RECOVERY FOR MORAL DAMAGES IN BREACHES OF CONTRACTS AND THE CACHERO CASE

"The law is a perpetual striving to fit doubtful situations into a scheme that moves in the direction of a realized sense of right . . . And part of that sense of right often requires conformity to patterns of judgment already questioned by many but not yet discarded by the organs of the community. It is, in many instances, like the chamber of the nautilus out of which the animal has already emerged but within which we must continue to move until the more stately mansion is fully prepared."—DR. MAX RADIN.

The iota of time when man first priced his moral dignity and worth before the imperative commands of the law as an instrument of social control cannot be accurately determined with algebraic precision. But one thing is certain, however. At the height of the classical Roman law, when the wise precepts of the Institutes of Justinian resplendently flourished, recovery for an outrage to personal feelings and mental pain had been allowed under the basic concept of *injuria*.[1] Not to be outdone, the old German and Anglo-Saxon law likewise recognized damages for an insult to the human dignity.[2] This trend was received at early common law with cautious and well-guarded application until the ancient case of the tavern keeper's wife arose,[3] where damages was awarded for mental anxiety suffered as a result of an assault upon her by an irate customer. Since that case, courts have been permitted a wide latitude of discretion in allowing damages in assault cases both as a reparation to the injured party for the indignity and as a deterrent to offenders of the public peace.[4] In the meantime, however, the sweeping generalization of Lord Wensleydale's dictum in the famous case of *Lynch v. Knight* [5] that "mental pain or anxiety the law cannot value, and does not pretend to redress, when the unlawful act complained of causes that alone" [6] turned the tide of decisions to one of adamantine reluctance.[7] It was not until later, when the scientific world began to realize that all mental suffering such as fright, shock, grief, anxiety, rage and shame are actually physical injuries [7a] and produce well-defined symp-

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[1] Ellison, Comments, *Recovery for Mental Suffering in Louisiana*, 15 LA. L. REV. 452 (1955). Digest 47.710.1 cites Labeo's writings. *See* LEE, THE ELEMENTS OF ROMAN LAW 382 (1952). The Institutes of Justinian says, "*Juris praecepta sunt, alterum non laedere, suum cuique tribuere* . . ." or ". . . looks to the liability of all damages." Stewart v. Arkansas S.R.R., 112 La. 768, 36 So. 677 (1904).

[2] POUND & PLUCKNETT, READINGS ON THE HISTORY AND SYSTEM OF COMMON LAW 46 (1927) cites an instance in the Laws of Ethelbert, where the forcible shaving of one's head subjected the offender to heavy damages.

[3] I. de S. *et ux* v. W. de S., Y.B. 22 EDW. 111, f. 99 pl 60 (1348) cited in Magruder, *Mental and Emotional Disturbance in the Law of Torts*, 49 HARV. L. REV. 1033-1034 (1936).

The growth and development of common law jurisprudence regarding mental suffering is extensively discussed in the following articles: Ellison, *supra* note 1 at 451; Goodrich, *Emotional Disturbance as Legal Damage*, 20 MICH. L. REV. 497 (1922); Green, *Fright Cases*, 27 ILL. L. REV. 761, 881 (1933); Magruder, *Ibid.* at 1043; Harper & McNally, *A Re-Examination of the Basis for Liability for Emotional Distress*, 13 WIS. L. REV. 426 (1938); Bohlen, *Right to Recover for Injury Resulting from Negligence Without Impact*, U. of PA. L. REV. 141 (1902; Hallen, *Damages for Physical Injuries Resulting from Shock*, 19 VA. L. REV. 253 (1933); Wade, *Tort Liability for Abusive and Insulting Language*, 4 VAND. L. REV. 63 (1950); Comment, *Fright or Nervous Shock as a Basis for the Recovery of Damages*, 12 TULANE L. REV. 272 (1938); Bohlen & Polikoff, *Liability in N.Y. for the Physical Consequences of Emotional Disturbance*, 32 COL. L. REV. 409 (1932); Throckmorton, *Damages for Fright*, 34 HARV. L. REV. 260 (1921).

[4] Magruder, *ibid.* at 1934, citing Lewis v. Hoover, 3 Blackf. 407 (Ind. 1834); Beach v. Hancock, 27 N.H. 223 (1853).

[5] 9 H.L. Cas. 577, 598 (1861).

[6] *Cf.* Gatzow v. Buening 106 Wis. 129; 81 N.W. 1003, 1009 (1900); *see* Southern Express Co. v. Beyers 240 U.S. 612, 615 (1916), where it was held that "mere mental pain and anguish are too vague for legal redress where no injury is done to person, property, wealth or reputation."

[7] Prof. Magruder of Harvard ascribed this lag to "the power of a sonorous phrase to command uncritical acceptance."

[7a] "Medical authorities no longer doubt that a mental shock may result in serious physical injury under relatively common circumstances." 11 U. OF FLA. L. REV. No. 2 262, 264 (Summer, 1958), citing White, Trauma, *Stress and the "Arteriosclerotic" Heart* (Coronary Heart Disease),

toms readily discernible by expert examination that Lord Wensleydale's dictum gradually relaxed to open a wide vista of recognition in favor of victims of mental assault.[8] Charles Darwin aptly describes this physical aspect of mental suffering thus: "The frightened man at first stands like a statue motionless and breathless or crouches down as if instinctively to escape observation... The heart beats wildly, or may fail to act and faintness ensues; there is death like pallor; ...utter prostration soon follows, and the mental powers fail...".[9]

Today, in most civilized countries of the world, such as the United States, England, France, Germany, Italy, Austria, Switzerland, and Spain, physical pain and injured feelings are among the damages recognized in favor of victims of motor vehicle accidents.[10] These damages are anchored upon the stark testimony of human experience that pain and suffering are the inevitable bedfellows of serious injury or illness.[11] The majority of the American courts consider grief, anxiety, worry, mortification and humiliation which a person suffers by reason of physical injuries as component parts of the mental pain for which damages may be allowed.[12] Beside the mental distress which is the accompanying shadow of physical pain, the courts have authorized compensation for the victim's fright and terror at the time of the injury and reasonable apprehension thereafter over the effects of injury upon his health; anxiety over the inability to make a living and fear of death or insanity as a consequence of the injury.[13]

In the Philippines, the first of the cases decided under the old Civil Code [14] where a claim for moral damages was granted was the case of *Lilius v. Manila Railroad Co.*[15]. The decision in this case completely turned a new milestone in Philippine jurisprudence and effected a marked departure from the old doctrine enunciated in the cases of *Marcelo v. Velasco*,[16] *Algarra v. Sandejas*,[17] and *Gutierrez v. Gutierrez* [18] where the claims for moral damages were denied.[19] This new evolution in our jurisprudence was perfectly justified because at the time the judgment in the *Lilius* case was promulgated, there had already been a complete reversal of the philosophy behind the judgment of the Supreme Court of Spain rendered on December 6, 1882 upon which the *Marcelo v. Velasco* and other subsequent cases were based.[20] The precedent-shattering doc-

in MED. TRIAL TECH. Q. 1956 Annual, 135 (1956); Wolff, *Life Stress and Bodily Disease* in 1 WIEDER, CONTRIBUTIONS TOWARD MED. PSYCHOLOGY 315 (1953).

[8] Goodrich, *Emotional Disturbance as Legal Damage*, 20 MICH. L. REV. 487 (1922). Thus, it cost a railroad company $1,000 as damages for "terror and anguish, outraged feeling and insulted virtue, mental humiliation and suffering" of a comely young lady teacher who received rains of kisses from a lustful conductor. Cracker v. Chicago & N.W. Ry. Co., 36 Wis. 657 (1875). Courts in Missouri and Kentucky priced a lusty hug and kiss upon lovely female passengers at $500 and $700 respectively. Liljegren v. United Rys., 227 S.W. 925 (Mo. App. 1921); Regsdale v. Ezell, 49 S.W. 775 (Ky. 1899). Damages for "mental anguish and humiliation" was valued at $2,000 in a case where a hotel manager came to the plaintiff's room at night and in vulgar and insulting language accused her of being a prostitute when in fact the gentleman who had just visited her was her husband. Emmle v. de Silva, 293 Fed. 17 (8th 1923) cited in Magruder, *op. cit supra* note 3 at 1034. *See* Draper v. Baker 61 Wis. 450, 21 N.W. 527 (1884); Weatherly v. Manatt 72 Okla. 138, 179 Pac. 478 (1919); Knitig v. Slaven 128 Kan. 466, 278 Pac. 729 (1929); Gadsden v. Hamilton 212 Ala. 531, 103 So. 553 (1925). *See* Collection of Cases, 40 A.L.R. 297 (1926).

[9] DARWIN, EXPRESSION OF EMOTIONS IN MAN AND ANIMALS, quoted by Ellison, *op. cit. supra* note 1 at 453.

[10] Castro v. Acro Taxicab Co., 82 Phil. 359, 382, 388 (1948). (Concurring opinion).

