name of his six children of the second marriage.

Leon died in 1927. In 1937, Emilio as judicial administrator of Leon's estate, sold ½ of the land to Gregorio Yrasuegui. In 1940 the six children of the second marriage sold the other half also to Yra-

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[145] G.R. No. L-3052, June 29, 1954, 50 O.G. 4262.

[146] *Ibid.*

[147] G.R. No. L-5178, Feb. 22, 1954. See Gavieres v. Sanchez, G.R. No. L-6206, April 13, 1954.

suegui. In 1950 an action was brought by Emilio and the other children of the first marriage for the recovery of the ½ of the land adjudicated to the children of the second marriage and sold to Yrasuegui.

It was held that the action cannot prosper. Yrasuegui was a purchaser in good faith. The children of the first marriage are estopped to claim an interest in said land after the lapse of 27 years following its registration under the Torrens system.

B. *Action to Recover Possession of Registered Land Does not Prescribe.*

Section 46 of Act No. 496 provides that "no title to registered land in derogation of the registered owner shall be acquired by prescription or adverse possession." By reason of this provision, adverse, notorious and continuous possession under claim of ownership for the period fixed by law is ineffective against a Torrens title.[148] As a corollary, the right to secure possession under a decree of registration does not prescribe. If a registered owner cannot be divested of his title by prescription, it stands to reason that the right to enjoy the property —which is included in ownership and for which possession is essential— should equally be imprescriptible. Otherwise, his dominion would be divested of one of its essential components, thus leading to a juridical incongruency.[149] This rule was reiterated in the case of *J. M. Tuason & Co., Inc. v. Bolaños.*[150]

C. *Time for Presenting a Will for Probate.*

There seems to be no specific legal provision prescribing the time within which the will should be presented for probate. The provisions contained in sections 2 and 3, Rule 76 of the Rules of Court, to the effect that custodian of the will "shall, within twenty days after he knows of the death of the testator, or within twenty days after he knows that he is named executor if he obtained such knowledge after the death of the testator, present" the will to the court having jurisdiction, unless the will has otherwise been returned to said court, are not statutes of limitation prescribing the period within which the petition for probate should be filed.

Failure on the part of the custodian or executor of the will to present the will in court within the twenty-day period simply renders them liable to pay a fine not exceeding two thousand pesos, as provided in section 4 of Rule 76, but the expiration of the period is not a bar to the filing of a petition for the probate of the will. And under section 5 of Rule 76 the custodian of the will, who refuses or neglects without reasonable cause to deliver the same when ordered to do

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[148] Valiente v. Judge, 45 O.G. Supp. 9, p. 43.
[149] Francisco v. Cruz, C.A. 43 O.G. 5105.
[150] G.R. No. L-4935, May 28, 1954.

so, by the court having jurisdiction, may be committed to prison and there kept until he delivers the will.[151] Section 5 likewise assumes that there is no time limit within which the will should be probated.

It cannot be argued that the statute of limitation governing the probate of wills should be sought in the provisions on prescription of actions now found in articles 1139 *et seq.* of the new Civil Code, formerly sections 38 to 50 of the Code of Civil Procedure, because obviously these provisions control only the bringing of *actions*, but not of *special proceedings*, such as the probate of a will. Actions and special proceedings fall into different categories governed by a different set of rules.

That there is really no fixed time limit within which the special proceeding for the probate of a will should be instituted is inferable from section 1, Rule 77 of the Rules of Court, which provides that "any executor, devisee, or legatee named in the will, or any other person interested in the estate, may, *at any time after the death of the testator*, petition the court having jurisdiction to have the will allowed." The phrase "at any time after the death of the testator" is clear enough to warrant the inference that the law allows an indefinite period, after the testator's death, for the presentation of the corresponding petition for the probate of a will. This rule is now complemented by the provision of article 838 of the new Civil Code which provides that "the testator may, *during his lifetime*, petition the court having jurisdiction for the allowance of his will." Just as there is no fixed period for *post mortem* probate, so there is likewise no definite time for *antemortem* probate.

In this connection mention might be made of the case of *Lopez v. Garcia Lopez*[152] where the will was executed in 1892. The testator died in 1901. The will was presented for probate in 1914, or thirteen years after the testator's death, and was duly allowed.

It is also relevant to refer to the rule that the presentation of the will for probate is mandatory, and a provision in the will that it need not be presented to the court for probate cannot divest the courts of their jurisdiction to allow or disallow the will.[153] The obligation to present the will for probate is in harmony with the rule that it can be probated during the lifetime of the testator or at any time after his death.

The interpretation above set forth is strengthened by the rule in American jurisprudence that "in the absence of statutes, or of an estoppel predicated upon delay in propounding a will, *a will may be admitted to probate at any time after the testator's death.*"[154]

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[151] U.S. v. Chiu Guimco, 36 Phil. 917.

[152] 40 Phil. 184.

[153] Guevara v. Guevara, 47 Phil. 479.

[154] Rebhan v. Mueller, 114 Ill. 343, 2 N.E. 75; Haddock v. Boston & M.R. Co., 146 Mass. 155, 15 N.E. 494, cited in 57 Am. Jr. 534.

However, there may be instances where the delay in the presentation of the will for probate may render the probate an idle ceremony, as in the case where the properties of the testator had already been acquired through adverse possession by one of the heirs.[155] In the case of *Dimanlig v. Cusi*,[156] the testator executed his will in 1900 when he was in imminent danger of death and he continued in that state until his death in that same year. Shortly after the testator's death the heirs and legatees named in the will took possession of the property which was allotted to them in the will. It was only in 1924 that the will was presented for probate and it was disallowed because of noncompliance with the requirement prescribed in article 703 of the old Civil Code. Notwithstanding the disallowance, one justice of the Supreme Court rendered the opinion that the heirs and legatees under the void will could no longer question the partition made among themselves, "because by their acts they have led one another to believe that they had a right to the portion allotted to each heir and legatee, and because by the lapse of ten years the title to the respective portion has prescribed in their favor."

Although, as we have just shown above, there is no fixed period within which the will should be presented for probate, nevertheless in the case of *Suntay v. Suntay*[157] there is a laconic holding that a petition for probate of the will should be presented within ten years. The facts giving rise to said holding are as follows:

One Jose B. Suntay died on May 14, 1934. On October 15, 1934 a petition was presented for the probate of his will, the original of which was missing. The petition was denied by the lower court on the ground that the evidence to prove the loss of the will was insufficient. On appeal to the Supreme Court, it was held that there was sufficient evidence to prove the loss of the will. The case was remanded to the lower court to enable the proponent to prove the contents of the lost will.[158] However, the proponent was not able to present at once his evidence on the contents of the lost will and on February 7, 1938 the lower court dismissed the petition for the probate of the will.

On June 18, 1947 another petition was filed for the probate of the decedent's alleged 1929 will, which was lost, and also of his 1931 will, supposedly executed in China and found among the papers of the deceased. Although, the decision does not state it explicitly, there must have been an objection to the 1947 petition on the ground of prescription. This objection was tersely disposed of by the Supreme Court in this fashion:

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[155] Art. 494, new Civil Code.
[156] 48 Phil. 394.
[157] G.R. Nos. L-3087 and 3088, July 31, 1946, 50 O.G. 5321.
[158] 63 Phil. 793.

> "As to prescription, the dismissal of the petition for probate of the will on 7 February 1938 was no bar to the filing of this petition on 18 June 1947, or before the expiration of ten years."

The above ruling gives the impression that the revival of the petition for the probate of a will may be brought within ten years following the dismissal of the original petition. The ruling is altogether vague and imprecise. Its specific legal basis should have been positively stated.

D. *Other Rulings on Prescription.*

1. The ten-year period provided in article 1144 of the new Civil Code for the enforcement of a judgment should be read in connection with section 6, Rule 39, of the Rules of Court, which provides: "A judgment may be executed on motion within five years from the date of its entry. After the lapse of such time and before it is barred by the statute of limitation, a judgment may be enforced by action." This rule was applied in *Day and Manalese v. Judge of Court of First Instance.*[159]

2. Prescription of action to enforce the judgment can only operate when there is a right that is enforceable or, in the case of a final judgment, when there is no legal impediment to its execution. If the trial court, which rendered the final judgment, ordered that the execution be held in abeyance due to the pendency of a case instituted by the judgment debtor against the judgment creditor, the five-year period for executing the judgment by motion is interrupted as long as the other case is not decided.[160]

3. An action instituted in 1950 for the purpose of reviving a judgment which became final in 1941 is not barred by prescription because it was brought within the 10-year period.[161]

4. An action to set aside certain orders of the court, brought more than ten years after the orders were issued, has already prescribed.[162]

5. An action to compel a trustee to convey the property registered in his name in trust for the benefit of the beneficiary does not prescribe.[163]

6. Where the cause of action for the specific performance of a written contract to sell real property forming part of an inheritance accrued in 1935, but the action was brought only in 1950, the action must be regarded as having prescribed.[164]

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[159] G.R. No. L-6691, April 27, 1954.

[160] David v. Garlitos, G.R. No. L-7142, June 30, 1954, 50 O.G. 3077.

[161] S. N. Picornell & Co. v. Cordova, G.R. No. L-6338, Aug. 11, 1954, 50 O.G. 3547.

[162] Vda. de Verzosa v. Rigonan, G.R. No. L-6459, April 23, 1954.

[163] Manalang v. Canlas, G.R. No. L-6307, April 20, 1954, 50 O.G. 1980 citing Cristobal v. Gomez, 50 Phil. 810; Salinas v. Tuason, 55 Phil. 729; Castro v. Castro, 57 Phil. 675.

[164] Mondoñido v. Alaura Vda. de Roda, G.R. No. L-5561, Jan. 26, 1954.

