COMMERCIAL LAW

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CORPORATION LAW

A. APPLICABILITY OF SECTION 18 OF ACT NO. 1459 TO SOCIEDADES ANONIMAS.

Prior to the enactment of Act 1459 otherwise known as the Corporation Law,[1] the Code of Commerce authorized the creation of a class of commercial associations known as "sociedades anonimas."[2] With the enactment of the Corporation Law, the provisions of this new law repealed the provisions of the Code of Commerce relative to *sociedad anonima* save only as to their application to *sociedades anonimas* organized prior to the effectivity of the Corporation Law.[3] The evident purpose in enacting the latter law was to introduce the American Corporation as the standard commercial entity and to hasten the day when the *sociedad anonima* of Spanish Law would be obsolete.[4] However, in repealing the provisions of the Code of Commerce, *sociedades anonimas* existing prior to the effectivity of the new law were allowed to continue business as such or to reform and organize under and by virtue of the new law.[5] Those which elected to continue as *sociedades anonimas* continued to be governed by the Code of Commerce in relation to their organization and method of transacting business and to the rights of members thereof as between themselves; but their relation to the public and public offi-

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[1] Act No. 1459 was approved on March 1, 1906 and took effect on April 1, 1906.

[2] Article 151 of the Code of Commerce provides for the creation of a class of commercial associations known as "sociedad anonima." Some translators of the Spanish text into English erroneously call such associations corporations.

[3] For purposes of general comparison, it maybe stated that the *sociedad anonima* is something very much like the English joint stock company with features resembling those of both the partnership and the corporation. Its affinity to the parnership is shown by the fact that sociedad, the generic component of its name in Spanish, is the same word that is used in that language to designate other forms of partnerships and in its organization it is constructed along the same general lines as the ordinary partnership. On the other hand, the affinity of this entity to the American corporation has not escaped notice and the expression *sociedad anonima* is now generally translated into English to mean corporation. See Harden v. Benguet Consolidated Mining Co., 58 Phil. 146.

[4] Harden v. Benguet Consolidated Mining Co., 58 Phil. 146 (1933).

[5] §75, of Act No. 1459 provides: Any corporation or a *sociedad anonima* formed, organized and existing under the laws of the Philippines on the date of the passage of this Act, shall be subject to the provisions hereof so far as such provisions maybe applicable and shall be entitled at its option either to continue business as such corporation or to reform and organize under and by virtue of the provisions of this Act, transferring all corporate interest to the new corporation which, if a stock corporation, is authorized to issue its shares of stock at par to the stockholders or members of the old corporation according to their interests.

cials were to be governed by the new law.[6] Under the Code of Commerce, the term of a mercantile association may be extended by the members by simply drawing up new articles and filing them with the Mercantile Registry.[7] There was some doubt as to whether or not members of *sociedades anonimas* authorized to continue business as such, can extend the period of existence of the association for a period beyond that fixed in the original articles by amending the articles of association. In the case of *Benguet Consolidated Mining Co. v. Mariano Pineda*,[8] our Supreme Court ruled that the statutory prohibition contained in Section 18 of the Corporation Law against extending the period of corporate existence by amendment of the original articles was intended to apply and does apply to *sociedades anonimas* already existing at the time of the effectivity of the Corporation Law.[9] The duration of corporate life of the *sociedades anonimas* has evident connection with its relation to the public and is not merely confined to its internal organization or method of transacting business.

In the same case, the Supreme Court denied the right of the petitioning *sociedad anonima* to reform or reorganize into a corporation under section 75 of the Corporation Law,[10] on the ground that the petitioner having elected to remain as a *sociedad anonima* during the period of its existence from 1903 to 1953, it cannot, now that its term has expired, choose to take advantage of the privilege granted by Section 75. Having made its choice, the company could not go back and seek a change of its position and adopt the reformation it had formerly repudiated. The election of one of the several alternatives provided by Section 75, once made, is irrevocable.

B. CAPACITY TO SUE AFTER TERMINATION OF CORPORATE EXISTENCE.

A corporation, after it has been dissolved, can neither sue nor be sued, and all actions or proceedings commenced by or against it prior to its dissolution are abated.[11] There must be some statutory

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[6] §191, Act No. 1459.

[7] Article 223, Code of Commerce.

[8] 58 O.G. 1961. In this case, the petitioners filed two documents for alternative registration with the SEC: (1) for extension of its term for another 50 years; and (2) for reformation and reorganization as a corporation in accordance with §75 of Act No. 1459. The SEC denied registration of both.

[9] §18, fourth paragraph, provides, among others: From the time of filing such copy of the amended articles of incorporation, the corporation shall have the same powers and it and the members or stockholders thereof shall thereafter be subject to the same liabilities as if such amendment had been embraced in the original articles of incorporation: Provided, however, That the life of said corporation shall not be extended by said amendment beyond the time fixed in the original articles.

[10] §75, Act No. 1459.

[11] In re National Surety Co. 283 NY 68; 27 NE (2d.) 505; Interstate Building and Loan Ass'n. v. Zersler, 126 N.J. Eq. 505; 10 A. (2d) 172.

authority for the prolongation or extension of its existence and capacity to sue for winding up and litigation purposes.[12] Under Sections 77 and 78[13] of the Corporation Law, corporate existence can be prolonged only for three years from and after the termination of the period fixed in the articles and only for purposes of winding up and liquidation. If the three-year period has expired, may the corporation sue and be sued as an entity? In the case of *Tan Tiong Bio v. Bureau of Internal Revenue*[14] the Court ruled that if the three-year period expired in 1951, the government can not impose a valid assessment on the corporation which no longer had a juridical personality; neither can the corporation dispute the assessment for lack of personality to sue. The government cannot insist on making a tax assessment against a corporation which ceased to exist and, at the same time, question the legality of the appeal, on the ground that the corporation has no capacity to sue because it is non-existent. Once it has ceased to exist by expiration of its term of existence, it cannot be sued; neither can it sue.[15]

C. EFFECT OF CORPORATE MERGER ON CAPACITY TO SUE.

In a strict sense, a merger is a union effected by the absorbing of one or more existing corporations by another which survives and

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[12] 36 COLUMBIA LAW REV. 320.