[11] Navarro v. The San Pedro Bus Line, CA-GR No. 6581-R, September 29, 1952. *See* Ellison, *supra* note 1 at 452.

[12] MCCORMICK & FRITZ, CASES AND MATERIALS ON LAW OF DAMAGES 305 (2nd ed. 1952).

[13] *Ibid.* at 316.

[14] The Old Civil Code took effect on Dec. 1, 1899—Mejares v. Nery, 3 Phil. 195 (1904).

[15] 59 Phil. 758 (1934).

[16] 11 Phil. 287 (1908).

[17] 27 Phil. 284 (1914).

[18] 56 Phil. 177 (1932).

[19] "The way for the revision of the old doctrine has been paved as early as 1918 by the concurring opinion of Mr. Justice Malcolm in Manzanares v. Moreta (38 Phil. 821). Following this line of reasoning, on January 30, 1930, in the case of Bernal v. House (54 Phil. 327), the Supreme Court awarded the plaintiffs therein for damages for death of their child . . ." Castro v. Acro Taxicab, *op cit. supra* note 10, at 387-388.

[20] The doctrine in the Spanish Supreme Court decision of Dec. 6, 1882 as well as the commentaries of Viada to the same effect had been abandoned by the same court since Dec. 6, 1912.

trine enunciated in the *Lilius* case was reiterated and clarified in the *Castro v. Acro Taxicab Co.*[21] case in 1948. This doctrine, however, did not enjoy express statutory approbation until a new title on "Damages" was introduced in the New Civil Code.[21a] The reason for this new title is expressed by the Code Commission, thus:

> "This subject of 'Damages' is introduced in the project. The present Code has but a few general principles on the measure of damages. Moreover, practically the only damages in the present Code are compensatory ones and those agreed upon in a penal clause. Moral damages are not expressly recognized in the present Civil Code, although in one instance—injury to reputation—such damages have been allowed by the Supreme Court of Spain, and some Spanish jurists believe that moral damages are allowable. *The Supreme Court of the Philippines has awarded moral damages in a few cases.*[22]
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> "The measure of damages is of far-reaching importance in every legal system. Upon it depends the just compensation for every wrong or breach of contract. The Commission has, therefore, deemed it advisable to include in the Project a Title on 'Damages' *which embodies some principles of the American law on the subject. The American courts have developed abundant rules and principles upon the adjudication of damages.*" (Italics supplied).

Two significant things must be considered in the foregoing observation of the Code Commission, namely, (1) that "the Supreme Court of the Philippines has awarded moral damages in a few cases" before the Code took effect, and (2) that the new Civil Code "embodies some principles of the American law on the subject and American courts have developed abundant rules and principles upon the adjudication of damages." These statements are of far-reaching significance and should serve as a guide in our analysis.

In our jurisdiction, it is beyond question that moral damages[23] may be recovered in a criminal offense resulting in physical injuries or in quasi-delicts causing physical injuries,[24] provided that such damages are the proximate result of the defendant's wrongful act or omission.[25] Likewise, moral damages may be awarded in case of fraudulent act or bad faith in a breach of contract[26] and in case of the death of a passenger caused by the breach of contract of carriage.[27] The reason most often given is that the mind is a part of the body and an injury to the body includes the whole and its effects are not separable.[28]

In the latter case, it was held that the "scientific doctrine admits that every damage, material or moral, provided it be real and true, gives rise to reparation." Castro v. Acro Taxicab Co., *supra* note 10, citing 2 CASTAN, DERECHO CIVIL ESPAÑOL 466-467 (43 ed.).

[21] 82 Phil. 359 (1948).

[21a] *See* 4 PADILLA, CIVIL CODE ANNOTATED 946 (1956).

[22] This statement takes cognizance of, and should be deemed to affirm, the Lilius v. M.R.R. case (59 Phil. 800 [1934]), and more particularly the Castro v. Acro Taxicab Co. (82 Phil. 359 [1948]), case wherein moral damages were awarded for pains and sufferings suffered by the plaintiff as a result of the accident.

[23] The new CIVIL CODE, in Art. 2217 provides: "Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission."

[24] NEW CIVIL CODE Art. 2219.

[25] NEW CIVIL CODE Art. 2217; Navarro v. San Pedro Bus Co. *op. cit. supra* note 11; 15 AM. JUR. 175-176.

[26] NEW CIVIL CODE Art. 2220.

[27] Art. 2206 par. 3, NEW CIVIL CODE provides that the spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased as a result of a crime or quasi-delict. Article 1764 of the same Code provides that damages for violation of the contract of carriage may be awarded in accordance with the provisions of Title 18 of Book 4 on Damages and that Article 2206 also applies in case of the death of a passenger caused by the breach of contract by a common carrier.

Thus, in Cabrera Ejercito v. Pasay Trans. Co. (47 O.G. 1335 [1949]), the carrier was ordered to pay an indemnity of P12,000 to the heir of a deceased passenger. Likewise, in Montoya v. Ignacio (50 O.G. 108 [1953]), the carrier was sentenced to pay the heirs of a deceased passenger damages amounting to P31,000. In Belisario v. Mindanao Bus Co. (C.A. 52 O.G. 6946) damages to the heirs of deceased passenger were also granted.

[28] 15 AM. JUR. 176.

The crucial question, however, arises whether moral damages can be recovered from physical injuries resulting from a breach of contract. The Philippine Supreme Court, in the recent case of *Cachero v. Manila Yellow Taxicab Co.*,[29] answered the question in the negative.

In this case, it appears that the plaintiff was a passenger in a taxicab owned by the defendant Manila Yellow Taxicab Co. The driver bumped the taxicab against a Meralco post as a result of which the cab was badly smashed and the plaintiff fell out of the vehicle and suffered physical injuries slight in nature. The taxicab driver was accordingly prosecuted and convicted. The plaintiff demanded damages from the defendant company in the total amount of ₱79,245.65, which, after an attempt at amicable settlement by the defendant, the former reduced to ₱72,050.20. The defendant refused to satisfy the claim, hence, the plaintiff filed the present action for damages. The lower court awarded the plaintiff medical expenses in the amount of ₱700, unearned professional fees in the amount of ₱3,200, and moral damages in the amount of ₱2,000. On appeal, the Supreme Court disallowed the claim for moral damages, reasoning thus:

"A mere perusal of plaintiff's complaint will show that his action against the defendant is predicated on an alleged breach of contract of carriage, i.e., the failure of the defendant to bring him 'safely and without mishaps' to his destination, and it is to be noted that the chauffeur of the defendant's taxicab, Gregorio Mira, has not been made a party defendant to this case.

"Considering, therefore, the nature of plaintiff's action in this case, is he entitled to compensation for moral damages Article 2219 of the Civil Code says the following:

"Art. 2219. Moral damages may be recovered in the following and analogous cases:

"(1) A criminal offense resulting in physical injuries;

"(2) Quasi-delicts causing physical injuries;..."

The Court then proceeded to explain that "of the cases enumerated in the just quoted Article 2219, only the first two may have any bearing on the case at bar. We find, however, with regard to the first that the defendant herein has not committed in connection with this case any 'criminal offense resulting in physical injuries'. The one that committed the offense against the plaintiff is Gregorio Mira, and that is why he has been already prosecuted and punished therefor. Although (a) owners and managers of an establishment or enterprise are responsible for damages caused by their employees in the service of the branches in which the latter are employed or on occasion of their function; (b) employers are liable for damages caused by their employees and household helpers acting within the scope of their assigned task;[30] and (c) employers and corporations engaged in any kind of industry are subsidiary civilly liable for felonies committed by their employees in the discharge of their duties,[31] plaintiff herein does not maintain this action under the provisions of any of the articles of the codes just mentioned and against all the persons who might be liable for the damages caused, but as a result of an admitted breach of contract of carriage and against the defendant employer alone. We, therefore, hold that the case at bar does not come within the exception of paragraph 1, Article 2219 of the Civil Code." On the strength of these arguments, the Court concluded that moral damages cannot be recovered.

[29] G.R. No. L-8721, May 23, 1957.
[30] NEW CIVIL CODE Art. 2180
[31] REVISED PENAL CODE Art. 103.

The authors respectfully disagree with the above ruling.

Ostensibly, the honorable Court limited the scope of its observation on Articles 2219 and 2180 of the New Civil Code and Article 103 of the Revised Penal Code. It must have had in mind the supposition that paragraphs 1 and 2 of Article 2219 of the Code are all-exclusive with respect to damages arising from physical injuries. But it fails to take note of the fact that the first phrase of the same article states that "moral damages may be recovered in the following and analogous cases." [32] From the tenor of this provision, the lawmakers manifestly intended the Article to cover a wide variety of cases and situations "analogous" to those expressly enumerated.