7. Confinement in jail is not a ground for interruption of the period of prescription.[165]

## 18. Obligations

### A. *Loss of Right to Make Use of Period.*

Article 1198 of the new Civil Code, which provides that "the debtor shall lose every right to make use of the period" in the event that "he does not furnish the creditor the guaranties or securities which he has promised," was applied in the case of *Daguhoy Enterprises, Inc. v. Ponce and Ponce.*[166]

In this case plaintiff corporation loaned to the defendant debtor a sum of money, payable within six years, and to secure the payment of the loan the debtor promised to mortgage a parcel of land to the plaintiff. The mortgage was executed, but it could not be registered due to certain defects noted by the Register of Deeds. The defendant debtor withdrew the mortgage deed from the office of the Register of Deeds and executed another mortgage, covering the same property, in favor of the Rehabilitation Finance Corporation.

Plaintiff creditor sued the defendant debtors for the recovery of the loan plus interest even before the maturity of the debt or the expiration of the six-year period within which the loan could have been paid. It was held that "the debtor lost the benefit of the period by reason of her failure to give the security in the form of the two deeds of mortgage and register them." This holding is similar to the doctrine announced in the case of *Laplana v. Garchitorena Chereau.*[167]

### B. *Case Where Debtor Was Found not to Have Prevented Fulfillment of Condition.*

Article 1186 of the new Civil Code, which provides that "the condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment," was invoked in the case of *Carla v. De la Rama Steamship Company, Inc.*[168]

That case involved a donation of the sum of ₱400,000, to certain minors on the condition that the sum donated would be retained by the donor, for the time being, as a loan, with 5% interest a year, and that it would not be paid to the donees "until such time as the company shall have first duly liquidated" its debt of ₱3,260,855 to the National Development Company. This debt was payable within fifteen (15) years or up to 1964.

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[165] Flores v. Plasina, G.R. No. L-5727, Feb. 12, 1954, 50 O.G. 1073. But see sec. 5, Rule 74, Rules of Court.

[166] G.R. No. L-6515, Oct. 18, 1954, 50 O.G. No. 11, p. 5266.

[167] 48 Phil. 163 (1925).

[168] G.R. No. L-5377, Dec. 29, 1954.

The donees sued the donor for the immediate payment of the sum donated, their theory being that the donor, although able to pay the debt, failed to make payment and thereby deliberately prevented the fulfillment of said condition. The Supreme Court rejected the theory of the donees. The Court found that, inasmuch as the debt to the National Development Company was payable in 15 years, the defendant corporation simply availed itself of the stipulated term; that the debt had in fact been reduced to ₱1,805,169; that the management of the defendant corporation found it advantageous to continue as debtor of the National Development Company because that was one way by which the corporation "could continue receiving the patronage and protection of the government."

The Supreme Court also found that the payment of the debt to the National Development Company, which debt was represented by shares of stock issued to the company, did not depend exclusively on the will of the defendant corporation, because, according to the evidence, the company had pledged the said shares to the Philippine National Bank, thus preventing the corporation from paying the balance of the debt as long as the shares remain pledged to the bank.

C. *Defect of Vehicle Is not 'Caso Fortuito.'*

The rule in *Lasam v. Smith*[169] that "an accident caused either by defects in the automobile or through the negligence of its driver is not a *caso fortuito*" was applied in the case of *Son v. Cebu Autobus Company*,[170] where it was held that the defective engine or "drag link spring" of the truck, which brought about the accident, resulting in injuries to plaintiff passenger, cannot excuse defendant carrier from the obligation to pay damages to him.

D. *Provisions on Facultative Obligation Given Retroactive Effect.*

Article 1206 of the new Civil Code, which provides that, "when only one prestation has been agreed upon, but the obligor may render another in substitution, the obligation is facultative," was applied to a transaction perfected before the effectivity of the new Code. According to the Supreme Court in the case of *Quizana v. Redugerio*,[171] article 1206, which is a new provision, creates a new right which should be declared operative at once pursuant to article 2253 of the new Code.

In the *Quizana* case, there was a written agreement between the plaintiff and the defendants that the latter's debt of ₱550 would be paid to the plaintiff on January 31, 1949 and that if the debt was not paid, the defendants would mortgage a certain parcel of coconut land

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[169] 45 Phil. 660.
[170] G.R. No. L-6155, April 30, 1954.
[171] G.R. No. L-6220, May 7, 1954.

to the plaintiff. Defendant debtors were sued by plaintiff creditor for the recovery of the debt. The defendants alleged that immediately after the due date of the obligation they made efforts to execute the stipulated mortgage, but the plaintiff refused to accept the same.

It was held that the debtors had the right to insist on the execution of the mortgage and that the suit of the creditor against them for the payment of the debt was premature. The case was remanded to the Court of First Instance with the instruction that the debtors should present a duly executed deed of mortgage over the property described in the agreement. The period of the mortgage was to be agreed upon by the parties with the court's approval.

E. *Presumption that Obligation Is Joint.*

Where the bond provides that the guarantor would be liable to the creditor only if the principal debtor did not comply with the terms of his contract, the guarantor's obligation is joint and not solidary. "There is solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity," according to article 1207 of the new Civil Code.[172]

F. *Payment by Third Person.*

Article 1236 of the new Civil Code provides that "the creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary." This provision is different from that found in article 1158 of the old Code, which provides "that payment made by any person, whether he has an interest in the performance of the obligation or not, and whether the payment is known and approved by the debtor or whether he is unaware of it." Under the old Code, the creditor could not refuse to accept payment made by a third person who had no interest in the fulfillment of the obligation. The new Code changed the rule by allowing the creditor to refuse payment from a third person. The reason for the change in the rule is that "the creditor should not be compelled to accept payment from a third person he may dislike or distrust. The creditor may not, for personal reasons, desire to have any business dealings with a third person; or the creditor may not have confidence in the honesty of the third person who might deliver a defective thing or pay with a check which may not be honored."

In *Rehabilitation Finance Corporation v. Court of Appeals*,[173] a case arising under the old Code, it appears that Jesus Anduiza was indebted to the Agricultural and Industrial Bank in the sum of ₱13,800,

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[172] World Wide Insurance and Surety Co. v. Jose, G.R. No. L-6295, Oct. 27, 1954, 50 O.G. No. 12, p. 5287.

[173] G.R. No. L-5942, May 14, 1954.

payable within ten years from October 31, 1941. The debt was secured by a mortgage. In 1944 Estelito Madrid, who was staying in the house of Anduiza, paid the obligation. In 1948 Madrid sued Anduiza and the Rehabilitation Finance Corporation (RFC), as successor of the Agricultural and Industrial Bank, to compel the RFC to cancel the mortgage and to require Anduiza to reimburse him what he had paid.

The Supreme Court held that Madrid's payment of Anduiza's obligation was valid. It was not necessary for Madrid, in order to make payment, to secure the written sanction of Anduiza. The bank could not require Madrid to secure a statement from the debtor that the latter sanctioned the payment, inasmuch as the creditor "had no other right than to exact payment" and after the payment was made, the obligation, as regards the creditor, should be considered extinguished.

It was further held that the good faith or bad faith of the payor was immaterial, since under the law it was his right to make payment on behalf of the debtor. Neither could the bank invoke the provision that the payor "may only recover from the debtor insofar as the payment has been beneficial to him," if it was made against his express will. This is a defense available to the debtor, not to the creditor. The RFC was required to cancel the mortgage and Anduiza was required to pay Madrid the amount which the latter had paid to the bank.

G. *Revaluation Under Ballantyne Scale.*

The settled rule that obligations contracted during the Japanese occupation which could have been paid during that time should be revalued under the Ballantyne scale was followed in *Samson v. Andal*[174] and in *Segovia v. Garcia and Villapando*.[175]

The other settled rule that an obligation contracted during the Japanese occupation, payable only after liberation, should be paid peso for peso, as stipulated in the contract and cannot be revalued under the Ballantyne scale[176] was applied to the proceeds of an insurance policy payable after liberation, although the policy was secured during the Japanese occupation and the premiums were paid in Mickey Mouse money.[177]

H. *Application of Payments.*

Application of payment is illustrated in *Guanzon v. Llantado*[178] where it was held that, if at the time the mortgaged property was sold at public auction for ₱5,000, to satisfy the principal debt of ₱15,000, the accumulated interests amounted to ₱3,646.66, the price of ₱5,000 should be applied to the interests, and the remainder to the principal, thus reducing said principal only by ₱1,353.34 or to ₱13,646.66.

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[174] G.R. No. L-5932, Feb. 25, 1954.
[175] G.R. No. L-5984, Jan. 28, 1954.
[176] Roño v. Gomez, 46 O.G. Nov. Supp. 399; Gomez v. Tabia, 47 O.G. 641.
[177] Londres v. National Life Insurance Co., G.R. No. L-51921, March 29, 1954
[178] G.R. No. L-5064, Jan. 14, 1954.

## 19. CONTRACTS

A. *Ratification of Agent's Contract.*

In a case where a married couple executed a power of attorney empowering their son to sell their land and the son sold the land with right of repurchase, the couple are deemed to have ratified the sale and they are estopped to assail its validity because, as lessees of the same land, under a contract of lease executed by their agent simultaneously with the *pacto de retro* sale, they paid the rentals to the vendee *a retro*, and, because they donated to their other two children their right to redeem the same land.[179]

B. *Illustration of Mistake.*

Mistake may vitiate consent, but according to article 1359 of the new Civil Code, "when, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed."

In *De la Cruz v. Del Pilar and Luzon Surety Co., Inc.*,[180] an unlawful detainer case, the plaintiff secured a writ of attachment and the defendant filed a bond for the lifting of the attachment, but through oversight the bond incongruously provided that it would answer for damages *resulting from the attachment*. This anomaly was discovered only when the plaintiff sought to execute the judgment in his favor against the defendant and the surety.

There was, therefore, a mutual mistake of fact committed in good faith, justifying reformation of the bond, which was captioned "defendant's counterbond for lifting writ of attachment." The surety was estopped to deny the nature of the bond, notwithstanding the provisions thereof. It was adjudged solidarily liable for the judgment against the defendant.