[13] §77 of Act No. 1459 provides:

Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established.

§78 of Act No. 1459 provides:

At any time during said three years said corporation is authorized and empowered to convey all of its property to trustees for the benefit of members, stockholders, creditors and others interested. From and after any such conveyance by the corporation of its property in trust for the benefit of its members, stockholders, creditors, and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the members, stockholders, creditors, or other persons in interest.

[14] G.R. No. L-8800, October 23, 1956. In this case, a corporation called the Central Syndicate was organized for a limited period of two years. The term expired on August 15, 1948. The three-year period for winding up its affairs expired in 1951. An assessment for deficiency sales tax against the syndicate was made by the Collector of Internal Revenue in 1954. The syndicate appealed the ruling of the Collector to the Court of Tax Appeals. The Solicitor General moved for dismissal of the appeal on the ground that the syndicate no longer had the capacity to sue because its term has expired.

[15] However, the same Court allowed the substitution of officers of the defunct corporation in order to avoid evasion of a tax statute on the ground that the assessment, if sustained, would make the officers personally liable as successors in interest to the corporate property.

continues the combined business.[16] Legislative authority is, however, essential to a corporate merger because it involves fundamental changes in the charter, in the share contracts and in the rights of creditors.[17] The legislature has the power to merge or consolidate corporations under its reserved power to alter, repeal and amend charters of corporations previously existing as well as to future corporations.[18] In merger, the corporations make a complete substitution of the surviving corporation (mergee) for all the rights and liabilities of the merged (absorbed) corporation and involves a compulsory novation on the part of the creditors.[19] In the case of *Land Settlement and Development Corporation v. Plinio Gaston*[20] the primary issue raised by the facts was: whether, in the merger of two corporations, the surviving corporation may sue on a contract entered into between the merged corporation and the defendant. The Supreme Court held that the plaintiff corporation (surviving) had legal capacity to sue upon the contract entered into between the defendant and the defunct corporation (merged) because all the assets, liabilities, contracts, etc. of the merged corporation were, in the process of merger pursuant to law, transferred to the plaintiff corporation.

D. GOVERNMENT OWNED OR CONTROLLED CORPORATIONS ARE NOT EXEMPT FROM PAYMENT OF LEGAL FEES.

The primary issue raised in the case of *Leopoldo Bacani, et al. v. National Coconut Corporation, et al.*[21] was whether or not the National Coconut Corporation is exempted from payment of stenographer's fees for copies of transcript of stenographic notes. In denying exemption of the NaCoCo, the Court held that the exemption clause prescribed by Rule 130 of the Rules of Court refers only to those government entities through which the functions of the government are exercised as an attribute of sovereignty. These refer, in partic-

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[16] Alabama Power Co. v. McNinch, 68 App. D. C. 132, 94. F. (2d.) 601; Metropolitan Edison Co. v. Com. of Internal Revenue, 261 NY 6; ALR 594. The surviving corporation might well be designated as the "mergee" corporation. See BALLANTINE 681.

[17] William Riker & Son Co. v. United Drug Co., 79 N.J. Eq. 580; 82 A. 930.

[18] 15 FLETCHER, Secs. 7049-7050. See Article XIV, Section 8, Constitution of the Philipipnes.

[19] Dewing, Financial Policy of Corporations 912 (4th Ed.). 45 YALE LAW JOURNAL 105.

[20] G.R. No. L-8938, October 31, 1956. In this case, the defendant purchased on installment a tractor from the Agricultural Machinery and Equipment Corporation. This corporation was merged with the plaintiff corporation by authority of Rep. Act No. 422—authorizing the President of the Republic to reorganize, among others, corporations owned or controlled by the government. After reorganization, the Agricultural Machinery and Equipment Corporation was reduced to a mere department in the plaintiff corporation, the surviving corporation.

[21] G.R. No. L-9657, Nov. 29, 1956.

ular, to municipal corporations. They do not include government entities which are given corporate personality separate and distinct from the government and which are governed by the Corporation Law.

E. FOREIGN EXCHANGE DEFINED.

Is a sale of shares of stock of a domestic corporation belonging to a non-resident to one who is a resident of the Philippines a transaction dealing in foreign exchange? In the case of *Robert Janda, in his capacity as administrator of the Estate of Wurdeman v. Lepanto Consolidated Mining Co.*,[22] our Supreme Court held that such a sale of shares is not a transaction involving foreign exchange. Foreign exchange, according to the Court, is that conversion of an amount of money or currency of one country into an equivalent amount of money or currency of another. By the sale of shares, dividends declared from time to time by domestic corporation accruing and payable to the non-resident before the sale, part of which could only be remitted to him as provided by Central Bank regulations will no longer accrue and be payable to non-residents but to the resident purchaser. The reason for remitting currency abroad has disappeared.

F. FOREIGN CORPORATION PAYING CLAIMS IN THE PHILIPPINES ON POLICIES TAKEN ABROAD IS NOT DOING BUSINESS.

In the case of *Good Morning Company and Agricultural Insurance Co. v. Macondray and Co. & Philippine Ports Terminal*,[23] the defendants assailed the legal capacity of the insurance company to sue on the ground that being a foreign corporation it was engaged in business in the Philippines without a corresponding license. Under our law, a foreign corporation doing business in the Philippines without a license may not, by itself or by assignee, sue in any court to enforce a debt, claim or demand.[24] The defendant contended that inasmuch as the foreign insurance company maintained a settling agent in Manila, who took charge of processing and paying claims

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[22] G.R. L-6930, May 25, 1956.

[23] Court of Appeals, 52 O.G. No. 13, 5887.

