CIVIL LAW

VENUSTIANO S. ROXAS *
LUALHATI V. FERRO **
AMADOR R. PEREZ ***

HUMAN RELATIONS

According to the Code Commission, the chapter on human relations contains basic principles that are to be observed for the rightful relationship between human beings and for the stability of the social order. While the old Code merely states the effect of the law, the new Civil Code "has gone farther than the sphere of wrongs defined or determined by positive law. Fully sensible that there are countless gaps in statutes, which leave so many victims of moral wrongs helpless, even though they have actually suffered material and moral injury the (Code) Commission has deemed it necessary, in the interest of justice to incorporate" Article 21 [1] which provides that "any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

The foregoing rule was applied in the recent case of *Pe et al. v. Pe* [2] wherein the defendant, a married Chinese secured the confidence of the plaintiff. During his business trips, as a sales agent and under the pretext that he wanted the plaintiff's daughter to teach him how to pray the rosary, the defendant frequented the latter's house until the two fell in love with each other and conducted clandestine trysts. Despite prohibition by the plaintiff and the filing of a deportation proceeding against the defendant, the two continued with their relationship until the girl left the family home and went away with the defendant. Plaintiff brought an action to recover damages from the defendant under Article 21 of the new Civil Code. But despite the fact that plaintiff has clearly established the illicit affair between his daughter and the defendant, which caused great damage to his name and reputation, the lower court dismissed the complaint as non-actionable for failure of the plaintiff to prove that the defendant deliberately and in bad faith tried to win the daughter's affection. The Supreme Court held that from the

---

* Recent Decisions Editor, *Philippine Law Journal*, 1962-63.
** Member, Student Editorial Board, *Philippine Law Journal*, 1962-63.
*** Member, Student Editorial Board, *Philippine Law Journal*, 1962-63.
[1] Report, Code Commission, pp. 39-40.
[2] G.R. No. L-17396, May 30, 1962.

chain of events no other conclusion can be drawn than that the defendant not only deliberately but through a clever strategy succeeded in winning the affection and love of plaintiff's daughter to the extent of having illicit relations with her. Considering that the defendant is a married man, he has therefore, committed an injury to the plaintiff and his family in a manner contrary to morals, good customs and public policy as contemplated in Article 21 of the new Civil Code.

The case of *Zapanta v. Montesa*[3] reiterates the well-established principle that the annulment of the second marriage on the ground of duress, force and intimidation is a prejudicial question determinative of the defendant's guilt or innocence of the crime of bigamy. In the Zapanta case, Olimpia filed a complaint for bigamy against petitioner in the Court of First Instance of Bulacan. Petitioner in turn, filed in the Court of First Instance of Pampanga against Olimpia a complaint for the annulment of their marriage on the ground of duress, force and intimidation. Thereafter, petitioner filed a motion to suspend the proceedings in the criminal case on the ground that the determination of the issue involved in the second case was a prejudicial question. Respondent judge denied the motion and ordered the petitioner's arraignment. Hence this present appeal. The Supreme Court, citing the case of *People v. Aragon*,[4] ruled that the requisites of a prejudicial question, that it must be determinative of the case before the court and that jurisdiction to try the same must be lodged in another court, are present in the case at bar. Should the question for annulment of the second marriage pending in the Pampanga court prosper on the ground that the petitioner's consent thereto was obtained by means of duress, fraud and intimidation, it will be obvious that his act was involuntary and cannot be the basis of his conviction for the crime of bigamy with which he was charged in the Bulacan court.

CITIZENSHIP AND NATURALIZATION

Strict interpretation—

1. The absence of disqualifications enumerated by law is a part and parcel of the case for naturalization, and it is incumbent upon the applicant to prove the same in addition to his possession of the positive qualifications required by the statute. The belief expressed by the witnesses that the petitioner would make a good citizen, and

[3] G.R. No. L-14534, February 28, 1962.
[4] G.R. No. L-5930, February 17, 1954.

that they recommend his admission to Filipino citizenship is a mere conclusion which, if unsupported by facts, is entitled to no weight.[5]

2. An answer by the witness to the effect that petitioner is not in any way disqualified because he possesses all the qualifications to become "Filipino" does not prove affirmatively that petitioner does not possess any of the disqualifications. To possess the qualifications is one thing and it is another to be free of any of the disqualifications. Failure to prove affirmatively by the petitioner's own testimony and that of the credible witnesses required by law, both of his possession of the qualifications to be admitted as a citizen and his not possessing any one of the disqualifications provided by law is fatal to a petition for naturalization.[6]

