

## INTERNATIONAL LAW

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Except for desultory resurgence of controversies founded on international law, the year 1960 suffered another near-drought in the cases essential to the germination of the seed of development of our principles of international law. With just but a dearth of decisions to discuss, care has been taken in making a selective choice of those cases principally touching upon issues with international aspects. Nevertheless, even passing statements of our Supreme Court but germane to subject under survey and which might serve as the springboard for the continuous growth of our jurisprudence have also been cited if only to present a complete and crystal-clear vista on the stratum of the Philippines in the field of international law.

### Suit Against Alien Property Administrator

Two important questions were resolved in the case of *Lim v. Brownell*<sup>1</sup> which was an appeal from an order of the lower court dismissing plaintiff's action for the recovery of real property vested in the Philippine Alien Property Administrator and thereafter transferred to the Republic of the Philippines. The case at bar revolves upon issues as to: (1) state immunity from suit, and (2) prescription of actions.

There is no denying that an action against the Alien Property Custodian involving vested property under the Trading with the Enemy Act located in the Philippines, is in substance an action against the United States. The immunity of the state from suit, however, cannot be invoked where the action, as in the present case, is instituted by a person who is neither an enemy nor ally of an enemy for the purpose of establishing his right, title or interest in vested property, and of recovering his ownership and possession. Congressional consent to such suit has expressly been given by the United States.<sup>2</sup> The order of dismissal, however, with respect to plaintiff's claim for damages against the defendant Attorney General (who was substitute for the Philippine Alien Property Administrator) must be upheld. The relief available to a person claiming enemy property which has been vested by the Philippine Alien Property Custodian is limited to those expressly provided for in the Trading with the Enemy Act, which does not include a suit for damages for the use of such vested property. That action, as held by this Court in the *Castelo* case just cited, is not one of those authorized under the Act which may be instituted in the appropriate courts of the Philippines under the provisions of section 3 of the Philippine Property Act of 1946. Congressional consent to such suit has not been granted.

The claim for damages for the use of the property against the intervenor defendant Republic of the Philippines to which it was transferred, likewise, cannot be maintained because of the immunity of the state from suit. The claim obviously constitutes a charge against, or financial liability to, the Government and consequently cannot be entertained by the courts except with the

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<sup>1</sup> G.R. No. L-8587, March 24, 1960.

<sup>2</sup> Sec. 3, Philippine Property Act of 1946. *Philippine Alien Administration v. Castelo et al.*, G.R. No. L-3981, July 30, 1951.

consent of said government.<sup>3</sup> This is not a case where the state takes the initiative in an action against a private party by filing a complaint in intervention, thereby surrendering its privileged position and coming down to the level of the defendant—as what happened in the case of *Froilan v. Pan Oriental Shipping Co. et al.*<sup>4</sup>—but one where the state, as one of the defendants, merely resisted a claim against it precisely on the ground, among others, of its privileged position which exempts it from suit.

Section 33 of the Trading with the Enemy Act has established a condition precedent to a suit for the return of property vested under the Trading with the Enemy Act, to wit, that the suit should be filed not later than April 30, 1949, or within two years from the date of vesting, whichever is later, but in computing such two years, the period during which there was pending a suit or claim for the return of the said property pursuant to secs. 9 or 32(a) of the Act shall be excluded. That limitation is jurisdictional.<sup>5</sup>

Plaintiff, however, contends that sec. 33 of the Trading with the Enemy Act cannot prevail over section 40 of the Code of Civil Procedure, which provides that an action to recover real property prescribes after 10 years, on the theory that under international law, questions relating to real property are governed by the law of the place where the property is located and that prescription, being remedial, is likewise governed by the laws of the forum. But the Trading with the Enemy Act, by consent of the Philippine Government, continued to be in force in the Philippines even after July 4, 1946<sup>6</sup> and consequently, is as much part of the law of the land as sec. 40 of the Code of Civil Procedure. Contrary to plaintiff's claim, therefore, there is here no conflict of laws involved. It should be stated that in an action under the Trading with the Enemy Act for the recovery of property vested thereunder, the right of the parties must necessarily be governed by the terms of that Act. Indeed, sec. 7(c) thereof explicitly provides that the relief available to a claimant of vested property is limited to those expressly provided for by its terms.