[24] Section 69, Act 1459 provides:

No foreign corporation formed, organized, or existing under any others than those of the Philippines shall be permitted to transact business in the Philippines or maintain by itself or assignee any suit for the recovery of any debt, claim or demand whatever, unless it shall have the license prescribed in the section immediately preceding. Any officer, or agent of the corporation or any person transacting business for any foreign corporation not having the license prescribed shall be punished by imprisonment for not less than six months nor more than two years or by fine of not less than two hundred pesos nor more than one thousand pesos, or by both such imprisonment and fine, in the discretion of the Court.

on insurance certificates issued by the insurer abroad, the insurance company is actually doing business in the Philippines.[25] In denying the contention of the defendant, the Court held that the mere act of an insurance company in collecting money does not necessarily constitute "doing business" in the Philippines. "A foreign insurer is doing business in a state where, *in addition to other acts and transactions within the state,* it also pays insurance losses therein."[26] Payment alone does not constitute doing or engaging in business. The Court was, however, careful in pointing out that no general rule or governing principle can be laid down as to what constitutes "doing business in or transacting business." Each case must be judged in the light of its own peculiar circumstances.

In the same case above mentioned,[27] the Court upheld the right of the insurance company who had paid the loss, to be subrogated to the claims of the insured against the wrongdoer who caused the loss.[28] The right of the insurance company to subrogation is not affected by the fact that the insurer is a foreign corporation because the insurer is "merely standing in place of the insured, to enforce a duty the person causing the loss owes the insured."[29]

INSURANCE

A. CONTRACT IS ONE UBERRIMAE FIDEI.

In the case of *Qua Chee Gan v. Law Union and Rock Insurance* Co., Ltd.,[30] the Supreme Court discussed the nature of an insurance contract. It is, according the court, a contract of perfect good faith not for the insured alone, but equally so for the insurer; in fact it is more so for the latter, since its dominant bargaining position carries with it greater and stricter responsibility. It is a contract of adhesion in which the insured's participation is reduced to the alternative "take it or leave it", in contrast to those entered into by parties bargaining on an equal footing, and therefore calls for greater strictness and vigilance on the parts of the courts of jus-

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[25] The defendant cited the case of Gen. Corporation of the Philippines and Mayon Investment Co. v. Union Ins. Society of Canton, Ltd., G.R. No. L-2684, Sept. 1950. It appears, however, that in this case, the foreign insurance corporation issued regularly marine insurance certificates to cover shipments to and made them payable in the Philippines; it appointed agents in the Philippines to process and pay claims; and it actually applied for and was granted a license. On these facts, the Court held that the foreign insurance corporation was actually 'doing business" in the Philippines.

[26] The Court cited 137 A.L.R. 1140 and the cases cited therein.

[27] Good Morning Company & Agricultural Insurance Co. v. Macondray & Co., 52 O.G. No. 13, 5887.

[28] 8 COUCH, CYCLOPEDIA OF INSURANCE LAW, Sec. 1997, p. 6593. See also Article 2207, Civil Code, on the right of the insurer to be subrogated to the rights of the insured in case of fire policies.

[29] Phoenix Ins. Company v. Penn Company, 33 NE 971.

[30] 52 O.G. No. 4, 1983.

tice with a view to protecting the weaker party from abuses and imposition, and prevent its becoming a trap for the unwary. Any ambiguity therefore in the terms of the contract must be held strictly against the insurer and liberally in favor of the insured, specially to avoid a forfeiture.[31]

B. WHEN INSURER IS BARRED FROM CLAIMING BREACH OF WARRANTY.

In the same case of *Qua Chee Gan*, the insurance company claimed a breach of the fire-hydrant warranty under which the insured was supposed to have eleven fire hydrants in the insured premises. It was however shown that the insurer was well aware of the fact that there were only two hydrants therein. The Court, citing authorities, held that where the insurer, at the time of the issuance of a policy of insurance, has knowledge of existing facts which, if insisted on, would invalidate the contract from its very inception, such knowledge constitutes a waiver of conditions inconsistent with the known facts, and the insurer is estopped thereafter from asserting the breach of such conditions. The reason, according to the court, is not difficult to find. To allow a company to accept one's money for a policy of insurance which it then knows to be void and of no effect, though it knows as it must, that the assured believes it to be valid and binding, is so contrary to the dictates of honesty and fair dealing, and so closely related to positive fraud, as to be abhorrent to fairminded men.[32]

C. WHEN AN ERRONEOUS CLAIM OF LOSS AVOIDS THE POLICY.

To avoid an insurance policy, the claim of loss filed by the insured must contain false and fraudulent statements with intent to defraud the insurer, and in the absence of such intent, there can be no fraudulent claim as to bar recovery, for valuations may differ honestly, without fraud being involved. This was the ruling in the case of *Qua Chee Gan v. Law Union and Rock Ins. Co., Ltd., supra.*

D. RIGHT OF REINSTATEMENT IN LIFE INSURANCE—PROOF OF INSURABILITY.

The case of *Belen T. Bañas v. Angel Bañas v. Occidental Life Ins. Co.*[33] decided last year by the Court of Appeals, is one of

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[31] In this case, one of the insurer's contentions was that there was a forfeiture of the fire policy because there was a breach of warranty of the clause which prohibits the storage of oils (animal and/or vegetable and/or mineral and/or their liquid products). The insured allegedly stored gasoline in the insured premises. The Court held that "oils" does not include "gasoline" but only lubricants.

[32] The court cited Wilson v. Commercial Union Assurance Co. 96 Atl. 540, 543-544.