Problems in characterization show that a breach of contract resembles in certain respects a tort so much so that a factual situation may be characterized as a tortious liability under one legal system, and a contractual liability under another legal system. A contract of carriage cannot be likened to an ordinary contract having merely a direct relation to property and pecuniary matters.[33] It is a contract which imposes upon the parties a legal duty or obligation so coupled with matters of mental concern or solicitude or with the feelings and sensibilities of the parties entering into them and from the nature of which it is known when the contract is made that great mental suffering will result from the breach. It is because of this attribute that courts in the United States hold that actions against common carriers for injuries resulting from negligence are, in all their essential features, actions for tortious misconduct, and that in determining the damages properly recoverable, a wider range of inquiry is permissible than in ordinary action for the simple breach of contract.[34]

The Court in the *Cachero* case proceeded to distinguish between "quasi-delicts" and "contractual obligations", citing the report of the Code Commision to the effect that "it was agreed to use the term 'quasi-delict' for those obligations which do not arise from law, contracts, quasi-contracts or criminal offenses."[35] It then quotes the rule in the celebrated case of *Cangco v. Manila Railroad Co.*[36] which says that 'it is important to note that the fundamental foundation of the legal liability of the defendant is the contract of carriage, and that the obligation to respond for the damage which the plaintiff suffered arises, if at all, from the breach of that contract by reason of the failure of the defendant to exercise due care in its performance. That is to say, its liabilty is direct and immediate, differing essentially in the legal viewpoint from that presumptive responsibility for the negligence of its servants, imposed by Article 2180 of the Code which can be rebutted by proof of the exercise of due care in their selection and supervision."

It must be recalled that in the *Cangco* case, the defendant employer interposed the defense of "due diligence of a good father of a family", but the Court rejected this contention because the action was based upon a breach of contract. In the *Cachero* case, the Court indulged in a lengthy discussion of the penultimate question whether moral damages can be recovered from physical injuries resulting from the breach of a contract. Parenthetically, the Court in the *Cangco* case precisely made a trenchant observation that the obligation under

[32] NEW CIVIL CODE Art. 2219. Analoguos means "bearing analogy or resemblance; corresponding or resembling in certain aspects, as in form, proportion, or relations." FUNK & WAGNALLS, NEW STANDARD DICT. OF ENG. LANGUAGE 100 (1947).
[33] 8 R.C.L. 482.
[34] *Ibid.* at 472.
[35] REPORT OF THE CODE COMMISSION 161-162.
[36] 38 Phil. 768 (1918).

breach of contract is direct and immediate, differing essentially from the presumptive responsibility in cases of quasi-delicts. The employer carrier is charged with the duty of exercising extraordinary diligence in the performance of its contractual duties [37] and its responsibility in case of breach of this contract is direct and immediate. Considering the fundamental legal nature of the carrier's responsibility and considering furthermore, the modern scientific affirmation of the inherent mutuality and inseparability of physical injury and mental pain, it is easily discernible that the *Cachero* doctrine will likely produce a number of unacceptable, absurd and unjust results. For a plethora of cases might arise where a plaintiff who suffered less moral anxiety and mental shock from injuries caused by quasi-delicts is awarded moral damages, and yet deny the same award in favor of a plaintiff who suffered not only great moral anxiety and disturbance at the thought of a broken engagement but mental anguish and fright at the time of the injury and reasonable apprehension thereafter over effects of the injury upon his health—anxiety over the inability to make a living because of a broken contract and personal injuries and fear of death or insanity or social humiliation as a consequence thereof.

The Court admits the sufficiency of facts alleged to sustain a finding of delict or quasi-delict, but refused to adopt them because the complaint states a cause of action based on a contract of carriage. "The fallacy of this ruling", says one authority, "is that, while it is true that the action of the injured passenger against the carrier is based on *culpa contractual* and not on delict or quasi-delict, the ineluctable fact is that the act constituting *culpa contractual* is also a delict or quasi-delict."[38] Had the plaintiff based his action on quasi-delict, the Court in the *Cachero* case implied, he could have recovered moral damages. Why should he be deprived of that right merely because of a procedural technicality? The Court undoubtedly indulged in judicial hair-splitting at the expense of equity.[39]

The due performance of the solemn covenant itself is profoundly a moral duty;[40] should this moral duty be extinguished or diminished in any considerable degree if one of the contracting parties suffers physical injuries resulting from such breach? To give affirmative support to this question would be to go against the basic idea upon which the Code Commission incorporated damages in the New Civil Code, namely, that the adjudication of moral damages is "more equitable that that the sufferer should be uncompensated. The wrongdoer cannot complain because it was he who caused the injury. In granting moral damages, the Project proceeds upon the ancient maxim that when there is a wrong,

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[37] The NEW CIVIL CODE Art. 1733 provides: "Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to the circumstances of each case.

"Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735 and 1745, Nos. 5, 6, & 7, while extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1766."

"Art. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

"Art. 1756. In case of death or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in Articles 1733 and 1755."

[38] Aquino, R. C., *Annual Survey of 1957 Supreme Court Decisions in Civil Law*, 33 PHIL. L.J. 261 (1958).

[39] In English and American jurisprudence, it is settled that the technical form of the action is generally immaterial, recovery being allowed in accordonce with the wrong indicated by the facts as alleged. The underlying principles governing an award of damages are the same, whether the action is in contract or in tort and do not depend on its form. Williams v. Carolina Ry. Co. 57 S.E. 216 (1903); Hitzel v. Baltimore, 167 U.S. 26 (1892).

[40] One of the oldest and fundamental rules of human conduct is expressed in the maxim, *pacta sunt servanda*. Agreements must be kept. The phrase is of ancient lineage, *cf.* Ciciro, *De Officiis*, iii, 24. *"Pacta et promissa semperne servanda sunt?"*

there is a remedy."[41] The scientific doctrine itself admits that every damage, material or moral, provided it be real and true, gives rise to reparation.[42]

Consequently, the dictum of the *Cachero* case to the effect that the "decisions in the cases of *Lilius v. Manila Railroad Co.* (59 Phil. 758) and *Castro v. Acro Taxicab Co.* (45 O.G. No. 5) wherein moral damages were awarded to the plaintiffs are not applicable to the case at bar because said decisions were rendered before the effectivity of the new Civil Code . . ." does not hold water if we examine the philosophy upon which the Civil Code provisions on moral damages were predicated. The Court disregarded a very important observation of the Code Commission when, in giving its reasons for the introduction of a new title on "Damages", it said that "the Supreme Court of the Philippines has awarded moral damages in a few cases" before the new Civil Code took effect. It is submitted that this satement should be taken as a recognition and continuance of the doctrine previously laid down in the *Lilius* and *Castro* cases wherein moral damages were awarded to passengers in motor vehicle accidents.[43]

While it is true that, as averred in the *Cachero* case, the doctrine of compensability of moral damages was written into the law only with the adoption of the new Civil Code, it is equally true that moral damages were awarded in breaches of contracts causing physical injuries in at least three cases decided after the new Civil Code took effect and before the *Cachero* case was decided.

Layda v. CA & Brillantes,[44] which was promulgated on January 29, 1952, is a case in point. In this case, it appeared that the passenger truck owned by the defendant collided with the side of a mountain. One of its passengers, Enrique Layda, was thrown to the ground and suffered pains and physical injuries as a consequence. The Court, in resolving the question of moral damages, referred back to the *Castro v. Acro Taxicab Co.*[45] and *Lilius v. M.R.R.*[46] cases. The Court noted the marked parallelism of the cited cases and the case at bar with some incidents weighing in favor of the condition of the petitioner.

Most of the moral damages defined in the new Civil Code, the Court said, "affect the petitioner's moral feeling and personal pride and should be weighed in the determination of the indemnity. Another consideration is the fact that the respondent is a public utility operator whose commitment is to serve the public carefully, prudently, and diligently so that the passengers may be brought by his men with safety to their place of destination. The carrier vouches that it would only employ good and reliable equipments and competent personnel, and in accepting passengers, agrees to bring them safety to their place of destination. Here the carrier breached its contractual obligation. There is need of imposing a stern and commensurate indemnity to the victim to serve as an exemplary measure and as a warning to all similarly situated to put a stop to the rampant and seemingly ever-increasing accidents and mishaps caused by a flagrant disregard of traffic laws and regulations. In this respect, the award of ₱4,000.00 moral damages given by the court *a quo* to petitioner is reasonable."

Running almost in line with the above reasoning is the *Navarro v. The San Pedro Bus Line Co.*[47] case. The Court of Appeals therein averred that the

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[41] REPORT OF THE CODE COMMISSION 74. It further states: "The denial of the award of moral damages has been predicated on the idea that physical suffering, mental anguish, and similar injury are incapable of pecuniary estimation. But it is unquestionable that the loss or injury is just as real as in other cases. The ends of justice are better served by giving the judge discretion to adjudicate some definite sum as moral damages."

[42] Castro v. Acro Taxicab Co. *Op. cit. supra* notes 10, 19 & 21. *See* notes 8 and 9.

[43] *See* REPORT OF THE CODE COMMISSION, *supra* notes 21a and 22.

[44] G.R. No. L-4487, January 29, 1952.