#### Suits Against an Enemy Alien in the Philippine Courts

By way of passing and *obiter dictum*, the Supreme Court in *Government v. Laperal*,<sup>7</sup> which was a petition for the cancellation of the annotation of mortgage, declared: "The question raised as to whether an enemy alien like the mortgagor Yasugami could be sued in the Philippine Courts before the signing and ratification of the Treaty of Peace between Japan and the Philippines and in the affirmative whether he could have availed himself of the benefits of the Moratorium Law, is one of first impression in this jurisdiction which should be threshed out, not within the limited confines of the summary proceedings contemplated in sec. 112 of Act No. 496 but in an ordinary action."

#### National Law Controls Successional Rights

To the general rule that property is governed by the *lex rei sitae*, the exception is that the distribution of the property of a decedent should be governed by his national law, an exception, which is in accordance with the na-

<sup>3</sup> *Syquia v. Almeda Lopez*, 47 O.G. 665; *Cia. Gen. de Tabacos v. Government of PI*, 45 Phil. 663.

<sup>4</sup> G.R. No. L-6060, Sept. 30, 1954.

<sup>5</sup> See *Cisatlantic Corporation et al. v. Brownell, Jr.*, Civil Case No. 8-221, U.S. Dist. Court, Southern Dist., N.Y. affirmed by the U.S. Court of Appeals, 2nd Circuit, May 11, 1955, Docket No. 23499.

<sup>6</sup> *Brownell, Jr. v. Sun Life Assurance Co. of Canada*, 50 O.G. 4814; *Brownell, Jr. v. Bautista*, G.R. No. L-6801, September 28, 1954.

<sup>7</sup> G.R. No. L-14228, June 30, 1960.

tionality theory of law, followed in civil law countries, as opposed to the domiciliary or territoriality theory follower in common law jurisdictions.<sup>8</sup>

In the case of *Phil. Trust Co. v. Bohanan et al.*,<sup>9</sup> the Supreme Court was confronted with the question as to what law should govern the validity of testamentary disposition made by a citizen of Nevada, U.S.A. The facts of this case can be distilled into simplest form as follows: In the proceedings for the probate of the will of C. O. Bohanan, executed by him on April 23, 1944 in Manila, it was found out and it was decided that the testator was a citizen of the state of Nevada because he had selected this as his domicile and his permanent residence. Thereafter, the executor Phil. Trust Co. filed a project of partition which was accordingly approved by the lower court. The wife Magdalena C. Bohanan and her two children question the validity of the testamentary provisions claiming that they had been deprived of the legitime that the laws of the forum concede to them. It is not disputed that the laws of Nevada allow a testator to dispose of all his properties by will.<sup>10</sup>

The Court applied our Old Civil Code<sup>11</sup> because the testator died in 1944.<sup>12</sup> Said Code expressly provides that successional rights to personal property are to be governed by the national law of the person whose succession is in question. Said the Court in conclusion: "As in accordance with Article 10 of the Old Civil Code, the validity of testamentary disposition is to be governed by the national law of the testator, as it had been decided and it is not disputed that the national law of the testator is that of the State of Nevada, already indicated above, which allows a testator to dispose of all his property according to his will, as in the case at bar, the order of the court approving the project of partition made in accordance with the testamentary provisions, must be, as it is hereby affirmed."