3. A naturalization case is not an ordinary judicial contest, to be decided in favor of the party whose claim is supported by the preponderance of evidence. Indeed, naturalization is not a matter of right, but one of privilege of the most discriminating, as well as delicate and exacting nature, affecting as it does public interest of the highest order, and which may be enjoyed only when the precise conditions prescribed by law are complied with.[7]

Petition for declaration of Filipino citizenship in a Naturalization Proceeding—

1. The case of *Tan v. Republic* [8] which in effect held that there can be no judicial declaration of the Filipino citizenship of an individual in the same naturalization proceedings even if the evidence so warrants was reiterated in the recent case of *Palaran v. Republic.*[9]

In the *Palaran* case, petitioner presented with the proper court a petition for naturalization with the alternative prayer to declare his status as a Filipino citizen. After trial in which the totality of the testimony of the witnesses showed that the petitioner is and has always been a Filipino, the lower court ordered that he may be declared such citizen in the same proceeding for naturalization without the necessity of pressing the latter proceeding. *Held:* The *Sen v. Republic* [10] case relied upon by the petitioner has long been overruled by our decision in the *Tan* case and has been consistently applied in the subsequent cases of *Tan Yu Chin v. Republic* [11] and *Tan v.*

---

[5] Santiago Ng v. Republic, G.R. No. L-16302, February 28, 1962.
[6] Kho Eng Poe v. Republic, G.R. No. L-17146, July 20, 1962.
[7] Tan Si v. Republic, G.R. No. L-18006, October 31, 1962.
[8] G.R. No. L-14159, April 18, 1960.
[9] G.R. No. L-15047, January 29, 1962.
[10] G.R. No. L-6868, April 30, 1955.
[11] G.R. No. L-15775, April 29, 1961.

Republic,[12] that no petitioner for naturalization can be declared as a Filipino citizen in the same proceeding even if the evidence so warrants without instituting a separate proceeding for the purpose.

Time to elect Philippine citizenship—

1. It is true that the clause "upon reaching the age of majority" in the Philippine Constitution, Article IV, section 1, par. 4 and Commonwealth Act No. 625 has been construed to mean a reasonable time after reaching the age of majority, and that the Secretary of Justice has ruled that 3 years is a reasonable time to elect Philippine citizenship, which period may be extended under certain circumstances, as when the person concerned has always considered himself a Filipino. But where the petitioner joined a unit of Chinese volunteers and registered himself in the Bureau of Immigration as a Chinese, his alleged failure to elect Philippine citizenship until 7 years later despite knowledge of his right to make a formal election because of his alleged financial difficulties and illness of the members of his family are patently insufficient to excuse said delay or to warrant extension of the period to elect Philippine citizenship.[13]

Exemption from filing the declaration of intention—

1. To exempt an applicant from filing the notice of intention to become a Filipino citizen, the residence required of said applicant in the Philippines must be continuous and that he must have enrolled all his children of school age in institutions recognized by the Philippine government. Thus, the exemption shall not apply where two of the children of the applicant were admitted to the Philippines when they were 17 and 12 years old and were immediately enrolled in a Chinese high school because it is evident therefrom that not all of the children of the petitioner who were of school age were given primary and secondary education in the public schools or in private schools recognized by the government. Neither can the petitioner claim to have resided continuously in the Philippines where he had gone to China several times and for long periods of time (approximately 5 months every visit) to his family.[14]

Full disclosure of facts determinative of applicant's personal identity—

1. The details concerning petitioner's place of birth and date of arrival in the Philippines are important in determining the per-

[12] G.R. No. L-16108, October 31, 1961.
[13] Dy Cueco v. Secretary, G.R. No. L-18069, May 26, 1962.
[14] Sy See v. Republic, G.R. No. L-17025, May 30, 1962.

sonal identity of applicant and serve to differentiate him from others bearing the same name. The discrepancy as to his application and the declaration of intention and failure to submit a copy of his certificate of arrival and full details on the place of birth, therefore resulted in that persons who might be in possession of derogatory information concerning him would not come forward with it, being left in doubt as to the true identity of the applicant. His conduct thus militated against the intent of the law requiring full disclosure about an applicant's personal circumstances and justifies the denial of the naturalization sought.[15]