[33] 52 O.G. No. 13, 5898, decided by the Court of Appeals. The case is discussed in this survey although it is not a Supreme Court decision because it involves a significant issue and is a case of first impresion.

first impression. The defendant company issued a policy on the life of the plaintiff, who was a married woman. The policy lapsed for non-payment of premiums, but within the period allowed by law[34] plaintiff applied for reinstatement thereof. The company refused to reinstate the policy unless the insured paid a higher rate of premium, contending that since the insured was pregnant at the time of the reinstatement application the risk of insuring her life had increased. It was admitted however that she was in good and sound health. The Court of Appeals, in giving judgment in favor of the plaintiff, held that since the plaintiff fulfilled all the conditions set forth by Section 184, paragraph *j* of the Insurance Act,[35] she had a right to have her policy reinstated at the original premium rate.[36] In reaching this conclusion, the Court discussed the meaning of "insurability" as used by the law in requiring "evidence of insurability satisfactory to the company" before reinstatement may be granted. "Insurability" according to the court, is not more comprehensive than the term "good health". Therefore, if the insured is in good health at the time of his application for reinstatement, he has a right to such reinstatement.[37] And the terms thereof will be based on the original contract because it is not a new contract but merely a revival of the

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[34] Within three years from default. See §184-J Insurance Act, not 35 infra.

[35] §184-J provides:

"Hereafter, no policy of insurance shall be issued or delivered within the Philippine Islands unless in the form previously approved by the Insurance Commissioner. In the case of life or endowment insurance, the policy shall contain in substance the following provisions:

(j) A provision that the holder of a policy shall be entitled to have the policy reinstated at any time within three years from the date of default unless the cash value has been duly paid, or the extension period expired, upon the production of evidence of insurability satisfactory to the company and the payment of all overdue premiums and any other indebtedness to the company upon said policy with interest at a rate which shall be stipulated in the policy and not exceeding ten percentum per annum, payable monthly."

[36] In the case of McGuire v. Manufacturers' Life Ins. Co. 48 O.G. 114, it was held that reinstatement is not a right but a matter of discretion on the part of the company. The case may be distinguished from the Bañas case in that in the former the insured had not even applied for reinstatement, much less offered to pay the back premiums.

[37] This is contrary to the prevailing view in the United States under which the company may inquire into matters other than the health of the applicant. The applicant may be in perfect health but if at the time of his application for reinstatement he is for instance engaged in a much more hazardous job than he had at the time he took the original policy, then the company is justified and, in all fairness, should be allowed either to refuse reinstatement or to demand a higher premium. Our own law (see Section 148-j, note 35 supra) uses the words "evidence of insurability satisfactory to the company"—thus implying that the company has a certain amount of discretion in disallowing an application of reinstatement. Of course, the company cannot be arbitrary in its action, and in the final analysis, the consideration of whether there is evidence of insurability satisfactory to the company or not will be addressed to the discretion of the court. Our Court of Appeals has therefore adopted the minority view.

old policy. Therefore, the court concluded, the company cannot change the rate of premium without the consent of the insured.[38]

NEGOTIABLE INSTRUMENTS

A. LIABILITY OF CO-MAKER OF A NOTE.

Where an instrument containing the words, "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.[39] This rule was applied by the Supreme Court in the case of *Philippine National Bank v. Teodoro Santos*,[40] where it was held that each of the persons so signing is jointly and severally liable for the full face value of the note. A co-maker, therefore, who signs with another a negotiable promissory note containing the words, "I promise to pay", is liable individually for the full amount stated in the note.

B. IMPLIED ACCEPTANCE OF A CHECK.

Section 132 of the Negotiable Instruments Law provides that the acceptance of a negotiable instrument "must be in writing and signed by the drawee." Except in cases of "constructive acceptance"[41] the law is explicit in that, a valid acceptance must be in writing and signed by the drawee. Although the uniform view in the United States is that only a written acceptance will be binding,[42] our Supreme Court is inclined to a different view. In the case of *Violet McGuire Sumcad v. Province of Samar and Philippine National Bank*,[43] the Court held that the defendant bank was liable on the check drawn against it because by its acts, it had impliedly accepted the same. The Court, however, held that the defendant bank was merely subsidiarily liable on the check while the drawer (Province of Samar) is primarily liable on the same.[44]

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[38] The Court, in holding that pregnancy is not a bar to reinstatement, took into consideration the fact that when he original policy was issued, the insured was a married woman, and in fixing the premium, the insurer must have taken into account the fact that in the future she would in all probabilities become pregnant.

[39] Section 17, paragraph 7, Negotiable Instruments Law.

[40] 52 O.G. No. 10, 4695.

[41] Section 137 of the Negotiable Instruments Law provides:

Where the drawee to whom a bill is delivered for acceptance destroys the same or refuses within 24 hours after such delivery, or within such other period as the holder may allow, to return bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

[42] See discussion of Prof. Vance, HANDBOOK OF THE LAW OF BILLS AND NOTES 809 and the cases cited therein.

[43] 52 O.G. No. 18, 7582.

[44] The facts of the case are as follows: The Province of Samar issued a check in favor of the postmaster of Borongan, Samar, drawn against the PNB. The payee negotiated the check to James McGuire, about four years later, i.e., in 1946. The PNB did not pay the check to the holder but on April 25, 1950, it requested the Bureau of Posts to furnish it with photostatic copies of the same. At this time, Samar had still sufficient money deposited with the PNB to cover

CHATTEL MORTGAGE

A. REGISTRATION IS ESSENTIAL FOR VALIDITY OF CHATTEL MORTGAGE.

Prior to the adoption of the new Civil Code[45] a chattel mortgage maybe constituted in two ways, namely: (1) by delivering possession of the property to the mortgagee; and (2) by having the deed of mortgage recorded in the proper office of the Register of Deeds.[46] A chattel mortgage not so constituted is not valid against any person not a party to the deed; but as to immediate parties, the chattel mortgage is nevertheless valid even though not registered.[47] This concept of a chattel mortgage is now modified by Article 2140[48] of the new Civil Code which provides for one mode of constituting a valid chattel mortgage — that is, by recording the deed of mortgage in the Chattel Mortgage Registry as a security for the performance of a principal obligation. A doubt, however, arises as to whether under Article 2140 an unregistered chattel mortgage is still valid as between the immediate parties. In the case of *Deogracias F. Malonzo v. Luneta Motor Co., et al.*,[49] the Court of Appeals

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the check. On May 14, 1950, after receiving the photostats, the bank requested the holder to present the check to the provincial treasurer and the provincial auditor for certification. The holder complied with this, but before the check could be certified, the Province of Samar (the drawer), withdrew all its deposits with the bank. Under this set of facts, the court held that there was an implied acceptance of the check. Presumably, the court decided the case on general principles of contracts. However, the Negotiable Instruments Law being a special law, should prevail over the general law on contracts. And since under the former, an acceptance must be in writing, an implied or even an express oral acceptance is not sufficient.