C. *Sale of Hereditary Share.*

The sale of an interest in a hereditary estate is not a sale of future inheritance because the heirs become the owners of the inheritance from the moment of decedent's death, although the actual distribution may be postponed to a much later date.[181]

D. *Exception to "In Pari Delicto" Rule.*

The rule sanctioned in articles 1411 and 1412 of the new Civil Code, formerly articles 1305 and 1306, that if both parties to an illegal

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[179] Amigo v. Teves, G.R. No. L-6389, Nov. 29, 1954, 50 O.G. 5799.
[180] G.R. No. L-6671, July 27, 1954.
[181] Mondoñedo v. Alaura Vda. de Roda, G.R. No. L-5561, Jan. 26, 1954.

contract were aware of the cause of the illegality, they shall have no action against each other (*In pari delicto melior est conditio defenditis*), is subject to the exception that it does not apply to cases wherein "public policy is considered advanced by allowing either party to sue for relief against the transaction."[182]

The exception is illustrated in the case of *De los Santos v. Roman Catholic Church of Midsayap*.[183] In this case a portion of a homestead was sold to the defendant church within five years following the issuance of the patent to the homesteader. It was assumed that both parties knew that the sale was in contravention of the prohibition contained in section 118 of the Public Land Law (Commonwealth Act No. 141). The heir of the homesteader sued for the recovery of the portion sold.

Ordinarily, following the rule that no action will lie if both parties were aware of the illegality, the action for recovery would not prosper and the land sold should revert to the State, as provided in section 124 of the Public Land Law. However, the Supreme Court held that the case falls within the exception to the rule of *in pari delicto*, because the avowed public purpose of the Homestead Law is to provide the homesteader and his heirs with a home and land which may be cultivated. The right to recover the homestead illegally sold cannot be waived. "It is not within the competence of any citizen to barter away what public policy by law seeks to preserve." Recovery of the portion sold was, therefore, allowed.

## 20. SALES

### A. *Contract Held to Be Sale, not Agency.*

In *Royal Shirt Factory, Inc. v. Co Bon Tic*,[184] the question was whether shoes delivered to the defendant by the plaintiff were sold or merely "consigned" for sale. To prove that the delivery was a sale, the plaintiff presented in evidence an order slip which contained the following "condicion" relative to the shoes in question: "Al cabo de 9 dias, pagar todo a razon de ₱7 al par o pagar lo vendido a ₱8 el par." The order slip was held to be incompetent evidence because it was not signed by the defendant.

But the conduct of the defendant showed that the contract relative to the shoes was a straight sale on credit and not one of agency. This was proven by the fact that the defendant made partial payments against the total delivery price of the shoes, without mentioning the number of shoes for which the partial payment was made. If the transaction were a consignment sale, and not an outright sale, the defendant would

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[182] Relloso v. Gaw Chee Hun, G.R. No. L-1411.
[183] G.R. No. L-6088, Feb. 25, 1954, 50 O.G. 1588.
[184] G.R. No. L-6313, May 14, 1954.

have accounted for the shoes unsold. He was held liable for the balance of the unpaid price.

B. *Specific Performance Presupposes Perfected Contract.*

In the case of *Halili v. Lloret and Gonzales Lloret*[185] the plaintiff brought an action to compel the defendants to execute a deed of sale for certain parcels of land. The Supreme Court found that, while there were negotiations between the plaintiff and the defendants for the purchase of the land, the sale was not perfected. There was no definite agreement as to the price and the conditions of the sale. Under the circumstances, specific performance cannot be decreed. The defendant, who received the alleged price in Japanese money, was ordered to return the amount to the plaintiff, subject to adjustment in accordance with the Ballantyne scale of values.

C. *Violation of Promise to Sell Gives Rise to Action for Damages.*

Article 1479 of the new Civil Code, formerly article 1451, provides that "a promise to buy and sell a determinate thing for a price certain is reciprocally demandable" and that "an accepted unilateral promise to buy or sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price." What is the consequence of a violation of a promise to sell?

This question is answered in the case of *Guerrero v. Yñigo and Court of Appeals*,[186] where a mortgagor repeatedly undertook, bound and promised to sell to the mortgagee the land given as security, but instead of complying with his promise, he sold the land to another person. It was ruled that the mortgagor's promise to sell did not bind the land but was "just a personal obligation of the mortgagor." The remedy of the mortgagee would be a personal action for damages against the mortgagor. If the purchaser contributed to the breach of the contract by the mortgagor, said purchaser would also be liable for damages. If the purchaser was guilty of fraud, which would be a ground for rescission of the contract of sale in his favor, the mortgagor can sue him for annulment of the sale.

D. *Art. 1491 Does not Include Aliens Disqualified to Purchase Lands.*

Article 1491 of the new Civil Code, formerly article 1459, enumerates in five paragraphs certain classes of persons, such as guardians, agents, executors, administrators, and public officers and employees who, for reasons of morality, are prohibited from acquiring by purchase the property entrusted to them; and paragraph 6 of the same article disqualifies from

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[185] G.R. No. L-6306, May 26, 1954.
[186] G.R. No. L-5572, Oct. 26, 1954, 50 O.G. No. 11, p. 5281.

acquiring by purchase *"any others specially disqualified by law."* Paragraph 6 is a new provision.

According to the case of *Krivenko v. Register of Deeds*,[187] aliens are disqualified to purchase private agricultural lands. Article 1646 of the new Code provides that "the persons disqualified to buy referred to in articles 1490 and 1491, are also disqualified to become lessees of the things mentioned therein."

The question that has arisen under articles 1491 and 1646 is whether the disqualification of aliens to purchase private agricultural lands is contemplated under paragraph 6 of article 1491 of the new Code. If aliens are included in article 1491, then they cannot lease private agricultural lands conformably with the provisions of article 1646. This point was resolved in the case of *Smith, Bell & Co., Ltd. v. Register of Deeds*.[188]

According to the decision in the said case (still pending reconsideration), article 1491 should be construed, in accordance with the rule of *ejusdem generis*, as referring only to cases where the person disqualified to purchase has some relationship of trust with the property which he is purchasing, such as the guardian, agent, executor, administrator, etc. It cannot refer, therefore, to the alien disqualified to purchase agricultural land.

Chief Justice Paras, in his concurring opinion, intimated that the rule of *ejusdem generis* is not applicable because paragraph 6 of article 1491 "may easily refer to all persons in general, who are disqualified by any law, and not merely to those who have confidential relations with the property to be purchased." He observed that "if paragraph 6 simply provides 'and others,' the principle of *ejusdem generis* would apply."

What the majority probably had in mind was the rule of *noscitur a sociis*, that the meaning of a word or expression is to be gathered from the surrounding words or from the context. *Ejusdem generis* is a part of *noscitur a sociis*.

In the *Smith, Bell & Co., Ltd.* case, the Court ruled that an alien could validly lease private lands for a term not exceeding ninety-nine (99) years.

E. *Warranty Against Eviction.*

The case of *Mendoza v. Caparros*[189] applies the familiar rule that the seller is liable on his warranty against eviction even if the contract of sale is silent on this point. The warranty is a natural element of the contract. Article 1548 of the new Civil Code, formerly article 1475, provides that "the vendor shall answer for the eviction even though nothing

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[187] 44 O.G. 471.
[188] G.R. No. L-7084, Oct. 27, 1954, 50 O.G. No. 11, p. 5293.
[189] G.R. No. L-5937, Jan. 30, 1954, 50 O.G. 566.

has been said in the contract on the subject." Articles 1558 and 1559 of the new Code, formerly articles 1481 and 1482 make the vendor a necessary party in the suit for eviction.

In the *Mendoza* case, it appears that one Agapito Ferreras in 1921 sold a parcel of land to Paulino Pelejo. In 1932 Pelejo sold the land to Victoriano Mendoza. In 1933, on Mendoza's death, the land was inherited by his son Pedro Mendoza, but in 1935 a Torrens title for the land was issued to the original vendor Ferreras. In 1951 when Ferreras died the land was inherited by his wife Justina Caparros and two children. Pedro Mendoza sued Justina Caparros, her two children and Pelejo. The trial court held that Pedro Mendoza was the owner of the land. Justina Caparros and her children did not appeal from the decision, but Pelejo appealed and contended that he should not have been included in the suit and that Mendoza should pay him ₱500 as attorney's fees. It was held that the inclusion of Pelejo was proper.

F. *Art. 1602 may Be Given Retroactive Effect.*

Article 1602 of the new Civil Code, which indicates the circumstances under which a contract of sale may be presumed to be an equitable mortgage, is "remedial in nature and not one which creates or takes away new or vested rights," and, consequently, it may be given retroactive effect to transactions consummated before the new Code was approved. The rule is that "remedial statutes, or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against the retrospective operation of statutes. To the contrary, statutes or amendments pertaining to procedure are generally held to operate retrospectively, where the statute or amendment does not contain language clearly showing a contrary intention." This old rule was followed in *Casabar v. Sino Cruz.*[190]

G. *Contract Construed as a Mortgage and not Pacto de Retro Sale.*

According to the Code Commission, "one of the gravest problems that must be solved is that raised by the contract of sale with the right of repurchase or *pacto de retro.* The evils arising from this contract have festered like a sore on the body politic." The contract has often been resorted to by usurers as a convenient camouflage for their usurious transactions. To check the abuses arising from *pacto de retro* sales, the Code Commission laid down certain rules, now found in article 1602 of the new Civil Code, for presuming that a contract, which on its face contains a stipulation for repurchase, is an equitable mortgage rather than

[190] G.R. No. L-6882, Dec. 29, 1954.

a *pacto de retro* sale. After enumerating five criteria any of which would give rise to the presumption that the contract is an equitable mortgage, article 1602 provides that a contract may be presumed to be an equitable mortgage "in any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation." The question of whether a contract is a *pacto de retro* sale or a mortgage was involved in the case of *Guerrero v. Yñigo and Court of Appeals*.[191] The disputed contract in that case contained the words "mortgage with conditional sale" and the following terms were stipulated:

> "That the Party of the First Part, by these presents, reserves for himself and his heirs the right to redeem the said property after the period of five (5) years from date hereof by paying back and returning the above mentioned amount and the right of possession and use within the said period; to exercise the said right to redeem the said property according to the terms hereof, title thereto shall pass to and become vested, absolutely, in the Party of the Second Part."