#### Proof of Foreign Law

Since in most cases a court cannot be expected to know the foreign law that is applicable, its ascertainment is necessarily governed by rules different from those governing the ascertainment of municipal law.<sup>13</sup> The content of foreign law is treated as an extra-legal fact which must be proved in the same way as pure facts are proved by the party having the burden of proof. The rules of law of another state must therefore be pleaded and proved, along with the other elements of a cause of action or defense.<sup>14</sup> In line with this principle it has been held that the laws of a foreign jurisdiction do not prove themselves in our courts, and such laws must be proved as facts.<sup>15</sup>

However, in the *Bohanan* case, *supra*, which was an appeal from an order dismissing the objections filed by appellants Bohanan et al. to the project of partition submitted by the executor and approving the same, our Supreme Court

<sup>8</sup> Concurring op. Torres, J., *Ibañez de Aldecoa v. Hongkong & Shanghai Banking Corp.*, 30 Phil. 228, 250-1.

<sup>9</sup> G.R. No. L-12105, Jan. 30, 1960.

<sup>10</sup> Sec. 9905, Compiled Nevada Law of 1925 provides:

"Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his or her estate, real and personal, the same being chargeable with the payment of the testator's debts."

<sup>11</sup> Par. 2, Art. 10, Old Civil Code, which is the same as par. 2, Art. 16, New Civil Code, provides:

"Nevertheless, legal and testamentary successions, in respect to the order of succession as well as to the extent of the successional rights and the intrinsic validity of their provisions, shall be regulated by the national laws of the person whose succession is in question, whatever may be the nature of the property and the country in which it may be found."

<sup>12</sup> The New Civil Code took effect only on August 30, 1950 (*Lara v. del Rosario*, 50 O.G. 1975; *Raymundo v. Peñas*, 51 O.G. 139).

<sup>13</sup> Salonga, *Private International Law* (1957), 399.

<sup>14</sup> Goodrich, H.F., *Conflict of Laws* (1949), 232-3.

<sup>15</sup> *In re Estate of Johnson*, 39 Phil. 156.

deemed it proper to take judicial notice of the pertinent law of Nevada<sup>16</sup> without the necessity of an offer of proof of such law. Although the Court declared that a foreign law "can only be proved in the form and manner provided by our Rules,"<sup>17</sup> it nevertheless veered away from the otherwise strict rule. Said the Court to justify its action:

"We have, however, consulted the records in the court below and we have found that during the hearing on October 14, 1954 of the motion of Magdalena C. Bohanan for withdrawal of P20,000 as her share, the foreign law, especially Section 9905, Compiled Nevada Laws, was introduced in evidence by appellants' (herein) counsel as Exhibit "2" Again said law was presented by the counsel for the executor and admitted by the court as Exhibit "B" during the hearing of the case on January 23, 1950 before Judge Rafael Amparo.

"In addition, the other appellants, children of the testator, do not dispute the above-quoted provision of the laws of the State of Nevada. Under all the above circumstances, we are constrained to hold that the pertinent law of Nevada, especially Section 9905 of the Compiled Nevada Laws of 1925, can be taken *Judicial notice of by us, without proof of such law having been offered at the project of partition.*" (Underscoring supplied).

#### Validity of Foreign Exchange Restrictions

Central Bank circulars are presumed valid until proven otherwise. Thus in the case of *People v. Lim Ho, et al.*,<sup>18</sup> the High Tribunal refused to declare that Circulars Nos. 20, 21, 42 and 55 of the Central Bank are in conflict with international agreement to which the Philippines is a party. Defendants in this case were charged and convicted in the lower court for exportation of gold without license and prohibited by Circulars Nos. 20 and 21 of the Central Bank and punishable under section 34 of Republic Act No. 265, and for failure to declare foreign exchange before departure for abroad and its exportation without license prohibited by Circulars Nos. 20 and 42, the last as amended by Circular No. 55 of the Central Bank and punishable under the same section of the same Act. Appellants now claim that Circulars Nos. 20, 21, 42 and 55 of the Central Bank have not been approved by the President of the Philippines pursuant to section 74 of Rep. Act No. 265; by the International Monetary Fund pursuant to the Articles of Agreement of the International Monetary Fund of which the Republic of the Philippines is a signatory; and by the President of the United States of America pursuant to Article V of the Trade and Related Matters Agreement entered into by and between the Republic of the Philippines and the United States of America. Hence they contend that the circulars in question were not validly promulgated.