If the drawee bank was considered by the court to have impliedly accepted the check, then such bank should have been held primarily liable as an acceptor, and not merely subsidiarily liable. An acceptor of a negotiable check is the party primarily liable thereon. A drawer, on the other hand, is only conditionally and secondarily liable. See §§61 and 62, NIL.

[45] Rep. Act No. 386, which took effect in 1950.

[46] §4 of Act No. 1508, otherwise known as the Chattel Mortgage Law, provides:

A chattel mortgage shall not be valid against any person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the Register of Deeds of the province in which the mortgagor resides without the Philippine Islands, in the province in which the property is situated: Provided, however, That if the property is situated in a different province from that in which the mortgagor resides, the mortgage shall be recorded in the office of the Register of Deeds of both the province in which the mortgagor resides and that in which the property is situated, and for the purposes of this Act the City of Manila shall be deemed to be a province.

[47] §4 of Act No. 1508, *supra*.

[48] Article 2140 of the new Civil Code, provides:

By a chattel mortgage, personal property is recorded in the Chattel Mortgage Register as a security for the performance of an obligation. If the movable, instead of being recorded, is delivered to the creditor or a third person, the contract is a pledge and not a chattel mortgage.

[49] 52 O.G. No. 12, 5566. This is a Court of Appeals case. However, on account of the construction placed by the Court on Article 2140 of the new Civil Code in relation to §4 of Act No. 1508, the author deems it proper to include this case in the annual survey.

ruled that "registration is an essential requisite for validity of the chattel mortgage." Article 2140 gives the concept of a valid chattel mortgage. The Court further clarified the meaning of registration by holding that the registration spoken of in Article 2140 is registration in those chattel mortgage registries specified by Section 4 of the Chattel Mortgage Law.[50]

In another case, *Associated Ins. & Surety Co. v. Lim Ang, et al.*[51] the Supreme Court held that recording of the deed of chattel mortgage in the Chattel Mortgage Registry is indispensable.[52] Mere inscription in the Day Book is not sufficient to constitute a valid chattel mortgage.

TRADEMARKS

A. FAILURE TO OPPOSE REGISTRATION OF TRADE MARK DOES NOT BAR PETITION FOR CANCELLATION OF THE SAME.

Can a party, who fails to oppose the petition for registration of a trademark, subsequently file a petition for cancellation of the trademark after it has been registered? In the case of *Anchor Trading Co., Inc. v. Director of Patents,*[53] the respondent failed to press his opposition to the registration of a trademark instituted by petitioner because of failure to pay the required filing fee in due time. In a subsequent petition for cancellation of the trademark filed by the respondent, the petitioner-registrant contended that the respondent was estopped, by his failure to file his opposition, to institute the petition for cancellation. The Court, in giving course to the petition for cancellation, held that the opposition to a registration and the petition for cancellation are merely intended as alternative proceedings which a party may avail of according to his own needs.[54] The only consequence resulting from the filing of an opposition to an application for registration of a trademark is his relinquishment of the privilege given to him by law to object to such registration, but such cannot prevent him from asking later for its cancellation when in his opinion there are good grounds justifying it.[55]

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[50] So that where the law indicates that the deed of Chattel Mortgage must be registered in two registries, the deed of Chattel Mortgage must be registered in both in order that the chattel mortgage might exist.

[51] 52 O.G. No. 11, 5218.

[52] See §15 of Act No. 1508.

[53] G.R. No. L-8004, May 30, 1956.

[54] Quoting from William Oil-O-Matic Corporation v. Butler, 15 USCA 93.

[55] This can be clearly inferred from §17 of Rep. Act No. 166. Said section set the grounds for the cancellation of a certificate of registration and, as maybe noted, some of those grounds refer not only to events that might arise after registration but even to those that were already existing before it.

INSOLVENCY LAW

A. LIABILITY OF A PERSON WHO DISPOSES OF PROPERTY OF THE INSOLVENT IN BAD FAITH.

If a person, cognizant of the impending insolvency of another, disposes of property in his possession belonging to the latter, in bad faith, in order to give preference to one creditor, is he liable to the assignee in insolvency thereafter appointed by the creditors? In the case of *Alfredo M. Velayo, in his capacity as assignee of the insolvent, Commercial Airlines, Inc. v. Shell Company of the Philippine Islands, Ltd.*,[56] the Supreme Court, applying section 37 of the Insolvency Law,[57] held the defendant liable to the assignee for damages in a sum double the value of the property disposed of. The Court found the defendant guilty of the act or acts mentioned in Section 37 for effecting, in bad faith and in breach of trust and confidence of the insolvent's creditors, a hasty telegraphic transfer of the credits of the insolvent to one creditor, in order to give preference to the latter. The Court further held that the assignee under Section 33 of the Insolvency Law, has the personality and authority to institute this case for damages, because he represents the insolvent as well as the creditors.[58]

TRANSPORTATION

A. COMMON CARRIERS IN GENERAL.

1. *Duty to exercise diligence in performing contract.*

Both under the New Civil Code[59] and under the Code of Commerce,[60] a common carrier is duty bound to exercise diligence[61] in the transportation of goods or passengers, and failure to do so will render the common carrier liable for damages. The burden of prov-

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[56] G.R. No. L-7817, Oct. 31, 1956.

[57] §37 of the Insolvency Law provides:

If any person, before the assignment is made, having notice of the commencement, embezzles or disposes of any of the moneys, goods, chattels, or effects of the insolvent, he is chargeable therewith, and liable to an action by the assignee for double the value of the property so embezzled or disposed of, to be received for the benefit of the insolvent's estate.