Residence requirement—

1. Failure to state a former residential address in the petition for declaration is a violation of section 7, Commonwealth Act No. 473 and constitutes a valid ground to disqualify the applicant for naturalization.[16]

2. Where the petitioner had gone to China many times and for long periods of time (approximately 5 months per visit) to see his family, he cannot be considered to have resided continuously in the Philippines.[17]

Proper and irreproachable conduct; knowledge of principles underlying the Philippine Constitution and desire to embrace Filipino customs and traditions—

1. The petitioner's eight-year cohabitation with his wife without benefit of clergy and begetting by her three children out of lawful wedlock is a conduct far from being proper and irreproachable as required by the Revised Naturalization Law regardless of the celebration of his marriage in a civil ceremony four days before filing the petition for naturalization.[18]

2. Where the applicant never registered as aliens two of his children with the Bureau of Immigration while all his other minor children were registered as aliens only after having filed the petition for naturalization, he has undoubtedly failed to conduct himself in a proper and irreproachable manner in his relations with the government.[19]

---

[15] Yan Hang v. Republic, G.R. No. L-17013, May 29, 1962, citing Yu Seco v. Republic, G.R. No. L-13441, June 30, 1960.

[16] Koa Gui v. Republic, G.R. N.o L-13717, July 31, 1962.

[17] *Supra*, note 14.

[18] Gavino Lao v. Republic, G.R. No. L-17053, October 39, 1962 and Francisco Lao v. Republic, G.R. No. L-17054, November 29, 1962.

[19] Chung Hang v. Republic, G.R. No. L-17391, November 29, 1962, citing Benjamin Co. v. Republic, G.R. No. L-12150, May 26, 1962.

3. In *Chua Chiong v. Republic* [20] the petitioner, when asked by the Fiscal about the customs of the Filipinos that he had embraced, the best "good custom" that petitioner could mention was the habit of the Filipinos to invite others to eat when it is time for eating. *Held:* While it is true that an applicant for Filipino citizenship is not expected to be a constitutionalist nor to have a mastery of the provisions of the Constitution, the petitioner's testimony as above quoted can hardly recommend him for citizenship.

4. The unexplained use of several aliases by an applicant for naturalization without any showing that it has been authorized as provided by the Alias Law,[21] or the adoption and use of another name at an adult age when he was baptized before contracting a canonical marriage is a violation of the Alias Law and is therefore indicative of the fact that applicant's conduct is not beyond reproach sufficient to qualify him from naturalization. The mere fact that the other name was not used in his business or social dealings is immaterial. The use of an additional Chinese name is likely to befuddle his identity as a contracting party to the marriage and cannot be justified that it was not used in other occasions, for marriage in the Philippines is a sacred institution that requires full and accurate disclosure of identities of the contracting parties.[22] The use of several names in the applicant's dealings with the public, different from that used in his petition for naturalization can have no other purpose than to confuse and mislead the people in order to facilitate the approval of the petition and to forestall any opposition thereto.[23]

5. The use of different names by the children of the applicant for naturalization is not in accordance with Filipino customs and traditions and is a valid ground for the denial of the application.[24]

6. The lack of serious concern by the applicant over the existence or whereabouts and/or failure to send money to his mother in China, despite financial means to do so does not speak well of his claim to have embraced the customs, traditions and ideals of the Filipino people, and is therefore a valid ground to deny the petition.[25]

7. Acts showing the alien's desire to preserve his identity as an alien, namely membership in a Chinese merchants' association, partiality in favor of Chinese in the selection of his employees and enrolling all of his children in Chinese schools, are violative of the

---

[20] Chua Chiong v. Republic, G.R. No. L-16045, May 31, 1962.
[21] Wang Fu v. Republic, G.R. No. L-15819, September 29, 1962.
[22] *Supra*, note 16.
[23] Te Eng Ling v. Republic, G.R. No. L-171918, November 28, 1962.
[24] *Supra*, note 21.
[25] *Supra*, note 21.

legal requirement that the applicant must show by overt acts the applicant's actual desire to become a Filipino citizen.[26]

Property and income qualification—

1. The failure of the petitioner to state in his oral testimony or to support with any certificate of assessment or declaration of real estate property his bare statement in his petition that he owns a building for commercial and residential purposes with an assessed value of ₱5,000.00 is not a sufficient proof to support the allegation as to property ownership of the petitioner.[27]