[45] G.R. No. L-49155, December 14, 1948.

[46] 59 Phil. 758 (1934).

[47] CA—G.R. No. L-6581-R, September 29, 1952.

awarding of moral damages found support in our Courts long before the adoption of the new Civil Code. It said that "the case of *Lilius v. M.R.R.* paved the way for a broader and more enlightened interpretation of our former law on damages, and the *Castro v. Acro Taxicab* case which was decided in 1948, stands four square on the principle that the old law was never meant to preclude recovery for moral damages."

In *Jalandoni v. Martir-Guanzon* [48] the Supreme Court declared that "except as concomitant to physical injuries, moral and corrective damages (allegedly due to suffering, anguish, and anxiety caused) were not recoverable under the Civil Code of 1899 . . . Recovery of such damages was established for the first time in 1950 by the new Civil Code . . ."

In *Dizon v. Sacoposo & Time Taxi Co.*,[48a] it appears that Dizon, on her 9 months of pregnancy boarded along with her aunt, a Time taxicab. The cab went speeding and as it turned left towards Lepanto, the right door of the cab flew open, as a consequence of which, Dizon fell out of the cab, hit the pavement and suffered bruises and contusions. She brought the present action for damages for physical injuries based upon an alleged breach of contract. In awarding moral damages, the Court of Appeals said: "Appellants except to the award of ₱500 as moral damages . . . invoking the ruling of this Court in the case of *Baluyot v. Lopez* (51 O.G. No. 2, 784) wherein the trial court's award of moral damages was reduced to ₱200 . . . The instant case, however, offers a different set of facts from that of the aforecited case. In the *Baluyot* case, *supra*, it appears that as a result of a collision between the Halili taxi against another, the 5 women passengers of the former were shoved against the front parts of the taxi seats causing abrasions and contusions upon said passenger's persons. Their injuries, however, were slight; besides, none of them was pregnant. In the present case, D was bodily thrown out of the taxicab by reason of the driver's admitted negligence and the cab's ostensibly defective doorlock. True, D did not sustain considerable injuries as borne out by her normal delivery, but the danger to which she was exposed was more serious not only upon herself but also, and especially, upon the child in her womb. The physical suffering, fright, anxiety and anguish the appellee endured by reason of the incident fully justifies, in our opinion, the award of ₱500 as moral damages in her favor."

The Court of Appeals in *Salamat v. Isidro* [49] likewise awarded moral damages under Article 2219 paragraph 2 which allows moral damages in "quasi-delicts". The plaintiff therein, a passenger of a bus owned by the defendant, based his action on *culpa contractual* and demanded damages for physical injuries suffered as a result of a collision. The Court awarded ₱2,000 as moral damages in addition to actual damages to the passenger.

It must be carefully noted that our Supreme Court in a decision announced on a much later date [50] than that of the *Cachero* case, resolved the same question impliedly, if not almost squarely. That is the *Villanueva vda. de Bataclan*

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[48] G.R. No. L-10423, January 21, 1955.
[48a] CA 15115-R, October 31, 1956, 53 O.G. 724 (1957).
[49] CA—G.R. No. 15788-R, May 21, 1957, 53 O.G. 5657.
[50] The Cachero case was decided on May 23, 1957. The Villanueva case was promulgated October 22, 1957. Brito Sy v. Malate Taxicab Co., which directly involved moral damages to the injured passenger, was promulgated Nov. 29, 1957.
Some authorities would seem to distinguish between an injured passenger who suffers moral damages and the spouse, legitimate and illegitimate descendants and ascendants of the deceased passenger who suffer mental anguish by reason of such death. (*See* Aquino, *op. cit. supra* note 38 at 261, citing the Cachero case). It is said that in the first case, the carrier is not liable if the action is based on a breach of contract; that in the second case, moral damages may be recovered. This line of reasoning is obvious considering that Article 1764 of the new Civil

v. Medina [51] case. By reason of the death of a passenger in consequence of the overturning and subsequent burning of a passenger truck, the widow brought a suit to recover from defendant owner compensatory, moral and exemplary damages and attorney's fees in the total amount of ₱87,150. The Supreme Court, in granting moral damages, grounded its decision upon the new Civil Code provisions amply providing for the responsibility of a common carrier to its passengers and their goods.[52] The Court tersely declared that the case involved a breach of contract of transportation and that there was negligence on the part of the defendant, through his agent, the driver Baylon. After an extensive discussion of the doctrine of proximate causation, the Court concluded that "as regards the damages to which the plaintiffs are entitled, . . . we are satisfied that the amount of six thousand pesos (₱6,000.) would constitute satisfactory compensation, this to include compensatory, moral and other damages."

In *Brito Sy v. Malate Taxicab Co.*[53] the passenger of a taxicab owned by the defendant company was injured in a collision between the cab and another truck. The injured passenger was granted by the trial court ₱4,200 as actual, compensatory and moral damages and attorney's fees. The question, however, of whether the passenger was entitled to recover moral damages was not raised on appeal.[54]

No more than a few months after the *Villanueva* and *Brito Sy* cases were decided, the Supreme Court went further than its *Cachero* ruling, and seemingly reluctantly opened the door in favor of such a recovery. This, it did in the recent case of *Necesito v. Paras*,[55] when it emphatically declared that in actions *ex contractu* against a common carrier, "no allowance may be made for moral damages, since under Article 2220 of the new Civil Code, in case of suits for breach of contract, moral damages are recoverable only where the defendant acted fraudulently or in bad faith . . ." Though moral damages was not actually awarded in this case because the defendant carrier was not guilty of bad faith or fraud, it was clear from all indications that the Court had substantially extended and amplified its line of reasoning in the *Cachero* case. It appears that Severina Garces and her son, Precillano Necesito were passengers of a Philippine Rabbit bus owned by the defendant. As the bus approached a wooden bridge, its front wheels swerved to the right; the driver lost control and after wrecking the bridge's wooden rails, the truck fell into a creek. Garces was drowned and Necesito was injured, suffering abrasions and fracture of the left femur. Necesito and the heirs of Garces filed 2 actions *ex contractu* against the owners of the bus. As to the question of damages suffered by the plaintiffs, the Court held that "no allowance may be made for moral damages, since under

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Code provides that damages in cases of breaches of contracts of carriage shall be awarded in accordance with Title XVIII of Book 4 concerning damages, and that Art. 2206 which allows certain relatives of the deceased passenger to recover moral damages, shall likewise apply to breaches of contracts by common carriers. The argument, however, loses its validity if we reckon the fact that Art. 2220 of the new Civil Code allows moral damages in breaches of contracts where the defendant acted fraudulently or in bad faith. *See* Necesito v. Paras, *infra* note 55.

[51] 54 O.G. No. 6, 1905 (1958).

[52] NEW CIVIL CODE Articles 1733, 1755, 1756 and 1763.

[53] G.R. No. L-8937, November 29, 1957, 54 O.G. 658.

[54] Moral damages were awarded in suits against a common carrier by an injured passenger or by the heirs of a deceased passenger in the following cases: Son v. Cebu Autobus, G.R. No. L-6155, April 30, 1954; Alcantara v. Surro, 49 O.G. No. 72769 (1953); San Jose v. Del Mundo, G.R. No. L-4450, April 28, 1952; Layda v. C.A. *supra*. *Contra*: Peñalosa v. Eastern Tayabas Bus Co., CA 53 O.G. 8137, which followed the Cachero ruling.

[55] G.R. No. L-10605, June 30, 1958.

Another interesting point in the *Necesito* decision is the discussion of the Court on the extent of diligence required of common carriers with respect to hidden mechanical defects, their liability therefor, and the application of the principle of *respondeat superior* to common carriers for the negligence of manufacturers of defective machine parts. For a critical evaluation and analysis of the merits of the Supreme Court's reasoning, *see* comment, Badong, P., *Observations on the Necesito Decision, supra.*

Article 2220 of the new Civil Code, in case of suits for breach of contract, moral damages are recoverable only where the defendant acted fraudulently or in bad faith, and there is none in the case before us. . . . We believe that for the minor Necesito, an indemnity of ₱5,000 would be adequate for the abrasions and fracture of the femur, including medical and hospitalization expenses . . . As for the death of Garces, who was 33 years old, with seven minor children when she died, her heirs are obviously entitled to indemnity not only for the incidental losses of property . . . that she carried at the time of the accident and for burial expenses . . . but also for the loss of her earning and for the deprivation of her protection, guidance and company." One thing is to be desired in this ruling in that it failed to apply Article 2206 of the new Civil Code allowing the spouse, legitimate and illegitimate descendants and ascendants of the deceased to recover moral damages for mental anguish by reason of the death of the deceased, which, by the force of Article 1764 of the same Code, must also apply to breaches of contracts by common cerriers.[56] The defect notwithstanding, the holding in this case goes further than the *Cachero* doctrine, considering that the Court is amenable to the award of moral damages, at least where the defendant acted fraudulently or in bad faith.