In affirming the judgment of conviction, the Court stated that Circular No. 20 was approved by the President of the Philippines and such approval of the other circulars was not necessary because they are just implementations of Circular No. 20, this statement being supported by citation of decided cases.<sup>19</sup> And as regards the necessity of approval of the International Monetary Fund and the President of the United States of America the Court cited the case of *People v. Koh*,<sup>20</sup> which says:

<sup>16</sup> Sec. 9905, Compiled Nevada Laws of 1925, *supra*.

<sup>17</sup> See Rule 123, sec. 41, Rules of Court, which provides:

"Sec. 41. Proof of public or official record.—An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such office has the custody."

<sup>18</sup> G.R. Nos. L-19091-2, Jan. 28, 1960.

<sup>19</sup> *People v. Jolliffe*, G.R. No. L-9553, May 13, 1959; *People v. Henderson*, G.R. Nos. L-10829-30, May 29, 1959; and *People v. Koh*, G.R. No. L-12407, May 29, 1959.

<sup>20</sup> G.R. No. L-12407, May 29, 1959.

"As to the international aspect, it is not incumbent upon the prosecution to prove that the provisions of Circular No. 20 complied with all pertinent international agreements binding on our Government. The Central Bank and the President certify that it accords therewith, and it is presumed that said officials know whereof they spoke, and that they performed their duties properly. It is rather for the defense to show conflict, if any, between the Circular and our international commitments."

Accepting the contention that executive regulations are valid only when they are not contrary to the laws and the Constitution, it further went on to say that the *onus probandi*, that the Circular does conflict with the Constitution or the laws, nevertheless, rests with the defendants.

The above ruling was reiterated in *People v. Tan*<sup>21</sup> where the defendants was charged with violation of Circular No. 20 of the Central Bank. As to the purpose of foreign exchange restrictions it was stated that "restrictions on foreign exchange imposed by Central Bank Circular No. 20 have a double purpose, namely, the replacement of the dollars disbursed from the international reserve and the acquisition of dollars to augment it. It is also intended to bring back our dwindling international reserve to a level sufficient to meet our normal demands for foreign exchange, and every dollar that should be added, but is not, to said international reserve adversely affects the country economy."

#### Judicial Declaration of Citizenship

Can there be a judicial declaration of citizenship of a person when such status is not put in issue by the pleadings? This question was answered in the negative in *Tan v. Republic*.<sup>22</sup> In his petition for naturalization as well as in his declaration of intention, petitioner stated that he is a citizen of Nationalist China and that he wants to become a citizen of the Philippines and to be admitted as such. The question whether or not petitioner is a citizen of the Philippines has never been put in issue in this case. As a consequence, when the lower court declared him to be such citizen, it went beyond the issues raised by the pleadings and, therefore, exceeded its jurisdiction. It is true that in the case of *Palanca v. Republic*<sup>23</sup> petitioner therein was declared a citizen of the Philippines in the proceedings for his naturalization. However, through appropriate pleadings, the said petitioner had averred that he possessed such status, thus putting the same in issue.

Thus the prevailing rule in this jurisdiction is as what was aptly stated by the Court in the case at bar speaking through Justice Concepcion, to wit: "Under our law, there can be no action for the judicial declaration of the citizenship of an individual. Courts of justice exist for the settlement of justiciable controversies, which imply a given right, legally demandable and enforceable, an act or omission violative of said breach of right. At times, the law permits the acquisition of a given status, such as naturalization by judicial decree. But, there is no similar legislation authorizing the institution of a judicial proceeding to declare that a given person is part of our citizenry."

#### Detention of Alien Pending Deportation

It is a rule recognized by international law that the state has the right to deport aliens whose continued stay is detrimental to the public welfare. Such right is absolute and unqualified.<sup>24</sup> It is also equally settled that as a

<sup>21</sup> G.R. No. L-9275, June 30, 1960.

<sup>22</sup> G.R. No. L-14159, April 18, 1960.