It was held that the foregoing stipulations revealed that the contract was a mortgage and not a *pacto de retro sale*. The first clause stipulated that the property could be redeemed but it did not fix a limited period within which the redemption should be made. It simply provided that the redemption could be effected after five years from the date of the instrument. The period of redemption could be fixed by the court upon application of the parties, pursuant to article 1128 of the old Civil Code, now article 1197.

The second clause, insofar as it might be construed as giving the mortgagee or creditor the right to own the property upon failure of the mortgagor to pay the loan on the stipulated time—which is not provided—would be a void *pactum comissorium*. Said second clause is conclusive proof that the contract was a mortgage and not a sale with *pacto de retro* because if it were the latter, the title to the land in question would have passed unto the vendee upon the execution of the sale and not later, as was stipulated therein that "title hereto shall pass to and become vested, absolutely, in the Party of the Second Part" "on failure of the Party of the First Part to exercise the said right to redeem the said property according to the terms hereof."

In *Araullo Macoy v. Vasquez Trinidad*,[192] there was a transaction concerning a parcel of land, whereby the owner in one instrument sold the land and in another instrument, executed on the same date as the sale, the same owner was given the option to repurchase it. The transaction was held to be a mortgage because (1) the supposed vendee never took possession of the land; (2) the supposed seller paid interest to the vendee; and (3) the vendee never demanded the delivery

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[191] G.R. No. L-5572, Oct. 26, 1954.
[192] G.R. No. L-6461, May 31, 1954.

of the land notwithstanding the expiration of the period for exercising the option to repurchase it.

H. *Vendee a Retro Owns Fruits of Land Sold During Period of Redemption.*

The rule in article 1609 of the new Civil Code, formerly article 1511, that in a *pacto de retro* sale "the vendee is subrogated to the vendor's rights and actions," was applied in the case of *Sabinay v. Garrido.*[193] In that case the Supreme Court said that, in a *pacto de retro* sale, the purchaser is not only the owner of the thing sold but also of all its fruits, subject to the condition that the vendee should resell the thing to the vendor *a retro* within the time stipulated in the contract. If the vendor *a retro* sued the vendee in order to compel the latter to allow the redemption and the vendor consigned the redemption price in court, the vendee ceased to be the owner of the property from the time of the consignation. All the fruits of the property gathered before the consignation pertained to the vendee, while the fruits produced after the consignation belonged to the vendor redeeming the property.

I. *Proof that no Repurchase Was Made.*

If the successor-in-interest of the vendor *a retro* had registered the land in his own name under the Torrens system, after the expiration of the alleged period for repurchase, and, on the other hand, the supposed successor-in-interest of the vendee *a retro* claims that no repurchase had been made, it is incumbent upon the latter to prove that there was no such repurchase. If he cannot prove that there was no repurchase, the right of the registered owner would be considered superior to that of the alleged successor-in-interest of the vendee *a retro.*[194]

J. *To Prevent Legal Redemption, Existence of Brooks, etc. Must Be Proved by Grantee.*

Article 1629 of the new Civil Code, which provides that "the owners of adjoining lands shall also have the right of redemption when a piece of rural land, the area of which does not exceed one hectare, is alienated, unless the grantee does not own any rural land," was applied in the case of *Maturan v. Gullòs.*[195]

In that case the grantee or purchaser wanted to defeat the right of legal redemption, sought to be exercised by an adjoining owner, by contending that the redemptioner had not proved that the lands involved are not separated "by brooks, drains, ravines, roads and other

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[193] G.R. No. L-6766, May 10, 1954.
[194] Beriones v. Court of Appeals, G.R. No. L-5980, March 22, 1954.
[195] G.R. No. L-6298, March 30, 1954.

apparent servitudes for the benefit of the other estates." This contention was rejected.

It was held that "the one called upon to prove the existence of a barrier between the two estates is he who wants to defeat the right of redemption on the grounds that the two estates are not contiguous to each other."

## 20. LEASE

### A. *Juridical Relation Between City and Stallholder.*

The contractual relation between a municipal corporation and the successful bidder of a market stall is that of lessor and lessee and, therefore, the provisions of the Civil Code on lease govern the rights and obligations of the parties to the contract. This is the ruling in the case of *City of Naga v. Court of Appeals and Sales*,[196] where the counterclaim for damages filed by a stallholder against the City of Naga, for alleged non-compliance with its obligations as lessor was dismissed. The counterclaim was ventilated in an ejectment suit instituted by the City of Naga, which suit was also dismissed by the Court of First Instance.

In connection with the said ruling, it is relevant to recall a previous ruling in the case of *Torres v. Ocampo*[197] that an action brought by the plantiff against the defendant occupant of a market stall, for the purpose of asserting plaintiff's preferred right to occupy the stall, is not an action for illegal detainer because it is not for the recovery of possession of a land or building brought by a person who has been deprived of the possession of any land or building by another, after the latter's right to hold possession by virtue of any contract, express or implied, has terminated.

The action is merely an ordinary action for recognition of plaintiff's preferred right to the use and occupancy of a market stall, as against the claim of the defendant, under the provisions of the Market Code and pertinent administrative regulations. Consequently, the provisions of Rule 72 of the Rules of Court on execution of judgment in ejectment cases pending appeal were held to be inapplicable.

It should be noted that the *Torres* case arose between two rival claimants to a market stall, whereas, the *City of Naga* case was between the municipal corporation, as owner of the stall, and the person occupying the stall by virtue of a contract. This circumstance may explain why in the later case it was held that the provisions on lease are applicable to the contractual relation existing between a municipal corporation and the stallholder.

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[196] G.R. No. L-5944, Nov. 26, 1954, 50 O.G. No. 12, p. 5765.
[197] G.R. No. L-1487, Jan. 23, 1948, 45 O.G. No. 7, 2876.

B. *Lessor's Obligation to Maintain the Lessee in the Peaceful Enjoyment of the Thing Leased.*

One of the obligations of the lessor is "to maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract." This is provided for in article 1654 of the new Code, formerly article 1554. Complementing this obligation of the lessor is the provision found in article 1664 of the new Code, formerly article 1560, that "the lessor is not obliged to answer for a mere act of trespass which a third person may cause on the *use of the thing leased;* but the lessee shall have a direct action against the intruder." Article 1664 clarifies the meaning of "mere act of trespass," or *perturbacion de mero hecho,* by providing that "there is a mere act of trespass when the third person claims no right whatsoever." This is an improvement on the old Code because article 1560 of the old Code did not define what "mere act of trespass" means; it simply stated that the act of any person relying upon a right is not a mere act of trespass.

In connection with the lessor's obligation to maintain the lessee in the peaceful enjoyment of the thing leased, there is a distinction between juridical disturbance (*perturbacion de derecho*) and a mere act of trespass (*perturbacion de mero hecho*). A legal trespass or juridical disturbance (*perturbacion de derecho*) refers to the acts of a person claiming a right to the thing leased, which acts prevent the lessee from enjoying it peacefully. The lessor should answer to the lessee for such acts. Thus, if a person, who disturbs the lessee in the possession of the thing leased, does so because he disputes the lessor's right to lease the thing, the trespass is a juridical one or *perturbacion de derecho.*

On the other hand, *perturbacion de mero hecho,* or trespass in fact, refers to the acts of a person, an intruder for example, who does not claim any right to the thing leased, but whose acts disturb the lessee in his use or peaceful enjoyment of the thing. In such a case the lessor does not answer to the lessee for the acts of disturbance. The lessee's remedy is a direct action against the person causing the disturbance.

This distinction was recognized in the case of *Goldstein v. Roces,*[198] where a landlord granted permission to a new tenant to take the roof off the building for the purpose of adding another story. The new tenant let the work to a contractor. During the time the roof was partially removed, rain fell and caused damage to a prior tenant leasing the lower floor of the building. It was held that the acts of the new tenant, which damaged the old tenant, did not constitute legal trespass but only trespass in fact and, therefore, the lessor was not obliged to pay the damage caused to the old tenant.

The acts of Japanese soldiers during the Japanese occupation in dispossessing a lessee of the thing leased were held to be *perturbacion*

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[198] 34 Phil. 562 (1916).

*de mero hecho* and not *perturbacion de derecho* which would render the lessor liable to the lessee.[199]

The same distinction was followed in the case of *City of Naga v. Court of Appeals and Sales*,[200] where it was held that the "contract of lease is no warranty by the lessor to the lessee that the latter will realize profits in his business venture" and that "even if the lessee should suffer losses he would still be bound to fulfill the terms of the contract." Thus, if a municipal corporation, as lessor of a market stall, delivered it to the successful bidder and maintained him in the peaceful enjoyment thereof, the lessor is not liable for damages to the stallholder, consisting in his alleged loss of profits, arising from the failure of the municipal corporation to prohibit itinerant vendors or peddlers from plying their trade on the sidewalk and alley surrounding the leased stall. This fact would not constitute a breach of the lessor's obligation to maintain the lessee in the peaceful enjoyment of the stall because the lessee has not been disturbed in his physical and material possession of the stall. The competition offered by the vendors is not a juridical disturbance (*perturbacion de derecho*) of the peaceful enjoyment of the stall leased but at most an act of mere trespass by third persons (*perturbacion de mero hecho*). The prevention of such a trespass is not included in the lessor's obligation or undertaking to maintain the lessee in the peaceful enjoyment of the stall leased to him.

C. *An Alien May Lease Private Land for 99 Years.*

In the case of *Smith, Bell & Co., Ltd. v. Register of Deeds of Davao*[201] the question was whether or not a corporation, controlled by alien stockholders, could lease a parcel of private land for a period of 25 years renewable for another 25 years, or a total of 50 years. It was contended that since aliens and alien-controlled corporations are disqualified from purchasing private lands under the doctrine of *Krivenko v. Register of Deeds* and since, according to article 1646 of the new Civil Code, those disqualified to purchase property under article 1491 of the new Code are also disqualified from leasing the same property, aliens could not lease private lands. Article 1491 provides that among those disqualified to purchase property are: "Any others specially disqualified by law."