Article 2220 of the new Civil Code provides that moral damages may be awarded in cases of "breaches of contract where the defendant acted fraudulently or in bad faith." What is the meaning of bad faith or fraud in Article 2220? It has been generally held that fraud, as applied to contracts, is the cause of an error bearing on the material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the other party or to cause an inconvenience or loss to the other.[57] In the sense of a court of equity, it has been held to properly include all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another.[58] It also embraces such acts as, though not originating in actual evil design to perpetrate a positive fraud or injury upon the other contracting party, are, by their tendency to mislead or deceive other persons, or to violate private or public confidence, or impair or injure the public interests, deemed equally reprehensible.[59]

It is therefore plain under Article 2220 of the new Civil Code that moral damages are the proper subject of the plaintiff's claim where the injury is inflicted maliciously, willfully, or in wanton disregard of the injured party's rights and feelings, or where it involves a breach of private or public confidence.[60]

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[56] *See* note 50, *supra*.

[57] Straus v. Ins. Co. of North Am., 157 La. 661, 102 So. 861, 865. *Cf.* Civil Code of La., Art. 1847.

Bad faith and fraud are synonymous, and also synonyms of dishonesty, infidelity, faithlessness, perfidy, unfairness. Joiner v. Joiner, Tex. Civ. App. 87 S.W. 2d. 903, 914-915.

Bad faith is the opposite of good faith, generally implying actual or constructive fraud, or a design to deceive or mislead another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but some interested or sinister motive. State v. Griffin, 100 S.C. 331, 84 S.E. 876, 877.

Actual fraud consists in deceit, artifice, trick, design, or some direct and active operation of the mind. It is something said, done, or omitted by a person with intentional design of perpetrating what he knows to be a cheat or deception.

Constructive fraud consists in any act of commission or omission contrary to legal or equitable duty, trust or confidence and operates to the injury of another. BLACK'S LAW DICT. 789 (1951)

[58] Howard v. West Jersey & S.S.R. Co., 102 N.J. Eq. 517, 141 A. 755, 757; 1 STORY, EQ. JUR. Sec. 187.

[59] BLACK'S LAW DICT. 789 (1951).

[60] 15 AM. JUR. 518-519. The case of East St. Louis Con. Ry. Co. v. O'hara, (reported in GREEN et al., CASES ON THE LAW OF TORTS 711 (1957), is illustrative of this rule. In that case, it was held that "where the defendant was running its engine in wanton and willful disregard of the rights and safety of the public generally, it was not necessary in order to raise an inference of wanton or willful negligence, to prove that the defendant's servants were actuated by ill will, directed specifically toward the plaintiff, or to have known that he was in such position as to be likely to be injured."

Where the breach of a contract causes physical injuries to the other contracting party, the moral offense becomes all the more serious and condemnable because the injury stems from two obnoxious sources, namely, *first*, from the fact of willful and malicious breach of the contract itself, and, in cases of contracts of carriage to which public trust and confidence is justly reposed, a violation of that confidence [60a] and, *second*, from the fact that the breach of such a contract has caused a direct physical injury to the person of the other contracting party.[61] On this second point, it will suffice our argument to state that in granting moral damages, the new Civil Code proceeds upon the ancient maxim that when there is a wrong, there is a remedy and that the grant of moral damages is more equitable than that the sufferer should be left uncompensated.[62] Human experience itself testifies that "pain and suffering are the inevitable bedfellows of serious injury or illness; these must be recompensated."[63] Award of moral damages arising from physical injuries, whether a consequence of quasi-delict or of breach of contract is justified by the settled principle that the mind is a part of the body and an injury to the body includes the whole and its effects are not separable.[64] Moreover, the rule on proximate causation provided in Article 2217 of the new Civil Code does not make exceptions with respect to breaches of contract.[65]

Considering the far-reaching and delicate implications of our injury, it is imperative that the *Cachero* ruling should be examined in the light of the seasoned American jurisprudence which has survived the test of reason, wisdom and experience for decades. It is an undeniable experience that because of the commanding impact of the American rule in our country, American legal thought and jurisprudence have strongly asserted themselves in this jurisdiction and in fact our courts have drawn freely from them from time to time. The illuminating report of the Code Commission is authority for the statement that the law on damages in the new Civil Code "embodies some principles of the American law on the subject. The American courts have developed abundant rules and principles upon the adjudication of damages."[66] And no less than Mr. Justice J. B. L. Reyes in the recent case of *Necesito v. Paras* [67] made an observation that in American law, the carrier is held to the same degree of diligence and liability as under the new Civil Code.

In the majority of the American states, damages for mental anguish and the like are not, as a general rule, recoverable in actions for violation of an

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[60a] Gross negligence which will justify the presumption of willfulness or wantonness is such as to imply a disregard of consequences or a willingness to inflict injury. An intentional disregard of a known duty necessary to the safety of the person, and an entire absence of care for the life, the person or the property of others, such as exhibits a conscious indifference to consequences, makes a case of constructive or legal willfulness such as charges the person whose duty it was to exercise care with the consequences of a willful injury. Bremer v. Lake Erie & W. R. Co. 318 A.L.R. 11 (1925), 41 A.L.R. 1345, 148 N.E. 862.

[61] *See* NEW CIVIL CODE Art. 1756, note 37, where common carriers are presumed to be negligent in case of death or injury to the passengers. *Cf.* Brito Sy v. Malate Taxicab & Garage, Inc., *supra* note 53.

Persons or corporations engaged in the business of transportation have been regarded as being under a special duty to use care in protecting their passengers from mental as well as physical injuries. Ellison, *supra* note 1 at 457. The law raises such duty and imposes liability out of regard for human life and for the purpose of securing the utmost vigilance by carriers in protecting those who have committed themselves to their hands. John v. Northern P. R. Co. 32 L.R.A. 85 (1927).

[62] *Op. cit. supra* note 41.

[63] Navarro case, *op. cit. supra* note 11; 15 AM. JUR. 176.

[64] 15 AM. JUR. 175 *ff. Cf.* "If mental distress and annoyance are by-products of physical hurt or financial hurt, due to negligence, recovery of damages may be had." OLECK, DAMAGES TO PERSONS AND PROPERTY Sec. 5 at 173 (1957).

[65] NEW CIVIL CODE Art. 2217, note 4.

[66] *See supra* note 21a.

[67] G.R. No. L-10605, June 30, 1958. In the Necesito v. Paras case, the Court cited both American and English authorities in determining the question "whether or not the carrier is liable for the manufacturing defect of the steering knuckle, and whether the evidence discloses in regard thereto that the carrier exercised the diligence required by law." *See* JARENCIO, TORTS AND DAMAGES IN PHIL. LAW 23-26 (1958).

ordinary contract, (as for example, one for payment of money) unless the breach amounts in substance to a willful or independent tort.[68] It has been denied in a number of cases where such mental anguish and suffering are the only damages recoverable or where they are not accompanied by physical injury. The reason why such damages are not recoverable generally is that they are too remote and could not have been in contemplation of the parties when the contract was made.[69] However, due to the complexities of modern society, numerous industrial accidents giving rise to threats of mental as well as physical injuries have occurred. Today, courts have realized, although with some hesitation, that many such claims are genuine and have accordingly allowed recovery for negligently caused mental suffering.[70] It thus developed that the original general rule is now subject to recognized and well-marked exceptions.

Thus, in some states of the United States, mental anguish or suffering is a proper element of damage in an action for breach of contract, at least where it may be said that such anguish is the mental result of such breach.[71] Similarly, damages for mental anguish or mental suffering where directly attributable to the breach of contract of transportation, particularly where the conduct of the carrier in contributing to such breach was wanton or unduly oppressive, have been generally allowed.[72] In fact, it is said that the tendency of modern authorities is to allow damages for mental anguish where it is clearly within the terms of the contract or transaction and was negligently or wantonly caused by the defendant.[73] And others hold that it could be recovered also where it may reasonably be held to have been within the contemplation of the parties at the time of entering into the contract as a probable result of its breach.[74] Moreover, recovery has been permitted in such cases, even though there was no physical injury or willful wrong, but where other damage is shown, as well as where the breach of contract does result in a physical injury.[75]

Hewing behind the foregoing pronouncements and with almost revealing exactitude was the ruling of the Alabama Supreme Court to the effect that moral damages may be recovered where the contractual duty or obligation is so coupled with matters of mental concern or solicitude or with the feelings of the party to whom the duty is owed that a breach of that duty will necessarily or reasonably result in mental anguish or suffering.[76] Or, as otherwise stated, damages may be recovered in the case of contracts having a relation to the feelings and sensibilities of the parties entering into them and from the nature of which it is known, when the contracts are made, that great mental suffering will re-

[68] 15 AM. JUR. 182.

[69] Brown v. Chicago, M. & St. P. R. Co., 54 Wis. 342; Walsh v. Chicago M. & St. P. R. Co., 42 Wis. 23. *See* Wilcox v. Richmond & D. R. Co., 52 F. 264; Clark v. Life Casualty Ins. Co., 84, A.L.R. 1420; Roofing v. Murphy, 224 Ala. 655. *Cf.* Chase v. Western U. Teleg. Co., 44 F. 554; Play v. Western U. Teleg. Co., 43 S.W. 965.