<sup>23</sup> 45 O.G. Supp. p. 204.

<sup>24</sup> *Tui Chun Hai v. Go Tam v. Commissioner*, G.R. No. L-10009, Dec. 22, 1958.

preliminary step to deportation such deportee may be detained. But for how long should an alien be detained pending his deportation? The case of *Pao v. Commissioner*<sup>25</sup> provides us an answer. In the case at bar, petitioner filed a petition for *habeas corpus* alleging a prolonged detention for a period of 8 years pending his deportation. The Supreme Court, through Justice Barrera, held that if there is any delay in the shipment of petitioner from this country, it is not due to the fault or negligence of the government or its officers. If diplomatic negotiations which have been pursued relentlessly by our government have not yielded tangible results leading to the immediate or early removal of petitioner and other aliens similarly situated the delay should not be considered a ground for declaring the order of deportation *functus officio*. Otherwise it would be within the power of the countries of undesirable aliens ordered deported from this country to render ineffective or unenforceable warrants of deportation, by simply frustrating all diplomatic efforts aimed at their removal from this country. The Court then concluded that "as long as the continued detention of a deportee is not attributable to the fault of the government and his deportation is not rendered impossible by his citizenship status by reason of which no country or ship will accept him, warrant for his deportation should stand in all its force and vigor, rather than be declared *functus officio*." Petition denied.

#### Taxes on Foreign Corporations

Section 24 of the National Internal Revenue Code levies income taxes on foreign corporations *only on income derived from sources within the Philippines*, and with respect to capital gains on the sale of personal properties, section 37(c) of the same Tax Code deems the *place of sale* as also the place or source of the capital gain. Accordingly, where the sale of shares of stock took place outside the Philippines no income tax may be validly imposed on said transaction as held in *Collector of Internal Revenue v. Anglo-California National Bank*.<sup>26</sup> It appears that respondent Calamba Sugar Estate Inc., herein represented by its trustee, the Anglo California National Bank, is a foreign corporation organized and existing under the laws of the State of California, U.S.A. duly licensed to do business in the Philippines. Petitioner imposed income taxes on the corporation supposedly based upon capital gains derived from the respondent's sale to the Pasumil Planters, Inc. of 250,000 shares of the capital stock of the Pampanga Sugar Mills, a domestic corporation. It is admitted that the negotiation, perfection and consummation of the contract of sale were all done in California. It follows that title to the shares of stock passed from the vendor to the vendee at said place, from which time the incidents of ownership were vested on the buyer.

Construing the same provision of law above cited (which is section 119[e] of the 1934 Act, U.S. I.R.C.) United States courts are in accord in disallowing the imposition of income taxes by its government on capital gains where the sale takes place outside its territorial jurisdiction. It is likewise the prevailing view that in ascertaining the place of sale, the determination of when and where title to the goods passes from the seller to the buyer is decisive.<sup>27</sup>

<sup>25</sup> G.R. No. L-14246, April 27, 1960.

<sup>26</sup> G.R. No. L-12476, Jan. 29, 1960.

<sup>27</sup> *East Coast Oil Co. v. Comm.*, 31 B.T.A. 558, aff'd. 85 F(2d) 322, cert. den. 299 U.S. 608, 81 L. Ed. 449, 57 S. Ct. 234; also *Disconto-Gesellschaft v. U.S. Steel Corporation*, 267 U.S. 22; *Compania de Tabacos de Filipinas v. Collector*, 279 U.S. 306, 73 L. Ed. 704, 49 S. Ct. 304.

## ACKNOWLEDGMENT

In grateful recognition of the ever continuing interest and utmost concern of Justice George A. Malcolm for the U.P. College of Law, the Malcolm Memorabilia Committee constituted by Dean Malcolm on March 1st, 1961 at the Manila Hotel meeting and composed of Atty. Pacita de los Reyes-Phillips, the Law Librarian, at present Miss Marina G. Dayrit, Dean Deogracias T. Reyes, and Professor Bienvenido C. Ambión, announces that the following Malcolm mementos and souvenirs have been received in behalf of the College: Six (6) Books<sup>1</sup> and an Envelope of Papers and Effects.<sup>2</sup>

All of these papers and effects together with the other Malcolm mementos which are forthcoming, "will be arranged in a cabinet enclosed in glass and dark wood and placed beneath the Amorsolo portrait in the University Law Library" pursuant to instructions of the donor—the founder and first dean of the U.P. College of Law.