The Supreme Court, through Mr. Justice Pablo, held that article 1491 does not apply to the disqualification of aliens to purchase lands and that under article 1643 of the new Code an alien-controlled corporation could lease a parcel of land for a period not exceeding ninety-nine

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[199] Lo Ching v. Roman Catholic Archbishop, 46 O.G. Jan. Supp. p. 399; Afoan v. Ayala y Cia, G.R. No. L-2376, June 26, 1951; Reyes v. Caltex, 47 O.G. 1193.

[200] G.R. No. L-5944, Nov. 26, 1954, 50 O.G. No. 12, p. 5765.

[201] G.R. No. L-7084, Oct. 27, 1941, 50 O.G. 5293.

years. It was noted that lease does not confer upon the lessee dominion of the leased property.

D. *Term of Lease Fixed in Final Judgment.*

Where the term of the lease was fixed in a final judgment, it can not be altered anymore by the court in a subsequent proceeding for the execution of the judgment. The effect of the lessor's acceptance of the rent for the term greater than that fixed in the judgment should be litigated in a separate action.[202]

## 21. LEASE—CONTRACT FOR A PIECE OF WORK

A. *Liability of Owner to Laborers Hired by Contractor.*

In connection with article 1729 of the new Civil Code and Act No. 3959, which makes the owner and the contractor solidarily liable for the payment of the laborer's wages, under certain conditions, it was held in the case of *David v. Cabigao and Standard-Vacuum Oil Company*[203] that if the owner did not require the contractor to execute an affidavit showing that the wages of the laborers employed in the work had been paid, said owner is solidarily liable with the contractor for the payment of the unpaid wages of the laborers, although the contractor had already been fully paid the stipulated contract price of the work performed. In the *David* case, the constitutionality of Act No. 3959 was upheld. Its provision, imposing upon the owner the obligation to require the contractor to execute a bond equivalent to the cost of labor and enjoining the same owner or builder not to pay the contractor the full amount stipulated in the contract, until he shall have shown by affidavit that he had paid the wages of the laborers, was held not to be an infringement of the owner's freedom to contract. Said provision is regarded as a legitimate exercise of the police power of the State for the promotion of the public welfare because Act No. 3959 seeks to protect the wage earners.

The facts of the *David* case are that the company engaged the services of Cabigao as contractor to build the company's service station; that Cabigao hired the plaintiffs as laborers to work in the construction of the station; and that Cabigao was fully paid for the construction of the station but he did not pay in full the wages of plaintiff artisans. Both Cabigao and the company were sued by the artisans for the recovery of their unpaid wages. It was assumed that the company had not required Cabigao to execute the bond in an amount equivalent to the cost of labor, as provided in Act No. 3959. Neither did the

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[202] Marasigan v. Ronquillo, G.R. No. L-5810, Jan. 18, 1954; 50 O.G. 606.
[203] G.R. No. L-5538, November 27, 1954, 50 O.G. No. 12, p. 5773.

company before paying Cabigao the contract price, require him to execute an affidavit that he had paid the wages of his laborers.

In view of the failure of the company to require the contractor to execute the requisite affidavit, it was adjudged solidarily liable to pay the wages of the plaintiff artisans. In passing upon the constitutionality of Act No. 3959, the court analyzed the purpose of the bond and affidavit provided for therein. The contractor's bond is required so that the owner may be reimbursed of any amount which he might be required to pay the laborers. It is not a mandatory requirement. The affidavit is required so that the owner may be relieved from any liability for the wages of the laborers, which the contractor had failed to pay. If there is a bond, the owner need not require the execution of the affidavit, since it can always seek reimbursement from the contractor's bond in the event that it should be held liable to the laborers.

If there is no bond, the solidary liability of the owner and the contractor for the wages of the laborers would arise only from the failure of the owner to require the contractor to execute the affidavit that he had paid the wages of the laborers.

Another case applying the provisions of Act No. 3959 is *Jugador v. De Vera*.[204] In this case the contractor sued the owner of the house for the recovery of the balance of the contract price. It was held that the owner could not raise the issue as to whether plaintiff contractor had complied with the provisions of Act No. 3959, because more than one year had already elapsed after the completion of the house and no claim for wages was filed against the owner of the house. Act No. 3959 provides that the contractors' bond is automatically cancelled "at the expiration of one year from the completion of the work"

## 22. Labor Law

### A. *Employer Is not Liable to Pay Workmen's Compensation for Death of Laborers of Independent Contractor.*

The case of *Philippine Manufacturing Company v. Santos Vda. de Geronimo*[205] adheres to the rule formulated in *De los Santos v. Javier*[206] that "when the Workmen's Compensation Act makes the owner of the factory the employer of the laborers employed therein notwithstanding the intervention of an independent contractor, it refers only to laborers engaged in carrying on the usual business of the factory, and not to the laborers of an independent contractor doing work separate and distinct from the usual business of the owner of the factory."

In the *Philippine Manufacturing Company* case, it appears that Eliano Garcia was engaged by the company to undertake the job of painting its tank for a stipulated price. Garcia hired Arcadio Geronimo

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[204] G.R. No. L-6398, March 30, 1954.
[205] G.R. No. L-6968, Nov. 29, 1954.
[206] 58 Phil. 82.

as laborer to paint the tank. While painting the tank, Geronimo fell and died as a result of the fall. It was held that the company was not liable to pay workmen's compensation for the death of Geronimo because he was not working for the company but for an independent contractor. Garcia, the contractor, was adjudged to pay the compensation due to the heirs of Geronimo.

## 23. PARTNERSHIP

A. *Waiver of Right to Demand Liquidation.*

"As a general rule when a partner retires from the firm, he is entitled to the payment of what may be due him after a liquidation. But certainly no liquidations is necessary where there is already a settlement or an agreement as to what the retiring partner shall receive." Where the return of the contributions of the retiring partners was understood and intended by all the parties as a final settlement of whatever rights or claim the withdrawing partners might have in the dissolved partnership, the acceptance of such payment precludes the retiring partners from later on claiming their supposed share in the profits of the firm at the time of its dissolution. This is the doctrine laid down in the case of *Bonnevie v. Hernandez.*[207]

In that case, it appears that the plaintiffs with other associates formed a syndicate or secret partnership for the purpose of acquiring the properties of the Manila Electric Company in the Bicol region. The Meralco assets were acquired by the partnership for ₱122,000 through defendant Jaime Hernandez, one of the partners, who represented the firm in the transaction. It had been intended to transfer the assets to a corporation, but before the incorporation papers could be formalized, plaintiffs with the consent of the other partners withdrew their contributions. Following the dissolution of the firm, Hernandez, as trustee, transferred the Meralco assets to a newly formed corporation at a book value of ₱365,000, and shares of stock were then issued to the subscribers on the basis of such valuation.

On the theory that Hernandez made a profit of ₱225,000 out of his assignment of the Meralco properties to the new corporation, the plaintiffs sued Hernandez, claiming the sum of ₱115,312 as their share of the supposed profits.

It was held that the action had no basis, because the alleged profit was not proved. Assuming that there was such a profit, Hernandez would not be liable to the plaintiffs because he did not receive the consideration for the assignment; the plaintiffs never asked Hernandez to liquidate the firm; and having accepted the return of their contributions, plaintiffs are precluded from claiming any share in the alleged profits of the firm at the time of its dissolution.

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[207] G.R. No. L-5836, May 31, 1954.

## 24. AGENCY

### A. *Principal Is not Bound by Agent's Act in Excess of his Authority.*

Article 1910 of the new Code provides that the principal is liable for all the obligations of the agent which he may have contracted within the scope of his authority, but not for obligations wherein the agent has exceeded his power. In the case of *City of Naga v. Court of Appeals and Sales*,[208] it was held that a city treasurer as agent of the City can not bind the latter for acts beyond the scope of his authority.

### B. *When Pacto de Retro Sale Is Within Agent's Authority.*

Where the power of attorney provides that the agent can enter into any contract concerning the land, or can sell it under any terms or conditions that he may deem fit, it undoubtedly means that he can act in the same manner and with the same breadth and latitude as the principal could concerning the property. A *pacto de retro* sale executed by the agent under such power of attorney is within the scope of his authority and is, therefore, binding on the principal.[209]

### C. *Other Rulings.*

1. The principal is under obligation to pay the stipulated compensation of the agent.[210]

2. Where an agent makes use of his power of attorney after the death of his principal, the agent should deliver the amount collected by him, by virtue of said power, to the administrator of his principal's estate.[211]

## 25. ALEATORY CONTRACTS

### A. *Condolence Contributions Are Payable to Beneficiaries Named by Member of Mutual Aid Society.*

In the case of *Southern Luzon Employees' Association v. Gulpeo*,[212] the question was whether the condolence contributions for the death of a member of a mutual aid society should be paid exclusively to the concubine and illegitimate children of the deceased member, whom he had designated in writing as the beneficiaries of such contributions, or to his legitimate wife and children, who were not named as beneficiaries.

In resolving this question it was held that the contract between the deceased member and the mutual aid society, relative to the payment of the death benefits or condolence contributions, partook of the

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[208] G.R. No. L-5944, Nov. 26, 1954, 50 O.G. No. 12, p. 5765.
[209] Amigo v. Teves, G.R. No. L-6389, Nov. 29, 1954.
[210] Mau Wu v. Sycip, G.R. No. L-5987, April 23, 1954; 50 O.G. 5366.
[211] Ramos v. Cacibes, 50 O.G. 1032.
[212] G.R. No. L-6114, Oct. 30, 1954.

nature of an insurance contract and, following the ruling in *Del Val v. Del Val*,[213] the beneficiaries named by the deceased are entitled to the condolence contributions to the exclusion of the legitimate wife and children of the deceased.

It was contended that the concubine and her children were disqualified from becoming beneficiaries because of article 2012 of the new Civil Code which provides that "any person who is forbidden from receiving any donation under article 739 cannot be named beneficiary of a life insurance policy by the person who cannot make a donation to him according to said article," and article 739 provides that a donation is void when made "between persons who are guilty of adultery or concubinage at the time of the donation."

This contention was not sustained because, according to the majority opinion, while one of the beneficiaries was the concubine, the others were the illegitimate children of the deceased, and said children are even entitled to successional rights. Three justices were of the opinion that articles 739 and 2012 of the new Code could not apply to the case, because the contract involved was perfected before the enactment of the new Code and its provisions cannot have retroactive effect.