[70] 15 LA. L. REV. 460 (1955).

[71] Western U. Teleg. Co. v. Hill, 163 Ala. 18.

[72] Jones v. The Cortes, 17 Cal. 487; Bonner v. Pullman Co., 160 S.C. 631.

[73] Burrus v. Nevada-California-Oregon R. Co., 88 Nev. 156.

"In general, damages for mental anguish or suffering are recoverable when they are the natural or proximate result of an act committed maliciously, intentionally, or with such gross carelessness or recklesness as to show an utter indifference to the consequence when they must have been in the actor's mind. . . . The rule allocating recovery of damages for mental anguish and suffering in cases involving wilful, wanton, and malicious acts is especially applicable in cases affecting . . . breach of . . . contracts of carriage." 15 AM. JUR. 592 ff. *See* 10 AM. JUR. 262, 414.

[74] Western U Teleg Co v. Redding, 100 Fla. 495.

[75] Hood v. Moffet, 109 Miss. 757.

[76] Becker Roofing Co. v. Murphy, 224 Ala. 655. The recoverable damages may include compensation for mental anguish or suffering which results so directly from that injury as to be the natural, legitimate and proximate consequence thereof. . . . In such case, the mental suffering is merely an aggravation of damages when it naturally ensues from the acts complained of. 15 AM. JUR. 592.

sult from their breach as distinguished from contracts which have a direct relation to property and other pecuniary matters.[77]

The Louisiana courts since 1903 have permitted recovery where the mental suffering has arisen from intentional breach of ordinary contract even if unaccompanied by physical injuries.[78] Rules in these cases have been formulated to guarantee the genuineness of the mental suffering claimed.[79] Even where the element of intentional or malicious action is lacking, moral damages have been allowed in favor of the party who suffered mental pain. As reasoned out by one court, "since the courts should redress all wrongs, it seems that one guilty of neglect, or want of due regard for the feeling of another, should be responsible to the latter for whatever damage his conduct, though not malicious, has produced."[80]

In a case decided in North Carolina, the owner of a hospital who, after undertaking to treat therein a woman with a broken hip, permits the room in which she is placed to be flooded with rain, causing her to contract pneumonia and die, is liable to her husband for moral damages arising not only from the injury inherent to the sufferings of the wife but also to the moral loss of the husband.[81]

In *Missouri P.R. Co. v. Kaiser*,[82] a railroad company was held liable for mental suffering to a girl about 16 years of age who, with a companion of about the same age, was travelling on the defendant's railway, and was put off in a small town short of their destination over their objections. The evidence of forcible ejection from the train was held sufficient to support the complaint "even if no actual physical force was used" to the detriment and injury of the plaintiff.

In sustaining the action of a passenger who was ejected from a railway train, the Court in *Louisville & N.R. Co. v. Laney*,[83] said that the railway com-

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[77] Mentzer v. Western U. Teleg. Co. 93 Iowa 752.

[78] Enders v. Skannal 35 La. Ann. (1883). Thus, in the famous "wedding dress" case, the court granted recovery for the mortification and humiliation of the bride occasioned by the defendant's negligent breach of his contract to furnish the bride with her trousseau. (Lewis v. Holmes 109 La. 1030, 34 So. 66 (1903. The same position was taken in a recent case wherein a laundry failed to return the only formal suit of a prospective groom in time for the wedding ceremony. (Mitchell v. Shreveport Laundries, 61 So. 2d. 5395 (La. App. 1952). In another Louisiana case, members of a social club were awarded damages for the mental suffering resulting from defendant's breach of a contract to furnish them with a pavilion for a picnic. (O'Meallie v. Morean, 116 La. 1820, 4 So. 243 (1906). *See* 15 LA. L. REV. 458 (1955).

[79] For example, American courts require "that actionable fright or shock experienced by the plaintiff be accompanied by a tangible physical injury. (1 STREET, THE FOUNDATIONS OF LEGAL LIABILITY 470 [1906], cited in 15 LA. L. REV. 460-461 [1955]). The "impact rule" have also been formulated where moral damages were allowed even in the absence of physical injuries. This rule was applied in the following cases: Laird v. Natchitoches Oil Mill, Inc. (10 La. App. 191, 120 So. 692 (1929) where recovery was allowed for mental suffering when a boy's bicycle was struck by defendant's truck, although the boy suffered no physical injuries; Klein v. Medical Realty Co., (147 So. [La. App. 1933]), where plaintiff recovered for mental suffering and fright caused by the falling of plaster from a ceiling and resulting in traumatic hysteria; Neulled v. Herrin Motor Lines, Inc. (184 So. 406 [La. App. 1938]), where a negligent driver who collided his truck with a car in which an expectant mother was riding was forced to compensate for her mental anguish, caused by fear that her unborn child would be deformed at birth. *See* 49 HARV. L. REV. 1040.

[80] Kernan v. Chamberlain, 5 Rob. 116 (La. 1843). The American Law Institute, in its Restatement of Torts, states the law thus: "Sec. 313. Emotional Distress Unintended: If the actor unintentionally causes emotional distress to another, he is liable to the other for illness or bodily harm of which the distress is a legal cause if the actor: (a) should have realized that his conduct involved an unreasonable risk of causing the distress, otherwise than by knowledge of the injury or peril of a third person, and (b) from facts known to him should have realized that the distress, if it were caused, might result in illness or bodily harm."

[81] Bailey v. Long 172 N.C. 661 (1933), 9 S.E. 89.

[82] 82 Tex. 144, 18 S.W. 305 (1891). *See* Reinhart v. Wright, 125 Ind. 536, 9 L.R.A. 514, 21 Am. St. Rep. 249, 25 N.E. 822; Walsh v. Chicago, 24 Am. Rep. 376; Wyman v. Levitt, 24 Am. Rep. 376.

[83] 14 Ala. App. 287 (1915), 69 So. 993. The Alabama Supreme Court also ruled in Louisville & N.R. Co. v. Clark, 205 Ala. 152, that a carrier violating his contract of carriage is liable for inconvenience, physical suffering and consequent illness resulting to the passenger from the breach.

pany breached its contract to carry the plaintiff safely and properly and to treat him respectfully, and that he was entitled to nominal damages in addition to all other damages resulting as a direct consequence of the breach including damages for personal injuries, indignities suffered from abuse and insults from agents of the defendant in ejecting him from the train, and mental and physical pain resulting from such breach.

In *Seaboard Air Line R. Co. v. Mobley*,[84] a female passenger was insulted in profane language used in her presence and hearing by two men in the presence of the conductor. The court in that case ruled that "independently of damages for personal injuries, damages may be recovered by a female passenger for mental suffering from fright or shock or due to profane, abusive language."[85]

In Georgia, the case of *Pullman Co. v. Strong*[86] also awarded moral damages. The question raised therein was whether the plaintiff, a passenger of the defendant who was travelling during her period of gestation, would be entitled to recover substantial damages in the absence of willful and wanton negligence if the only physical injuries suffered should have resulted from fright as distinguished from injuries accompanying fright. The Court declined to touch upon this question on the ground that "the evidence authorized a finding that there were physical injuries accompanying the fright."[87]

In *Sherwood v. Chicago & W.M. Rys. Co.*,[88] it appeared that the plaintiff was a passenger in one of the trains of the defendant company. The train ran past its usual stopping place to which the plaintiff was going. On hearing the name of the station called, the plaintiff got up and proceeded to alight but the train suddenly backed up, as result of which the plaintiff fell violently on the ground breaking her hip. The plaintiff sued on the ground of breach of contract of carriage. The Supreme Court, in instructing the jury to determine, among other things, mental suffering, aptly said:

> "The elements of damages which the jury is entitled to take into account consist of all effects of the injury complained of consisting of personal inconvenience, the sickness which the plaintiff endured, the loss of time, *all bodily and mental suffering*, impairment of capacity to earn money, the pecuniary expenses, *the disfigurement or permanent annoyance which is liable to be caused by the deformity resulting from the injury;* and in considering what would be a just sum in compensation for the suffering or injury, the jury is not only at liberty to consider the bodily pain, but the *mental suffering, anxiety, suspense, and fright* may be treated as elements of the injury for which damages, by way of compensation, should be allowed." (Italics ours).

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[84] 194 Ala. 211, 69 So. 614 (1915).

[85] *See* 8 R.C.L. 529; R.C.L. Perm. Supp. 2285; R.C.L. Pocket Part, title, "Damages", Sec. 85. *See also* annotations in 23 A.L.R. 872; 44 A.L.R. 228; 56 A.L.R. 657.