2. Where the tax declaration submitted by the applicant to show ownership of real estate is specifically declared in the name of his wife alone, and the land is assessed at only ₱2,020.00 with no improvements thereon, it cannot be admitted that he owns real estate worth at least ₱5,000.00.[28]

3. A petitioner earning a monthly salary of ₱140.00,[29] or ₱104 with free board and lodging furnished by his employer [30] or ₱120.00 plus a monthly allowance of ₱60.00 for board and lodging furnished by his mother-employer,[31] does not satisfy the requirement of a lucrative income or gainful occupation.

4. An average annual income of ₱5,980.00 by an applicant who maintains a family of six, although none of the five children goes to school for none is of school age is not lucrative within the provisions of Section 2, Commonwealth Act No. 473.[32]

5. An applicant for naturalization who is a third year chemical engineering student whose schooling in Manila is financed by his parents who stay in the province and whose board and lodging is given free by his brother-in-law with whom he stays in the city, does not satisfy the requirement as to lucrative income even with his monthly salary of ₱120.00 as an employee and a savings deposit in the bank of ₱2,000.00.[33] Petitioner cannot invoke the case of *Lim v. Republic* [34] wherein the applicant, a second-year pre-medical student, employed in his father's business with a monthly salary of ₱30.00 plus free board and lodging, and having a deposit in the bank

[26] *Supra*, note 21.
[27] Cu v. Republic, G.R. No. L-13341, July 21, 1962.
[28] *Supra*, note 19 citing Alfonso Teh Lopez v. Republic, G.R. No. L-9155, April 23, 1955.
[29] Uy v. Republic, G.R. No. L-17622, May 29, 1962.
[30] *Supra*, note 23.
[31] Manuel Yu v. Republic, G.R. No. L-17748, November 28, 1962.
[32] *Supra*, note 16.
[33] Sy Piñero v. Republic, G.R. No. L-17399, October 30, 1962.
[34] G.R. No. L-4588, January 28, 1953.

of ₱1,002.00 was admitted to Philippine citizenship. In the first place, the purchasing power of our currency at that time (1953) was high and the prevailing cost of living then was low as compared to the present. Secondly, the free board and lodging in the *Lim* case was provided by applicant's own father-employer which may be considered an addition to or part of his monthly salary; whereas in the instant case, such free board and lodging is provided only by the petitioner's brother-in-law. Hence, it cannot rightly be deemed part of the applicant's salary since unlike a father, it is not likely that a mere brother-in-law will continue giving free board and lodging.

6. Where the applicant for naturalization claims to be employed by either of his parents, he must submit more satisfactory proof than his own testimony as well as his mother's sworn testimony to that effect, that he is actually employed and worth the salary he is receiving in order to eliminate any suspicion that his parents have employed him only as a convenient arrangement to satisfy the requisites for naturalization.[35]

Language requirement—

1. The failure of the petitioner to answer questions propounded to him in simple and understandable English without waiting for the interpretation is indicative of the fact that his knowledge of the English language does not satisfy the requirement of the law.[36]

2. The failure, however, of the applicant to make good and grammatical translation of certain Tagalog expressions does not conclusively establish the applicant's deficient knowledge of Tagalog, when the specimen of his handwriting in both English and Tagalog languages made in open court reveals that his translation into Tagalog is clearly understandable. The Naturalization Law does not set a specific standard of the required ability to speak and write any of the principal Philippine languages.[37]

3. Where the trial court denied the petition for naturalization on the ground that the petitioner failed to show during the hearing his ability to speak, read and write Tagalog, the finding by the trial court that saw and heard the applicant testify must be given weight and value unless its finding is clearly erroneous.[38]

---

[35] *Supra*, note 31.
[36] *Supra*, note 20.
[37] Ho Yuen Tsi v. Republic, G.R. No. L-17137, June 29, 1962.
[38] Lao Teck Sing v. Republic, G.R. No. L-4735, July 31, 1962.