B. *Forms of Wagering Contracts.*

A wager may take the form of a contract, called wagering or gambling contract. Contracts of this nature include various common forms of valid commercial contracts, as contracts of insurance, contracts dealing with future things, options, etc.[214]

## 25. Compromises

A. *Compromise Agreement Is Binding.*

According to article 2037 of the new Civil Code, "a compromise has upon the parties the effect and authority of *res judicata*," and under article 2038 of the same Code, a compromise can be assailed only on the grounds of "mistake, fraud, violence, intimidation, undue influence or falsity of documents." Where there is no showing that a party to an amicable settlement, which was agreed upon to terminate a pending litigation, "did not understand the terms" of the settlement or that "the facts were different from those agreed upon," the settlement must be respected and the judgment of the court based thereon should not be disturbed.[215]

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[213] 29 Phil. 534.

[214] Webster's Dict., cited in Londres v. National Life Insurance Co., G.R. No. L-5921, March 29, 1954.

[215] Sajona v. Sheriff of Manila, G.R. No. L-5603, Aug. 24, 1954.

## 26. GUARANTY

### A. *Guarantor Cannot Be Sued Without Joinder of Principal Debtor.*

Article 2058 of the new Civil Code provides that the guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor and has resorted to all legal remedies against him, and article 2066 of the same Code entitles the guarantor, who pays for the debtor, to be indemnified by the latter. In view of these provisions, it was held in the case of *World Wide Insurance and Surety Company, Inc. v. Jose*[216] that the guarantor cannot be sued alone by the creditor. The guarantor's liability is accessory and subsidiary. To render the guarantor liable, it must first be established that the principal debtor is liable and that he could not pay his liability.

In the aforementioned case, it appears that the creditor sued the guarantor and the principal debtor for rescission and for the recovery of damages occasioned by the default of the principal debtor. During the pendency of the action, the principal debtor died. Plaintiff creditor asked for the dismissal of the case against the deceased principal debtor. The trial court dismissed the case against him, leaving the guarantor as the sole defendant. Later the guarantor moved that the case against the deceased principal debtor be reinstated and that he be substituted by his widow and children. The trial court denied the motion. The guarantor brought the case on certiorari to the Supreme Court.

It was held that the case against the deceased principal debtor should be reinstated because the guarantor could not be held liable without first establishing the liability of the principal debtor. The heirs of the deceased debtor should be substituted for him.

### B. *Right of Surety to Go After Principal Debtor Even before Payment.*

Article 2071 of the new Civil Code, formerly article 1843, enumerates the instances when the guarantor may proceed against the principal debtor even before having paid the debt. In connection with article 2071, it is relevant to note the ruling in the case of *Alto Surety & Insurance Co. v. Aguilar*[217] that the surety may sue the principal debtor and the latter's counter-guarantors if the debtor is already in default, although the surety has not yet made any payment on the principal obligation.

Surety and guaranty companies usually insert in their printed form for the so-called counterbond executed by the principal debtor and his counter-guarantors a stipulation that if the principal debtor defaults in the payment of the obligation and demand is made upon the surety to make such payment, the liability of the debtor and his counter-guarantors to in-

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[216] G.R. No. L-6295, Oct. 27, 1954, 50 O.G. No. 11, p. 5287.
[217] G.R. No. L-5628, March 16, 1954.

demnify the surety shall at once accrue. This stipulation was considered valid in the *Alto* case. Thus, if the indemnity agreement or counterbond provides that the principal debtor shall indemnify the surety "as soon as demand is received from the creditor, or as soon as it becomes liable to make payment of any sum under the terms of the . . . bond, . . . *whether such sum or sums or part thereof, have been actually paid or not*," the said debtor and his counter-guarantors may be sued by the surety although no payment has as yet been made by the surety. The action in that case against the debtor would not be premature.[218]

### C. *One Judgment Against Principal Debtor and Bondsmen Is Sufficient.*

Since judicial bondsmen have no right to demand the exhaustion of the property of the principal debtor, there is no justification for entering separate judgments against them. With a single judgment against principal and sureties, the prevailing party may choose, at his discretion, to enforce the award of damages against whomsoever he considers in a better situation to pay it. This is the holding in *Del Rosario v. Nava and Alto Surety & Insurance Co., Inc.*[219]

## 27. Pledge

### A. *Loss of Pledge Does not Extinguish Principal Obligation.*

Inasmuch as pledge is an accessory contract, the loss of the thing pledged without the fault of the creditor does not extinguish the principal obligation. The loss should be borne by the pledgor since he remained the owner of the thing pledged.[220]

Where a warehouse receipt was endorsed to a creditor to secure the payment of a loan, the creditor does not automatically become the owner of the goods covered by the receipt. He merely retains the right to keep and, with the consent of the owner, to sell the goods so as to satisfy his credit from the proceeds of the sale. This is so because the transaction involved is not a sale but only a pledge. If the goods covered by the receipt were lost without the creditor's fault, the debtor would bear the loss, according to the case of *Martinez v. Philippine National Bank*.[221]

In the case of *Philippine National Bank v. Atendido, supra.*, the debtor pledged to the creditor 2,000 cavanes of palay stored in the warehouse as security for a loan of ₱3,000 payable within 120 days. The debtor indorsed in blank the warehouse receipt evidencing the deposit of the palay. Later the palay was lost. It was held that the loss of

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218 Alto Surety & Insurance Co. v. Aguilar, *supra*. Same holding in Tuason, Tuason, Inc. v. Machuca, 46 Phil. 561.

219 G.R. No. L-5513, Aug. 18, 1954.

220 Philippine National Bank v. Atendido, G.R. No. L-6342, Jan. 26, 1954.

221 G.R. No. L-4080 Sept. 21, 1953; Philippine National Bank v. Atendido, *supra*.

the palay did not extinguish the principal obligation. The palay was only given as security. The indorsement of the receipt did not transfer the ownership of the palay to the creditor, whose only right was to foreclose the pledge and cause the palay to be sold in the manner prescribed by law.

## 28. Real Mortgage

### A. *Mortgagor Must Be the Owner of the Thing Mortgaged.*

One of the essential requisites of a pledge or mortgage, according to article 2085 of the new Civil Code, formerly article 1857, is "that the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged." Applying this provision, if the property mortgaged is not owned by the mortgagor, the mortgage is void. This ruling is in consonance with the maxim *nemo dat quod non habet* and with the general principle that acts executed against mandatory or prohibitory laws are void.[222]

Does the rule apply to lands registered under the Torrens system which seeks to protect innocent transferees for value? If registered land was sold or mortgaged by a person who impersonated the real owner, is the sale or mortgage valid? The Supreme Court in the cases of *De Lara and De Guzman v. Ayroso*,[223] and *Parqui v. Philippine National Bank*[224] answered these questions by laying down certain distinctions and qualifications.

If the certificate of title was already in the name of the forger or impostor when the land was sold or mortgaged to an innocent purchaser or mortgagee, there being nothing to excite suspicion, the vendee or mortgagee has the right to rely on what appeared in the certificate of title of the vendor or mortgagor appearing on the face of the said certificate.

But, if the title was still in the name of the real owner when the land was sold or mortgaged by the impostor, although an innocent purchaser or mortgagee for value was not under obligation to inquire into the ownership of the property and go beyond what was stated in the face of the certificate of title, it was his duty to ascertain the identity of the person with whom he was dealing as well as his legal authority to effect the conveyance. That duty devolves upon all persons buying property of any kind, and one who neglects it does so at his peril.

In the latter case, according to the Supreme Court, the mortgage executed by the impostor without the consent of the real owner must be regarded as a nullity and its registration under the Land Registration Law lends it no validity because, according to section 55 of that law, registration procured by the presentation of a forged title is null

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[222] Art. 5, New Civil Code, formerly Art. 4.
[223] G.R. No. L-6122, May 31, 1954, 50 O.G. No. 10, p. 4838.
[224] G.R. No. L-6310, Nov. 26, 1954, 50 O.G. No. 12, p. 5768.

and void. It is, of course, assumed that the registered owner was not negligent or was not in connivance with the forger, or that the fraud was not made possible by the owner's act of entrusting the certificate of title to the forger. The Land Registration Law does not permit its provisions to be used as a shield for the comission of fraud.

In the case of *De Lara and De Guzman v. Ayroso, supra*, it appears that the spouses Jacinto Ayroso and Manuela Lacanilao were the registered owners of a parcel of land. The certificate of title evidencing their ownership was taken by Juliana Ayroso, daughter of Jacinto, and delivered by her to a man whose name does not appear in the record. This man, impersonating Jacinto Ayroso and accompanied by Juliana Ayroso, mortgaged the land to the plaintiffs. Juliana was known to the plaintiffs. She was a witness to the mortgage deed. Jacinto Ayroso never authorized the mortgage and did not receive any part of the mortgage loan. The paintiffs sued Jacinto Ayroso for the foreclosure of the mortgage. The question was whether the mortgage could be enforced against Jacinto Ayroso.

It was held that the mortgage was a nullity because it was executed by an impostor without the authority of the real owner of the land mortgaged. The mortgage was not enforceable against Ayroso. The title was still in the name of Ayroso, the real owner when the impostor mortgaged the land. Ayroso, the registered owner, was not negligent. The court distinguished the case from that of *De la Cruz v. Fabie*[225] where the certificate of title was already in the name of the forger when the conveyance was made, and also from the case of *Blondeau v. Nano and Vallejo*,[226] where the mortgage executed by the alleged forger was not forged at all and where the real owner was negligent.

In the case of *Parqui v. Philippine National Bank, supra*, the factual situation is somewhat more complicated than that found in the *Ayroso* case. In the *Parqui* case, it appears that Rosalio Parqui during his evacuation in 1944 deposited his certificate of title for safekeeping with Feliciana Ordoñez. After liberation he asked her to return it to him, but she replied that it was lost. In August 1950 he learned that his land, covered by said title, had been mortgaged to the Philippine National Bank and sold to the highest bidder in the foreclosure sale. Feliciana Ordoñez and Roman Oliver, impersonating Parqui, had mortgaged the land. Parqui sued the bank for the annulment of the mortgage and the foreclosure sale.