Speaking of acknowledgments, the incumbent Faculty Editor of the *Philippine Law Journal* who has been continuously editing the *Journal* since the December, 1954 issue thereof thus the longest to occupy the position since the *Journal* resumed its publication after World War II, and whose resignation is effective as soon as this current and last issue for the academic year is off the press, reiterates his thanks for the unfailing cooperation of contributors to the *Journal*, especially colleagues in the faculty and the members and various chairmen of the Student Editorial Board—these students not only wrote in the columns of the *Journal* but also assisted our various printers in the painstaking tasks incident to publication. Appreciation is also in order for the assistance rendered by the different Business Managers of the *Journal*. Lastly the Editor expresses once again his gratitude to Dean, now U.P. President V. G. Sinco, and Dean Vicente Abad Santos for reposing their confidence in the journalistic and writing ability of this Faculty Editor and for the usual generous support extended by said deans to the *Philippine Law Journal* during this Editor's entire incumbency.

<sup>1</sup> These books which are transmitted to the Law Library are entitled: (1) *The Sinners of Angeles* by Renato D. Tayag (1960); (2) *Memoirs of Baguio* by L. P. Gutierrez—1901-1960; (3) *The Citizen's Poems* by Amado Yuzon (1960). (4) *Paete* by Eugenio C. Quesada (1956); (5) *Historical Bulletin—Vol. IV, No. 2, June, 1960*; and (6) *Religious Revolution in the Philippines—Vol. I—1860-1940* by Pedro S. de Achutegui, S.J. and Miguel A. Bernad, S.J. (1960).

<sup>2</sup> The Envelope contained the following Papers and Effects: (1) U.P. College of Law Pin, pinned on a sheet of paper giving instructions to the Committee regarding the repository of and manner of arrangement of the Memorabilia Materials; (2) Photographic reproduction of the Amorsolo portrait of Justice George A. Malcolm; (3) Photographic reproduction of a newspaper clipping showing Justice Malcolm together with President Quirino and President Laurel; (4) List of U.P. Law Alumni from 1913 to 1950 detached from the U.P. Law 40th Anniversary Souvenir Program; (5) Announcement of the Educational Courses at the YMCA for 1910-1911; (6) U.P. College of Law, Its History and Accomplishments by Dean Abad Santos (Manila Rotary Club Speech); (7) Retrospect on the U.P. College of Law by Professor B. C. Ambion—detached from the 1958 *Philippine Law Journal*; (8) U.P. College of Law Catalogue for 1916-1917 and Announcements for 1917-1918; (9) One-page brochure on *American Colonial Careerist* by Dean Malcolm and issued by the Christopher Publishing House; (10) *The Woolsack*—presented by Class 1913 to Dean Malcolm; (11) Picture of the Silver Anniversary celebration of Class 1913 held on October 18, 1918; (12) President Murray Bartlett's Letter dated April 1, 1915 addressed to Dean Malcolm paying tribute to the latter's organization of the U.P. College of Law; (13) A two-page handwritten letter of Dean Malcolm to Dean Abad Santos transmitting checks in the amount of Ten Thousand Pesos (P10,000.00) for financing a chair in Constitutional Law; (14) Speech delivered by Dean Malcolm before the U.P. Law Faculty at a luncheon tendered in honor of Justice and Mrs. Malcolm on January 6, 1961 at the Manila Hotel; (15) Program of the Conference on Effective Legal Education held at the U.P. College of Law on January 9-10, 1961; and (16) Program of the U.P. Law Golden Jubilee Dinner and Presentation of Awards at the Manila Hotel on January 14, 1961.