[86] 35 Ga. App. 59, 132 S.E. 399 (1926). *See* Clark v. Life Casualty and Insurance Co., where the court emphasized that damages for mental anguish are recoverable in violations of contract when accompanied by physical injuries. (84 A.L.R. 1420 [1933]). An action for mental anguish disconnected with physical injury, for breach of contract cannot be maintained at common law. Connel v. Western Teleg. Co., 116 Mo. 34, 22 S.W. 345, 20 L.R.A. 172. *See* Wilcox v. Richmond & D.R. Co., 52 F. 264, 17 L.R.A. 804.

[87] *Cf.* "It is not essential to liability that there be proof of any bodily physical injury in case physical disability results naturally and directly from extreme fright or shock." Pankopf v. Hinkley, 141 Wis. 146, 148, 149, 123 N.W. 625, 24 L.R.A (N.S.) 1159. In Sager v. Sisters of Mercy of Colorado, 81 Colo. 498, 256 Pac. 8, the court awarded damages to a domestic servant of the defendant for her "anguish of mind and humiliation" although the acts "were unaccompanied by physical injury." *Contra*: Connel v. Western Teleg. Co., *Ibid.*

[88] 46 N.W. 773. *See* Johnson v. Levy, 168 La. 447; Lewis v. Holmes, 109 La. 1030; Buyle v. Phila. Rapid Trans. Co., 134 Atl. 446, (1926).

In Spade v. Lynn & B.R. Co., 172 Mass. 488, 52 N.E. 747, 43 L.R.A. 822, 70 Am. St. Rep. 297, damages from fright sustained by a passenger on whom a drunken man was thrown in a car while another drunkard was being removed from the car, had been awarded by the court.

The Massachusettes court likewise made an identical ruling in the case of *Homans v. Boston Elev. R. Co.*,[89] when it awarded moral damages to a passenger who sustained a nervous shock resulting from a jar to the nervous system which accompanies a blow to the person caused by being thrown from a seat through the carrier's negligence. The court added that it was not necessary to show that the shock is the consequence of the blow.[89a]

Damages for mental anguish or suffering resulting from the wrongful ejection of a passenger from the vehicle of a common carrier may be recovered upon the same basis as prevails in any other action involving tortious conduct. This was the holding in *Sloane v. Southern California R. Co.*[90] It is even said that the paroxysms of the nervous system induced by the indignity and humiliation attendant upon a wrongful ejection from a vehicle constitute a bodily injury for which damages are recoverable and ignorance by the carrier of the susceptibility of the passenger to nervous disturbances will not change its liability in this respect.[91]

In *Chesapeake & O.R. Co., v. Robinett*,[92] where a carrier wrongfully ejected a passenger from a train and knocked or threw him against his daughter to her injury, the carrier was adjudged liable for the injury and fright suffered by the daughter as a result thereof.

The latest American decisions[93] have elicited a trend toward imposing liability in particularly flagrant cases of intentional infliction of mental suffering even though unaccompanied by physical injury.[94] *Thus, in Delta Finance Co. v. Ganakas*,[95] the Georgia Court of Appeals held that "physical injuries" resulting from fright[96] are compensable when the fright is produced by an in-

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[89] 180 Mass. 456.

[89a] *Cf.* "Even though there may be no actual objective symptoms of injury, there may be recovery for nervous shock if the evidence concerning such nervous condition is sufficient to warrant the belief that such injuries were actually sustained." Pecocoro v. Popanica, 173 So. 203, 204, La. App. (1937).

[90] 11 Cal. 664, 32 L.R.A. 193.

[91] Head v. Georgia P.R. Co., 7 S.E. 217, 11 Am. St. Rep. 433. *See* Deborah v. Illinois C.R. Co., 65 Miss. 14, 3 So. 36.

[92] 151 Ky. 778, 152 S.W. 970, 45 L.R.A. (N.S.) 443. *See* Georgia R. Co. v. Wallace, 141 Ga. 51, 80 S.E. 282.

The following cases similarly held that mental suffering is a proper element of damage for breach of contracts by carriers for the transportation of passengers:

Pullman Co. v. Lutz, 154 Ala. 517: momentary fright caused by the wrongful discharge of a passenger by a sleeping car company, although the fright was attended by no serious circumstances whatever to her mind.

Zabron v. Cunard S.S. Co., 151 Io. 345: disappointment and humiliation because of refusal of a steamship company to receive and transport a passenger without a ticket which had been paid for, and which it had neglected to forward to him.

Burrus v. Nevada-California-Oregon R. Co., 38 Nev. 156, *supra* note 73 where a contract to run a special train to convey the injured son of plaintiff to a place where he may receive medical attention had been violated.

Ft. Smith & W.R. Co. v. Ford, 34 Okla. 575: negligent failure of its servants to discharge a passenger at destination was accompanied by insolence and indifference to the passenger's rights.

[93] *See* 1956 ANNUAL SURVEY OF AM. LAW 359-361 (1957).

See also 11 U. OF FLA. L. REV. No. 2 262 (Summer 1958).

[94] Wade, *Tort Liability for Abusive and Insulting Language*, 4 VAND. L. REV. 63, 71-73 (1950). *Contra*: Spade v. Lynn & B.R. Co., 168 Mass. (1897), 38 L.R.A. 512, 60 Am. St. Rep. 393, 47 N.E. 88, Green on Torts, 86 ff (1957), *supra*, where it was held: "We remain satisfied with the rule that there can be no recovery for fright, terror alarm, anxiety, or distress of mind, if these are unaccompanied by some physical injury; and if this rule is to stand, we think it should also be held that there can be no recovery for such physical injuries as may be caused solely by such mental disturbance, where there is no injury to the person from without."

But Green, Malone, et al. in their latest work on CASES ON THE LAW OF TORTS 89 (1957), said that it was not until Dulieu v. White & Sons, 2 K.B. 669 (1901), that a new doctrine was given substantial recognition. "This case with its full examination and rejection of the objections recited in Spade v. Lynn and other cases completely turned the tide of decision in traffic cases even in states so fully committed to denial of recovery as were the courts of Mass., N.Y., and others."

[95] 91 S.E. 2d. 883 (Ga. App. 1956).

[96] It is easily discernible that American decisions award moral damages whether 'physical injuries result from fright' or 'fright result from physical injuries'.

tended act or by gross carelessness, and that the plaintiff's damages amounted to "physical injuries." Texas followed the tide when in the case of *Duty v. General Finance Co.*,[97] it permitted a suit for mental anguish resulting from outrageous collection methods of a finance company "even though the only physical injuries suffered were headache, upset stomach, and loss of weight and sleep." It is clear that "where some 'physical injury' accompanies the severe mental anguish, and 'physical injury' means no more than loss of sleep, nausea, headache, or some such minor ailment,"[98] damages are allowed in American courts today even in purely "collection" cases. As Professors Thornton and McNiece say, "the rule permitting recovery in such cases seems to be a just one although we cannot see much point in including the rather fictional requirement of physical injury . . . A line of distinction can be drawn between the slight hurts which are the price of a civilized society and the severe mental injuries inflicted by reprehensible actions wholly lacking in social utility . . ."[99]

It can be gleaned from the foregoing cases that moral damages can be recovered in at least three instances of breaches of contracts in the American jurisdiction,[100] to wit:

(1) Where such mental anguish or suffering is a proper element of damage because it is the natural result of the breach[100a] or where it may be within the contemplation of the parties at the time of the entering into the contract as a probable result of its breach;[101]

(2) Where such breach is accompanied by physical injuries[102] or other malicious or willful wrong:[103] and,

(3) Where although the breach produces no physical injury but other damages resulting from such breach is shown by competent evidence.[104]

Commenting further on the *Cachero* case, it cannot be denied that a taxicab operator cannot but foresee the result of his operations in case one of his cabs meets an accident as had precisely happened in this case. Surely, it is apparent that aside from the shock the passenger might have received as a consequence of the accident, mental anguish or suffering will necessarily be sustained from the physical injuries, and it is beyond the realm of sound reasoning to hold that such breach of contract has no relation whatsoever to the feelings, solicitude and sensibilities of the passenger.[105] Such probable mental anguish the passenger might suffer in case of breach of contract could very well be within the contemplation of the parties. This our Supreme Court should have considered out of equity and justice for the passenger. Cachero's dignity and worth as an

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[97] 273 S.W. 2d. 64 (Tex. 1954).

[98] 1956 ANNUAL SURVEY OF AM. LAW 359-361 (1957).

[99] *Ibid.* at 359 ff.

[100] For further discussion on the liability of common carriers, *see* 49 HARV. L. REV. 1038, 1051-1052 (1936); GREEN, MALONE, et al., CASES ON THE LAW OF TORTS 89 (1957).

[100a] "It is sufficient if the damage claimed legitimately flows directly from the negligent act whether such damages might have been foreseen by the wrongdoer or not." Koehler v. Waukesha Milk Co. 190 Wis. 52, 60, 298 N.W. 901, 904.