The sale and mortgage were annulled, following the ruling in the case of *De Lara and De Guzman v. Ayroso*. The failure of Parqui to send a cautionary notice to the Register of Deeds, as to the loss of his certificate, was held not to be material because the bank was not deceived by the absence of such notice.

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[225] 35 Phil. 144.
[226] 61 Phil. 625.

The ruling in the cases of *Ayroso* and *Parqui* finds sanction in the cases of *Veloso and Rosales v. La Urbana and Del Mar*,[227] and *Lopez v. Seva*.[228]

B. *Several Mortgages on Same Property.*

In *Araullo Macoy v. Vasquez Trinidad*,[229] a parcel of land became the object of *pacto de retro* sales which were found to be mortgages. The real transactions were that Pilar and Gregoria Araullo, the owners, mortgaged their land to Hermogenes Martir, who in turn mortgaged his rights first to Carmen Vasquez and then to Zacarias and Jose Jamelo. The Court ordered that the mortgage in favor of Martir should be foreclosed and that the payment to be made on account of said mortgage or the proceeds of the foreclosure sale should be applied first to the debt to Martir, then to Martir's debt to Carmen Vasquez, and then to the credit of the Jamelos.

C. *Superiority of Mortgage Credit over Refectionary Credit.*

The rule laid down in *Director of Public Works v. Sing Juco*[230] that a mortgage lien has preference over a refectionary credit (*credito refaccionario*) arising subsequent to the registration of the real mortgage was reiterated in the case of *Luzon Lumber and Hardware Company, Inc. v. Quiambao and RFC*.[231] It was also held in the *Quiambao* case that "when a mortgage is made to include new or future improvements on registered land, said lien attaches and vests not at the time said improvements are constructed but on the date of the recording and registration of the deed of mortgage."

In the *Quiambao* case, it appears that defendant spouses mortgaged their three lots to the Rehabilitation Finance Corporation (RFC) to secure the payment of a loan, which was to be spent for the construction of two buildings. The mortgage on the lots was registered on September 13, 1948. The materials used in the construction of the two buildings were bought on credit by defendant spouses from plaintiff company during the period from October 1948 to March 1949. To recover the unpaid balance of the price of the materials, plaintiff company sued defendant spouses. The RFC was joined as a party defendant after it had foreclosed the mortgage and bought the lots and buildings as the highest bidder at the auction sale.

It was held that the mortgage credit of the RFC was superior to that of the refectionary credit held by the plaintiff. The RFC loan was

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[227] 58 Phil. 681 (1933).
[228] 69 Phil. 311.
[229] G.R. No. L-6461, May 31, 1954.
[230] 53 Phil. 205.
[231] G.R. No. L-5638, March 30, 1954.

used to defray the cost of constructing the buildings, and the mortgage, by express stipulation, included all the improvements which would be constructed on the lots.

## 29. QUASI-DELICTS

### A. *No Damages Can Be Claimed if There Was no Actionable Negligence.*

The case of *Sian v. Lopez*[232] presents a situation usually found in cases of *damnum absque injuria*. The case is authority for the proposition that where a fire started from a house, whose owner had allegedly stored gasoline therein, and the fire spread to a neighbor's house, which was burned, the neighbor cannot claim damages from the owner of the house where the fire started, in the absence of allegation and proof that the method of storage of the gasoline was negligent or wrongful, and that such wrongful method of storage operated as a direct and proximate cause of the conflagration itself. The mere fact that the gasoline increased the conflagration would not of itself be sufficient. All combustible material necessarily does that. Even frame buildings, when exposed to the conflagration, aid the spreading of it to other buildings.

In the *Sian* case, it appears that fire of undetermined origin broke out in the ground floor of the two-story house of strong materials owned by Rufino Lopez; that alarm was given, but the firemen could not control the fire due to the lack of pressure at the water hydrant; and that due to the proximity of the Lopez house to that of the plaintiffs, the fire spread to the latter's house.

The plaintiffs sued Lopez for damages on the theory that the fire originated from the gasoline which was stored in the premises of the Lopez house. However, the presence of gasoline in the house was not proved. It was not illegal for Lopez to keep a car under the house, since this is allowed by the Revised Ordinance of Manila and the tanks of automobiles are specially constructed and designed to guard against the ordinary perils incident to the storage of gasoline. The case was distinguished from that of *Yu Biao and Sontua v. Osorio*.[233]

Lopez was not held liable for damages. This holding may be justified under article 1174 and 2176 of the new Code, formerly article 1105 and 1902, relative to force majeure and quasi-delicts.

### B. *Suit Based on Culpa Contractual.*

A suit for damages brought by an injured passenger against the owner of a truck wherein he was riding at the time of the accident is based on *culpa contractual* and not on *culpa aquiliana*, and, therefore,

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[232] G.R. No. L-5388, Oct. 20, 1954.
[233] 43 Phil. 511.

the dismissal of the criminal charge against the driver of the truck does not bar the said suit for damages.[234]

C. *Tortious Wrong.*

The alleged awarding of a prize in an essay contest, in violation of the rules of the contest, may constitute an actionable wrong or tortious act.[235]

## 30. DAMAGES

A. *Moral Damages Cannot Be Recovered for Mental Suffering Caused by Injury to Another Person.*

The rule in American jurisprudence that mental anguish is restricted generally "to such mental pain or suffering as arises from an injury or wrong to the person himself, as distinguished from that form of mental suffering which is the accompaniments of sympathy or sorrow for another's suffering or which arises from a contemplation of wrongs committed on the person of another," and that, consequently, "a husband or wife cannot recover for mental suffering caused by his or her sympathy for the other's suffering" was adopted in the case of *Strebel v. Figueras.*[236]

The situation in that case, which occasioned the ruling, was that plaintiff Emilio Strebel sought to recover damages from Jose Figueras, former Secretary of Labor, for having allegedly maneuvered the transfer of Doctor Manuel Hernandez, the husband of Strebel's stepdaughter, from the Bureau of Immigration to the Bureau of Prisons. The Supreme Court held that, even if such transfer were assumed to be wrong, the right of action hypothetically resulting therefrom would have accrued to Doctor Hernandez himself, who was not a party to the case, and not in favor of Strebel.

However, it should be noted that under article 2219 of the new Civil Code the parents of the female seduced, abducted, raped, or abused may recover moral damages from the offender.

B. *Moral Damages for Malicious Prosecution Perpetrated before the New Code Are not Recoverable.*

The old Penal Code punished the offense of "acusación o denuncia falsa." This offense is not punished in the Revised Penal Code. Article 2219 of the new Civil Code allows moral damages for malicious prosecution. According to the case of *Strebel v. Figueras, supra,* this provision of article 2219 does not have retroactive effect, in view of article 4 of

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[234] San Pedro Bus Line v. Navarro, G.R. No. 6291, April 29, 1954; Son v. Cebu Autobus Company, G.R. No. L-6155, April 30, 1954.

[235] Philippine International Fair, Inc. v. Ibañez, G.R. No. L-6448, Feb. 25, 1954, 50 O.G. 1036.

[236] G.R. No. L-4722, Dec. 29, 1954.

the new Code, which prohibits retroactivity of laws, and article 2257 of the same Code, which reads: "Provisions of this Code which attach a civil sanction or penalty or a deprivation of rights to acts or omissions which were not penalized by the former law, are not applicable to those who, when said laws were in force, may have executed the act or incurred in the omission forbidden or condemned by this Code."

In the *Strebel* case, plaintiff Strebel was not allowed to recover moral damages for the alleged malicious prosecution perpetrated against him by defendant Figueras in 1949, or before the effectivity of the new Code.

C. *Interest on Amounts Awarded in Condemnation Proceedings.*

In expropriation proceedings the rule as to interest is that "the owners of expropriated lands are entitled to recover interest from the date that the company exercising the right of eminent domain takes possession of the condemned lands, and the amounts granted by the court shall cease to earn interest only from the moment they are paid to the owners or deposited in court."[227]

This rule was applied in the case of *Republic v. Lara*,[228] where the land sought to be expropriated was occupied in July, 1946; the complaint for expropriation was filed on July 17, 1949; and the plaintiff deposited the amount of ₱117,097.52 in August 1949.

Under these circumstances, it was ruled that the plaintiff should pay legal rate of interest on the amounts of compensation awarded to the defendant landowners from the time the plaintiff took actual possession of their lands in July, 1946. However, the deposit of ₱117,097.52 in 1949 stopped the running of the interest with respect to the amount thus deposited.

D. *When Deposit of Amount Due Does not Relieve Debtor from Payment of Interest.*

Article 2210 of the new Civil Code, formerly article 1108, provides that "if the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon." One question which arises under this provision is whether or not there may be instances where the running of the interest is suspended. In the case of *Daguhoy Enterprises, Inc. v. Ponce*,[229] it was held that the debtor's deposit in court of the amount due would not relieve the debtor from the payment of the interest, from the time the deposit was made, if the deposit did not amount to a payment of the loan.

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[227] Phil. Railway Co. v. Solon, 13 Phil. 34; Phil. Railway Co. v. Duran, 33 Phil. 156.
[228] G.R. No. L-5080, Nov. 29, 1954, 50 O.G. No. 12, p. 5778; Republic v. Gonzalez, G.R. No. L-4918, May 14, 1954.
[229] G.R. No. L-6515, Oct. 18, 1954; 50 O.G. No. 11, p. 5267.

The factual situation, under which said ruling was rendered, is as follows: Defendant debtor was previously sued by a representative of the plaintiff creditor for the accounting of a certain loan and other amounts. Defendant debtor deposited in court by means of a check the amount of the loan plus interest. The plaintiff filed a petition in the same case for the withdrawal of the check, but the debtor refused to agree to the withdrawal.

Later, the creditor brought another suit for the recovery of the loan. The debtor was adjudged to pay the loan. It was held that the deposit in the other case of the amount of the loan did not relieve the debtor from the payment of interest because she had opposed the withdrawal of the deposit and, therefore, prevented the creditor from applying it to the payment of the loan.