[58] See Hunter, Kerr & Co. v. Samuel Murray, 48 Phil. 449; Chartered Bank of India v. Imperial, 48 Phil. 931; Asia Banking Corporation v. Herridge, 45 Phil. 527.

[59] Articles 1734-1735.

[60] Articles 361-363.

[61] Under Articles 1735 and 1755 of the new Civil Code, the degree of diligence required is extraordinary and not merely the diligence of a good father of a family as required by the Code of Commerce. To this extent, the new Civil Code provisions modify the Code of Commerce provisions as far as common carriers are concerned.

ing such diligence is, except in certain specified cases,[62] on the carrier. Should the carrier defend on the ground of fortuitous event or *force majeure,* the burden of proving such is on the carrier. In the case of *Standard Vacuum Oil Co. v. Luzon Stevedoring Co.*,[63] the Supreme Court held that after the shipper has proved the delivery to the carrier of the merchandise in good condition and its non-delivery at the place of destination, the burden of proof is on the carrier to show that the loss was due not to his negligence but to some accident for which the law will excuse him.[64]

2. *Nature of liability of common carrier.*

The liability of a common carrier to the shipper of goods and to its passengers is based on the contract of transportation and not on tort. It is for this reason that the defense of due diligence in the selection and supervision of its employees is not available to a common carrier when the action is brought by its shippers or its passengers.[65] The negligence of the driver is conclusively the negligence of the carrier. Should the negligence of the driver result in injuries or death to any of its passengers, there is a breach of the carrier's contractual obligation to carry its passengers safely to their destination. In such a case, as held by our Supreme Court in the case of *Medina v. Cresencia*,[66] the registered owner of the vehicle concerned is liable to the heirs of the deceased passenger, regardless of the fact that such owner was not actually the employer of the driver, because the liability is based not on the employer's subsidiary liability under the Revised Penal Code, but on the contract of carriage.[67] For the same reason, the court pointed out, there is no need of first proving

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[62] Article 1735, new Civil Code enumerates these exceptions:
"(1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;
(2) Act of the public enemy in war, whether international or civil;
(3) Act or omission of the shipper or owner of the goods;
(4) The character of the goods or defects in the packing or in the containers;
(5) Order or act of competent public authority."

[63] G.R. No. L-5203, April 18, 1956.

[64] In this case, the court noted the following circumstances showing lack of diligence on the part of the carrier: the tugboat used was acquired from the Foreign Liquidation Administration as surplus property and was not dry-docked properly. It was not provided with the requisite equipment to make it seaworthy. There was a deficiency in the man power of the tugboat and the crewmen were incompetent.

[65] Cangco v. Manila Railroad Co., 38 Phil. 768; De Guia v. Manila Electric Railroad and Light Co., 40 Phil. 706.

[66] G.R. No. L-8194, July 11, 1956.

[67] In this case, the passenger jeepney concerned was registered in the name of Cresencia but was sold by the latter to Avorque without the approval of the Public Service Commission, and as far as the records were concerned, the owner was still Cresencia. But the driver who caused the injury was hired after the sale, and therefore the employer of said driver was Avorque and not Cresencia. The driver was convicted in the criminal action.

the insolvency of the driver before damages can be recovered from the carrier, for in *culpa contractual,* the liability of the carrier is not merely subsidiary or secondary, but direct and immediate.[68]

Consistent with this principle, there is no need of suspending the civil case for damages against the carrier until the final decision of the criminal case against the guilty driver, since the civil action is based on the alleged breach of contractual relation between the passengers and the owner and operator of the vehicle, and is independent of the criminal responsibility which may exist under the Revised Penal Code. This was the ruling in the case of *Bisaya Land Transportation Co. v. Mejia.*[69]

3. *Bills of lading not confined to maritime transportation.*

In the case of *Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue,*[70] the defendant collector levied the documentary stamp tax on freight receipts issued by the plaintiff, a common carrier engaged in transporting passengers and freight *by land.* The plaintiff contended that freight receipts are not bills of lading, presumably in the belief that the latter are issued only by vessels. In setting aside this contention, the Supreme Court held:

> "...Bills of lading, in modern jurisprudence, are not those issued by masters of vessels alone; they now comprehend all forms of transportation, whether by sea or land, and includes bus receipts for cargo transported."

B. ADMIRALTY.

1. *Martime tort.*

The collision between two vessels due to the fault or negligence of one or both of them is a maritime tort and not a civil tort. In the case of *Manila Steamship Co., Inc., v. Abdulhamaan & Lim Tong Ho,*[71] the Supreme Court had occasion to distinguish the effects of these two kinds of tort. In the case of civil tort, the defense of due diligence in the selection and supervision of employees is a defense which the employer may prove to exempt him from liability for the fault or negligence of his employees. This defense is not available in martime tort because, according to the court, the language of Article 827 of the Code of Commerce[72] in making vessels solidarily

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[68] The court cited Articles 1755, 1756 and 1759 of the new Civil Code.
[69] G.R. Nos. L-8830, 8837-39, May 11, 1956.
[70] G.R. No. L-6741, January 31, 1956.
[71] G.R. No. L-9534, Sept. 29, 1956.
[72] This article provides: "If the collision is imputable to both vessels, each one shall suffer its own damages, and both shall be solidarily responsible for the losses and damages occasioned to their cargoes."

liable for damages emphasizes the direct nature of the responsibility of the shipowners. If the rule were otherwise, shipowners would be able to escape liability considering that the qualifications and licensing of ship officers are determined by the state and that vigilance over the officers and crew of vessels at sea is practically impossible.[73]