[101] The case of Jacobs v. Western Union Teleg. Co. 196 Mo. App. 300, 196 S.W. 81, goes further by holding that "the rule, as a whole, was formulated upon the idea that, though certain damages might be of such character that they could not be reasonably supposed to have been contemplated at the making of the contract, yet if they were such as could naturally and reasonably be considered, according to the usual course of things, to result from such breach, the party at fault would be liable for them."

[102] *Op. cit. supra* notes 83 86, 94, & 96. *See* Green, *supra* note 100 at 87.

[103] *Op. cit. supra* notes 68, 72 & 73.

[104] Westeson v. Olathe State Bank, 78 Colo. 217. *See supra* notes 87, 89a, 94, 75, 93.

[105] The allowance of damages for wounded feelings, when they are the concomitant or result of a physical injury, is placed rightfully on the ground that the mind is as much a part of the body as the bones and the muscles and an injury to the body included the whole and its effects are not separable. 20 A.L.R. 177.

individual should have been taken more in consideration.[106] His moral feelings and personal pride should have been thrown into the scales of justice.

Motor vehicles today occupy a larger place in the social, industrial and economic fabric than any other factor of twentieth century civilization. The automobile is contributing very immensely to the pleasure of the people, while at the same time the reckless use of the same is taking a tremendous toll of life and limb. More and more each year it is increasing as a factor in commercial transportation of freight and passengers. All these facts are known and recognized by the riding public and the courts would be grossly remiss in the discharge of their duties if they failed to recognize them and guard against them by declaring sound doctrines calculated to overcome the well-known evil tendencies.[107]

Under our law, a public utility operator, from the nature of his business and for reasons of public policy, is bound to observe extraordinary diligence so that his passengers may be brought by his men safely to their destination. The contract he enters into is one of public concern and solicitude, one clothed with public interest, and he therefore vouches that he will carry his passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, and with due regard for all the circumstances.[108] Once he falls short of that obligation or undertaking, he commits a public wrong and a moral injury to the passenger. Consequently, a stern and commensurate indemnity, which should include exemplary and moral damages, should be awarded to the victims to serve as a punitive measure and as a deterrant to all others similarly situated to put a stop to the rampant and seemingly ever-increasing mishaps caused by notorious flouting of traffic rules and by the flagrant disregard of the passenger's rights.[109] Where the authorities are for the welfare of the general riding public, liberalizing the grant of moral damages to victims of breach of contractual obligations would do just right what they are desiring to impose on public utility corporations.[110]

One of the commonest instances of recovery of damages for mental suffering in many American jurisdictions is that action for injuries as would in other jurisdictions warrant exemplary damages. In our jurisdiction, however, at least in so far as the *Cachero* doctrine is concerned, the recovery would still be made to depend upon the form of the action. While the form of the action is admittedly determinative of the validity of defenses that may be interposed by party litigants and in some cases, of the quantum of evidence presented,[111] it would, nevertheless, be relegating our jurisprudence on damages into the realm of the ridiculous by sorting out the kinds of damages that may be awarded in a given form of action, i.e., breach of contract or tort. In the majority of the American jurisdictions, the statement of the cause of action does not usually disclose whether it sounds in tort or in contract.[112] The gravamen of an action for negligent injury to a passenger by a common carrier being the breach of a duty imposed by law,[113] there may arise cases where tort comes into being as

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[106] *See* Layda v. C.A. & Brillantes, *op. cit. supra* note 44.
[107] Korner v. Cosgrove, 108 Ohio St. 484 (1923), 141 N.E. 2, 31 A.L.R. 1193.
[108] NEW CIVIL CODE Articles 1733 & 1755.
[109] *See supra* note 106. *Accord*, Montgomery & E. Ry. Co. v. Mallete, 9 So. 363, 92 Ala. 209 (1891); Green, *op. cit. supra* note 94.
[110] *See* New Orleans & N.E.R. Co. v. Japes, 142 U.S. 18 (1913); Kitsop County Trans. Co. v. Harvey, 15 F. (2d) 166 (1876); Tuller v. Talbot 76 Am. Dec. 695 (1906); Houser v. Chicago, R.I. Co. 219 N.W. 60 (1927); Gillen Water v. Madison I.R. Co. 90 N.Y. 588 (1893); Louisville v. Ballard, 3 SW 530 (1876).
[111] *See* JARENCIO, TORTS AND DAMAGES IN PHILIPPINE LAW 53-69 (1958).
[112] SEDGEWICK, ELEMENTS OF THE LAW OF DAMAGES 106 (1909). *See supra* note 39.
[113] NEW CIVIL CODE Art. 1733 & 1755.

a result of the breach of contract. In the *Cachero* case, there was a contract of carriage and it was breached. Under such circumstance, the breach of contract may well give rise to tort not only because it was wrong to breach the contract, but also because the law laid down an obligation upon the carrier to perform his duties with due regard to fixed standards. The carrier had breached the obligation imposed by law which in the particular instance arose from the relation created by contract. Where there is an obligation imposed both by law and by contract, it is sometimes said that the tort, though independent of, is, in a measure, dependent upon the contract.[114]

The paramount essence of contract law is that it defines rules of private conduct which should govern contracting parties. Tort law on the other hand is designed to enforce the general standard of reasonable conduct. Contracts of carriage which by law are inevitably impressed with profound safeguards to public interest cannot escape the requirements of general standard of reasonable conduct and survive. Modern theorists of the tort-contract relationship have had occasion to expound on borderlines that freely admit of the public character of contracts which gradually oscillate into the fascinating territories of tort law and vice versa.[114a] Dean Prosser registers his approval and satisfaction with the tort-contract merger concept by saying that "when the ghosts of case and assumpsit walk hand in hand at midnight, it is sometimes a convenient and comforting thing to have a borderland in which they lose themselves."[114b] Professor Cowan speaks even in more lucid language, thus:

> "Today, . . . the ancient tort law of undertakings broke open the bonds of contract to let in the indefinite public as beneficiaries. It also widened planned obligations to coincide with judicially determined 'reasonable expectations.' It introduced tort conceptions alien to contract such as the difference between misfeasance and non-feasance, and the notion of 'voluntary undertakings' among parties already bound by an agreement. It even went so far as to make the fact of contracting sufficient grounds for holding liable in tort parties who otherwise would be strangers to liability.
>
> "The very process by which contract widened its scope served the later purposes of tort law. . . Contract took on a general character and its obligations assumed the aspect of 'reasonable expectations' . . .
>
> "It becomes possible to look at contract once more as one of the many ways that a tort duty arises. The agreement becomes an undertaking, the parties assume general duties, the beneficiary is the public likely to be affected. Consideration becomes an aid in determining the existence of a duty, a way of discovering whether the undertaking might reasonably be regarded as having been seriously embarked upon . . . Daily the similarities between tort and contract grow more pronounced, the difference hazier. The nineteenth century sought to allow parties to limit liability for planned undertakings by contract, and, by requiring plaintiff to prove fault, restricted liability for losses caused the general public. This is changing. As negligence law presently is shading off into liability without fault, contract shades off into tort. . . Tort invades the very heartland of contract and substitutes as to the parties themselves, the public law of tort for the private law of contract."[114c]

Premises considered, should not Article 2219 of the new Civil Code which provides that "moral damages may be recovered in the following and analogous[115] cases . . . (2) quasi-delicts causing physical injuries. . ." be held properly applicable to cases of breaches of contracts causing physical injuries?[115a]

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[114] Trout v. Watkins Livery and Undertaking Co., 130 S.W. 236 (1873). *See* 8 R.C.L. 472, 482, *supra* notes 33 & 34.

[114a] *See* PROSSER, SELECTED TOPICS ON THE LAW OF TORTS, *The Borderland of Tort and Contract* 380-452 (1954); Cowan, *Contracts and Torts Should be Merged*, 7 J. LEGAL ED. 377 (1955).

[114b] *Ibid.* at 380 ff.

[114c] Cowan, *Rule or Standard in Tort Law*, 13 RUTGERS L. REV. 141, 152-156 (Fall, 1958).

[115] *See supra* note 30, for definition of "analogous."

[115a] *See* Salamat v. Isidro, *supra* note 49.

In view of the long line of American authorities holding that moral damages may be recovered in breaches of contracts causing physical injuries, it is evident that the wisdom of the *Cachero* doctrine holding the contrary is open to question. We see no laudable reason why the Court in the *Cachero* case refused to apply these American doctrines now that the new Civil Code has fortified the Philippine jurisprudence on moral damages conceived in the *Lilius* and *Castro* cases [116] and later reiterated in the *Layda, Navarro, Salamat,* and *Villanueva* cases.[117]

It is therefore submitted that Philippine courts should adopt the tendency of the American courts in liberalizing the grant of moral damages in favor of the victim out of equity and justice. These principles should be engrafted into our jurisprudence to resolve endless doubts and the unfortunate maze of inconsistencies revealed by our courts to the end that the moral dignity and worth of the individual may be vindicated and protected from thoughtless assaults by common carriers.

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[116] *Op. cit. supra* notes 15 & 21.
[117] *Op. cit. supra* notes 44, 47, 49, & 51.
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