The above ruling should be distinguished from the rule laid down in the case of *Gregorio Araneta Inc. v. Tuason de Paterno and Vidal*,[240] where the debtor consigned the amount due in court by means of a certified check. The consignation by means of check was void but it operated to relieve the debtor from the payment of interest. Said the Court, speaking through Justice Tuason:

> "The matter of the suspension of the running of interest on the loan is governed by principles which regard reality rather than technicality, substance rather than form. Good faith of the offerer or ability to make good the offer should in simple justice excuse the debtor from paying interest after the offer was rejected. A debtor cannot be considered delinquent who offered checks backed by sufficient deposit or ready to pay cash if the creditor chose that means of payment. Technical defects of the offer cannot be adduced to destroy its effects when the objection to accept the payment was based on entirely different grounds. Thus, although the defective consignation made by the debtor did not discharge the mortgage debt, the running of interest on the loan is suspended by the offer and tender of payment."

It is relevant to mention in this connection the ruling in another comparatively recent case, that of *Philippine National Bank v. Relativo*[241] "that the effect of a valid tender of payment is merely to exempt the debtor from the payment of interest and or damages."

E. *Attorney's Fees.*

1. If the insurance company did not act with evident bad faith in delaying the payment of the proceeds of a life insurance policy, it is not liable to pay attorney's fees.[242]

2. The inclusion of the vendor in a suit brought by the heir of the vendee against the persons seeking to deprive the heir of his title to the

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[240] G.R. No. L-2886, Aug. 22, 1952, 49 O.G. 1 p. 45.
[241] G.R. No. L-4298, Oct. 29, 1952.
[242] Chuy v. Phil.-American Life Ins. Co., 50 O.G. 3035.

property is proper and, consequently, the vendor cannot demand attorney's fees if the suit is decided in favor of the heir of the vendee.[243]

F. *Other Rulings on Moral Damages.*

1. Moral damages cannot be claimed against a city assessor who wrote to the plaintiff that the latter was delinquent in the payment of realty taxes, in the absence of an allegation in the complaint that the plaintiff was not delinquent. The alleged moral damages "are but the product of oversensitiveness."[244]

2. Moral damages were allowed in suits against a common carrier instituted by an injured passenger or by the heirs of a deceased passenger.[245]

G. *No Exemplary Damages.*

If there is no proof that a public official, like a provincial treasurer, acted in bad faith in the performance of his duties, he cannot be condemned to pay from his private funds any exemplary damages.[246]

H. *Liquidated Damages.*

In *Avecilla v. Santos*,[247] the parties to a suit involving a parcel of land agreed that the land in question should be surveyed by a private land surveyor for relocation purposes; that if the result of the survey would show that the defendants had encroached upon plaintiff's land, the defendants would surrender the land and pay the surveyor's fee plus ₱1,000 as damages; and that if the result should be otherwise, the plaintiff would pay the fees of the surveyor and damages amounting to ₱1,000.

The survey resulted in the finding that the land claimed by the plaintiff did not belong to him and was located partly in the land occupied by the defendants and partly in the portion applied for as homestead by another person. The trial court dismissed plaintiff's complaint but refused to award the defendants the damages of ₱1,000.

On appeal, it was held that the stipulation for the payment of ₱1,000 by the party whose claim was not supported by the surveyor's findings was in the nature of liquidated damages as defined in article 2226 of the new Civil Code; that, since it is a reasonable stipulation,

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[243] Mendoza v. Caparros, 50 O.G. 566.

[244] Bagalay v. Ursal, G.R. No. L-6445, July 29, 1954.

[245] San Pedro Bus Line v. Navarro, G.R. No. L-6291, April 29, 1954; Son v. Cebu Autobus, G.R. No. L-6155, April 30, 1954; Castro v. Acro Taxicab Co. 46 O.G. 2032; Leysa v. Court of Appeals, G.R. No. L-4487, Jan. 29, 1952; San Jose v. del Mundo, G.R. No. L-3450, April 28, 1952; Alcantara v. Surro, 49 O.G. 2769; Montoya v. Ignacio, 50 O.G. 108.

[246] Busacay v. Buenaventura, 50 O.G. 111; *Cf.* Festejo v. Fernando 50 O.G. 1556.

[247] G.R. No. L-6343, April 29, 1954.

it should be enforced, "and the courts have absolutely no discretion in its enforcement"; that no proof of pecuniary loss is necessary in order that liquidated damages may be adjudicated; and that there is no basis for reducing the amount of damages agreed upon, inasmuch as it was not shown to be iniquitous, unconscionable or *contra bonas mores*.

## 31. Concurrence and Preference of Credits

### A. *Credits Evidenced by Public Instruments Are Superior to Those Enforced by Attachment.*

Article 1924 of the old Civil Code provides in part as follows:

> "With respect to the other personal and real property of the debtor, the following credits shall be preferred: . . .
> 3. Credits which without a special privilege are evidenced by:
> A. A public instrument; or
> B. A final judgment, should they have been the subject of litigation.
> These credits shall have preference among themselves in the order of the priority of dates of the instruments and of the judgments, respectively."

Paragraph 3, Article 1924 of the old Code is the same as paragraph 14 of article 2244 of the new Code.

In *Rizal Surety & Insurance Co. v. De la Paz*,[248] it appears that a theater was burned and the proceeds of the insurance amounting to ₱20,000 were claimed by several creditors of the theater owner. The insurance company instituted an action for interpleader in order to determine how the insurance proceeds should be apportioned among the creditors.

It was held that the claim of the Collector of Internal Revenue for amusement taxes should be given top priority pursuant to section 315 of the National Internal Revenue Code, which makes such taxes "a lien superior to all other charges or liens not only on the property itself upon which such tax may be imposed but also upon the property used in any business or occupation upon which tax is imposed and upon all property rights therein." After the taxes, the credit evidenced by a public instrument dated May 23, 1946 should be paid; then the credit evidenced by a public instrument dated July 19, 1946; next would be the credit evidenced by a judgment which became final on September 26, 1946; and, lastly, the credit sought to be enforced by a writ of garnishment served on the plaintiff on February 5, 1947 should be paid.

The above procedure is in accordance with the doctrine of *Kuenzle & Streiff v. Villanueva*[249] that the law on attachment and the law on preference of credits may be applied together.

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[248] G.R. No. L-5463, May 26, 1954.
[249] 41 Phil. 611.

B. *Refectionary Credit.*

Under our jurisprudence, refectionary credits, as contemplated in paragraph 4, article 2242 of the new Civil Code, corresponding to paragraphs 3 and 5, article 1923 of the old Code, include "not only materials used for repair or reconstruction, but those used for new construction as well." The lien for refectionary credits is not based on the provisions found in article 2241 of the new Code, formerly article 1922, which refer to movable property. A mortgage credit is superior to a refectionary credit incurred after the registration of the mortgage.[250]

## 32. Transitional Provisions and Repealing Clause

A. *Provisions on Facultative Obligation Were Given Retroactive Effect.*

Pursuant to article 2253 of the new Civil Code, which provides that "if a right should be declared for the first time in the Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the prior legislation, provided that said new right does not prejudice or impair any vested right or acquired right of the same origin," article 1206 of the new Code, which is a new provision recognizing the validity of facultative obligations, was applied to a transaction which was perfected in 1948 or before the new Code became effective.[251] The agreement in *Quizana v. Redugerio, supra,* obligated the debtors to pay a loan on a certain date, but if no payment was made, they were given the right to execute a mortgage as security for the payment of the debt. It was noted that such an agreement was lawful.

But a claim for refectionary credit, which is provided for in the old Civil Code, cannot be considered a new right within the meaning of article 2253 of the new Code.[252]

B. *Vested Rights Contemplated in Article 2254.*

Article 2254 provides that "no vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others." According to the Code Commission, "it is evident that no one can validly claim any vested or acquired right if the same is founded upon his having violated the law or invaded the rights of others."

In the case of *Raymundo v. Peñas,*[253] it was contended that under

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[250] Luson Lumber and Hardware Company, Inc. v. Quiambao and RFC, G.R. No. L-5638, March 30, 1954.

[251] Quizana v. Redugerio, G.R. No. L-6620, May 7, 1954.

[252] Luson Lumber and Hardware Company, Inc. v. Quiambao, G.R. No. L-5638, March 30, 1954.

[253] G.R. No. L-6705, Dec. 23, 1954.

article 2254 an action for absolute divorce commenced by the wife, before the new Civil Code took effect, on the ground of concubinage, could not be maintained under the new Code, which allows only relative divorce, considering that the final judgment of conviction for concubinage, was affirmed by the appellate court only after the new Code had began to take effect. Reliance was placed on article 2254. It was argued that the wife had no vested right to ask for absolute divorce on the basis of the husband's criminal act. This argument was considered untenable. Said the Supreme Court:

> "It should be apparent, upon reflection, that the prohibition of article 2254 must be directed at the offender, not the offended party who is in no way responsible for the violation of legal duty. The interpretation adopted by the Court below results in depriving the victim of any redress because of the very acts that injured him. The protection of vested rights is but a consequence of the constitutional guarantee against deprivation of property without due process, and a violation of law by another can in no way constitute such due process."

C. *Repeal of Article 302 of the Code of Commerce.*

Article 2270 of the new Civil Code, in repealing the provisions of the Code of Commerce on agency, repealed thereby article 302 of the said Code, relative to the "mesada" or one month separation pay.[254]

However, it should be noted that Republic Act No. 1052, which took effect on June 12, 1954, restored the "mesada." Section 1 of this law provides:

> "In cases of employment, without a definite period, in a commercial, industrial, or agricultural establishment or enterprise, neither the employer nor the employee shall terminate the employment without serving notice on the other at least one month in advance.
>
> "The employee, upon whom no such notice was served, shall be entitled to one month's compensation from the date of termination of his employment."

Section 2 of the same law provides that "any contract or agreement contrary to the provisions of section 1 of this Act shall be null and void."

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[254] Lara v. Del Rosario, G.R. No. L-6339, April 20, 1954, 50 O.G. 1975.