2. *Effect of sinking of ship due to collision.*

In a collision is due to the negligence of one vessel, the owner thereof is civilly liable for all damages arising out of the collision.[74] If the collision is due to the fault of both vessels then the owners of both vessels are solidarily liable for all such damages.[75] But this civil liability of shipowners arising from collision is limited to the value of the vessel with all its appurtenances and freightage earned during the voyage.[76] It is a well-settled rule, therefore, that should the vessel sink or should it be totally lost, the civil liability of the owner of the guilty vessel or vessels is extinguished,[77] unless the ship is covered by insurance. In the latter case the proceeds of said insurance is regarded as substitute for the vessel, and the owner's responsibility subsists to the extent of the insurance collected.[78] In the case of *Manila Steamship Co. v. Abdulhaman, supra,* the court noted that this rule is in consonance with the rules prevailing in other maritime jurisdictions, and citing some authors,[79] gave the reason for the rule: That harshness and injustice to the shipowner would result if the rule were otherwise, because a shipowner has practically no control over the conduct of the captain and the crew while the vessel is at sea. However, the Supreme Court, also in accordance with said authorities, laid down one exception to this rule limiting th shipowner's liability to the value of the ships, its appurtenances and freightage. Should the shipowner *himself* be at fault and should thereby deliberately increase the risk to which the passengers and cargo aboard the ship would be subjected, the sinking of the ship will not extinguish the shipowner's liability. Thus, should the shipowner hire a master or a captain who is not

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[73] The Court distinguished this case from the case of *Walter S. Smith v. Cadwalluder Gibson Lumber Co.*, 55 Phil. 517. According to the court, the latter case involved a civil tort and not a maritime tort because the collision was not between two vessels at sea. The vessel in question was maneuvering to moor at plaintiff's wharf, and while so doing struck said wharf. The court absolved the defendant owner of the ship because it proved due diligence in the selection and supervision of the captain.

[74] Article 826 Code of Commerce.

[75] Article 827 *id.*

[76] Article 837 *id.*

[77] Philippine Shipping Co. v. Vergara Garcia, 6 Phil. 282; Chin Cuan v. Cia. Maritima, 66 Phil. 608.

[78] Urrutia & Co. v. Baco River Plantation Co., 26 Phil. 632.

[79] I FARIÑA, DERECHO COMMERCIAL MARITIMA 122-23, II DANJON, DERECHO MARITIMA 332.

properly qualified and not duly licensed by the state, he cannot plead the loss of the vessel as a defense to an action for damages arising from the collision. To limit liability in such a case, according to the court, is to erase all differences between compliance with the law and deliberate disregard thereof. The reason for the rule of limitation of liability as stated above, would not be present.

C. PUBLIC SERVICE ACT.

1. *Jurisdiction of Public Service Commission over vessels.*

The Public Service Commission exercises jurisdiction, supervision and control over all public services.[80] The law in defining "public service" includes steamboat, steamship line, ferries and small water craft.[81] However, the law also provides that the Commission shall have no authority to require steamboats, motorships and steamboat lines to obtain certificates of public convenience nor to prescribe their routes or definite lines of service.[82] Under these provisions, it has been previously held that the Public Service Commission's jurisdiction over vessels is limited to the fixing of freight and rates.[83] The case of *Javellana v. Public Service Commission*[84] involved the transportation of passengers and cargo between Batangas and Mindoro. The first question which the Supreme Court had to decide was whether the service was a ferry service or not. If it were, the Commission would have complete jurisdiction over it. If it were not ferry service but one involving interisland trade, then the Commission would be limited in its jurisdiction because then the craft used would be considered as "steamboat, motorship or steamship lines" and thus under the jurisdiction of the Bureau of Customs. The court ruled that ferry service is the "service either by barges or rafts, even by motor or steam vessels, between the banks of a river or stream to continue the highway which is interrupted by that body of water or in some cases to connect two points on opposite shores of an arm of the sea such as a bay or a lake which does not involve too great a distance or service which involves crossing open sea...." Accordingly, the court held that the service in question could not be considered a mere ferry service because the waters separating Batangas and Mindoro cover a considerable distance and are known to be quite rough.

The next question which the Court had to determine was the extent of the Commission's jurisdiction over the vessel in question.

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80 See §13(a) Com. Act No. 146, as amended, otherwise known as the Public Service Act.
81 See §13(b) *id.*
82 See §13(a) *id.*
83 Siochi Transportation Co. v. Public Service Com., 66 Phil. 91.
84 G.R. No. L-9088, April 28, 1956.

The court held that the public services "over which the Public Service Commission has jurisdiction, supervision and control now includes steamboat, motorship and steamship line except that as regards steamboat, motorship and steamship line, the commission cannot require them to obtain certificate of public convenience or to prescribe their respective routes or lines of service." However, the court concluded, the commission may prescribe their schedule of trips and passenger and freight rates.

2. *When certificate of public convenience granted.*

Under the law, a certificate of public convenience will be granted only if the operation of the service applied for will promote the public interests in a proper and suitable manner.[85] The promotion of public convenience therefore is the primary consideration for the granting of such certificate.[86]. This principle was reiterated in the following cases: *Laguna Tayabas Bus Co. & Batangas Transportation Co. v. Pabalan,*[87] *Bacolod Ice & Cold Storage v. Negros Ice & Cold Storage,*[88] *Red Line Transportation Co., Inc. v. A. Ascano,*[89] *Raymundo Transportation Co., Inc. v. v. Cerda,*[90] *Saulog Transit Inc. v. Medina,*[91] and *Victory Liner Inc. v. Saulog Transit.*[92]

3. *When "protection of old operator" doctrine not applicable.*

The "old operator" doctrine is to the effect that so long as the present operator keeps and performs the terms and conditions of its license and complies with the reasonable rules and regulations of the Public Service Commission and meets the reasonable demands of the public, it has more or less a vested preferential right over another who seeks to acquire a later license to operate over the same route.[93] The purpose behind this rule is to protect the old operator in his investment and to prevent ruinous competition which would, in the final analysis, result to the prejudice of the consuming or riding public. It is well-settled that this doctrine will not be applied when the old operator does not render adequate service or when the old operator does not offer to meet the increase in the demand the moment it arises but waits until a new application is filed with the

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85 §25.
86 Batangas Transportation Co. v. Orlanes, 52 Phil. 455; Manila Electric Co. v. Pasay Trans. Co., 57-825.
87 G.R. No. L-7059, April 28, 1956.
88 G.R. No. L-7088, May 16, 1956.
89 G.R. No. L-8292, May 23, 1956.
90 G.R. No. L-7880, May 30, 1956.
91 G.R. No. L-7329, May 30, 1956.
92 G.R. No. L-7266, June 28, 1956.
93 Batangas Trans. Co. v. Orlanes, 52 Phil. 455.

Commission.[94] The rule will protect only those who are vigilant in meeting the needs of the traveling public. This principle was reiterated by our Supreme Court in *Raymundo Transportation Co., Inc. v. Cerda*,[95] *Saulog Transit Inc. v. Medina*,[96] *and Medina v. Saulog Transit Co., Inc.*[97]

In the application of the above-mentioned principles, the Supreme Court held in the case of *Del Rosario v. Public Service Commission*[98] that the established operator must be given ample opportunity to substantiate his objection against the new authority granted by the Commission because of the "need of protecting established operators and of avoiding cut-throat competition whenever possible in order that the service to the public may not suffer."

In determining whether the service being rendered by the present operator is adequate or not, the checking of the actual passengers by impartial witnesses is more reliable evidence of the volume of traffic between two points than the testimony of witnesses of each party who are not free from bias and who observe the number of passengers only when they actually board the bus. This was the holding of the Supreme Court in the cases of *Batangas Transportation Co. v. Biñan Trans.* and *Batangas Transportation Co. v. Silva.*[99] Furthermore, as the court held in the case of *Laguna Tayabas Co. v. Regodon*,[100] the time schedules and frequency of trips are approved by the Commission on the basis of the ordinary and usual traffic and not on occasional and unexpected congestion of traffic.

4. *Effect of sale without the approval of the Public Service Commission.*

In the case of *Medina v. Cresencia, supra,* the Supreme Court reiterated the principle that when a franchise or any privilege pertaining thereto is sold without the approval of the Public Service Commission, the sale is not binding against the Commission nor against the public. In contemplation of law, the grantee of record continues to be responsible under the franchise in relation to the Commission and the public, because the franchise is personal in nature and notice of its sale is necessary to protect the interest of the

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[94] International Autobus Co. v. Mabanag, G.R. No. L-3302, Jan. 11, 1951; International Autobus Co. v. Lubatan, G.R. No. L-3622, July 26, 1951; Interprovincial Autobus Co. v. Clarete, G.R. Nos. L-4100 & 4102, May 15, 1952; Raymundo Trans. v. Perez, 56 Phil. 274; Halili v. Floro, G.R. No. L-3465, Oct. 25, 1951.

[95] *Supra.*

[96] *Supra.*

[97] G.R. No. L-7244, June 28, 1956.

[98] G.R. No. L-9819, Sept. 28, 1956.

[99] G.R. No. L-8497, G.R. No. L-8517, Sept. 21, 1956.

[100] G.R. No. L-9586, Dec. 27, 1956.

public. Therefore, should the driver of a jeepney sold without the Commission's approval cause injuries to any of its passengers, the registered owner thereof may be held liable directly to the offended party.[101]

5. *Right of operators to notice.*

Whenever an application for a certificate of public convenience is filed, the operators on the route covered by the application have a right to be notified[102] In the case of *De Leon v. Goquinco*,[103] the Supreme Court held that only those having substantial interest in the new application need be notified. If part of the objecting operator's route covers the route applied for but said objecting operator is not allowed by its certificate to make any stops on that part of the route which is applied for, then his interests are not substantially affected and he would therefore not be entitled to notice.[104]

6. *Supreme Court's power of review—its limitation.*

Although the Supreme Court is clothed with the power of reviewing the decisions and orders of the Public Service Commission,[105] it may set aside such decisions or orders on only three grounds: (1) that there was no evidence to reasonably support the order or decision, (2) that it is contrary to law, or (3) that it is without the jurisdiction of the Commission.[106] This rule was reiterated by the Supreme Court in the following cases: *Buan v. Pambusco v. La Mallorca*,[107] *Medina v. Saulog Transit Co.*,[108] *Red Line Transportation Co. v. Ascano*[109] and *Victory Liner v. Saulog Transit*.[110].

D. CARRIAGE OF GOODS BY SEA ACT.

Under the Carriage of Goods by Sea Act, suit for damages must be brought within one year after delivery of the goods or the date when the goods should have been delivered, otherwise the liability of the carrier will be discharged.[112] In the case of *Tan Liao v. Amer-*

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101 See Santos Montoya v. Ignacio, 50 O.G. No. 1, p. 108; Timbol v. Osias, G.R. No. L-7547, April 30, 1955; Dizon v. Octavio, 51 O.G. No. 8, 4059.
102 §16.
103 G.R. No. L-9588, Sept. 14, 1956.
104 De Leon v. Goquinco, *supra*.
105 §35.
106 *Ibid.*
107 G.R. Nos. L-7996-99, May 31, 1956.
108 *Supra*.
109 *Supra*.
110 *Supra*.
111 Public Act No. 521, 74th U.S. Congress, made applicable to the Philippines by Com. Act No. 65. This Act applies only to foreign trade.
112 §3(6).

ican President Line,[113] the goods were received on December 26, 1946. Tan Liao filed a claim with the defendant for damages to the goods on July 25, 1947 and his claim was denied on February 16, 1948. Tan Liao brought his action on May 25, 1948. The defendant raised the defense of prescription of the one year period of limitation prescribed by the Carriage of Goods by Sea Act. The defendant claimed that his action had not prescribed because his cause of action accrued only upon the denial of his claim. The Supreme Court set aside this contention, stating that the law is very clear and explicit in requiring that the action be brought within one year *from the receipt of the goods* or from the date of the supposed delivery.

[113] G.R. No. L-7280, Jan. 20, 1956.