Educational requirement—

1. The mere fact that the children of the petitioner who were of school age during the ten-year period of residence required by him were in China, does not excuse him from complying with the law for it is his duty to make every effort to bring them to the Philippines so that they could be given the requisite education.[39]

2. The failure of the petitioner to enroll his two children, without any convincing proof like the birth certificate to show that they are not yet of school age, is fatal to the petition for naturalization as well as the petitioner's exemption from filing a declaration of intention (if he has resided continuously for 30 years in the Philippines).[40]

Character witnesses—

1. The fact that the testimony of the witness shows that he has known the petitioner before World War II, having been his classmate in the fourth grade; that while they got separated during the war they wrote to each other; that they became classmates again in the summer of 1948 and of 1950 to 1954 during college; and that they had also opportunity to correspond with each other and met personally every year during vacation place the witness in a position to vouch for the character and conduct of the petitioner for at least five years prior to the filing of the petition.[41]

2. But witnesses who only saw the petitioner during vacation time while he was attending high school in Manila, are not in position to testify as to the petitioner's conduct after finishing studies in the local school. Consequently, petitioner is deemed to have failed to produce competent witnesses who can testify as to his conduct during all the time that he has been in the Philippines.[42]

3. Likewise, where it appears that both witnesses were employees of the petitioner, which business ties cannot but render them partial to him, they do not therefore come within the requirement of the law that the affiant must be credible persons.[43]

4. The phrase "morally irreproachable is not satisfied by mere "good" or even "good conduct" because the law requires a moral

[39] Si Ne & Si An Lok v. Republic, G.R. No. L-16828, May 30, 1962 reiterating the decision in Dy Chuan Tiao v. Republic, G.R. No. L-6430, August 31, 1954 and Tan Hoi v. Republic, G.R. No. L-15266, September 30, 1960.

[40] Hao Su Siong v. Republic, G.R. No. L-13045, July 30, 1962.

[41] Yap v. Republic, G.R. No. L-13944, March 30, 1962.

[42] *Supra*, note 29.

[43] *Supra*, note 39.

character of the highest order. The vouching witnesses apart from their allgations in their affidavit, must prove at the trial that the applicant is "morally irreproachable." [44] Thus in the case of *Ho Yuen Tsi v. Republic*,[45] the Court held that the merely casual meeting of the character witnesses with the petitioner when they were introduced to each other by the former's friend in a downtown restaurant clearly shows that the nature of their association was not such as to permit them to be reasonably posted on petitioner's qualifications, particularly as to his moral character and behaviour during his entire period of residence in the Philippines. Neither can this kind of association render the witnesses competent to vouch for the "irreproachable character" of the petitioner.

5. Under Section 7 of Commonwealth Act No. 473, the vouching witnesses are required only to attest and testify that they know the applicant for naturalization to be a resident of the Philippines and a person of good repute and that the applicant has conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines as required by Section 2, paragraph 3 of the same Act, as amended, unless they had known him for a period longer than the one stated in Section 7. But if the applicant is a native child of aliens or brought to the Philippines when he was just an infant, the period of infancy or childhood is not included in the phrase "during the entire period of residence in the Philippines" because no one could attest and testify that the applicant had conducted himself in a proper and irreproachable manner or otherwise during that period. Such period refers only to the time when a person becomes conscious and responsible for his acts and conduct in the community where he lives. Accordingly, such conduct may be proved by other competent evidence, not necessarily by the two vouching witnesses. Evidence that no derogatory police and court record exists against him would corroborate the testimony of the applicant as regards his proper and irreproachable conduct.[46]

6. Where the witness for the petitioner testified that some of the data contained in his affidavit attached to the petition, such as the date of birth of petitioner, were supplied by the petitioner, such knowledge of said witness is to be considered hearsay and therefore indicative of his insufficient personal knowledge of the personal character of the petitioner.[47]

---

[44] Chua Pu v. Republic, G.R. No. L-16825, December 22, 1961.
[45] *Supra*, note 37.
[46] Dy Lam Go v. Republic, G.R. No. L-15858, July 31, 1962.
[47] Antonio Go v. Republic, G.R. No. L-18068, October 30, 1962.

7. It is within the purview of Section 7, Commonwealth Act No. 473 that what must be "credible" is not the declaration made but the person making it. And in the case of *Ong v. Republic* [48] the Court ruled that this implies that such person must have a good standing in the community; that he is known to be honest and upright; that he is reputed to be trustworthy and reliable; and that his word may be taken on its face value as a good warranty of the worthiness of the petitioner.

In the recent case of *Tan Si v. Republic*,[49] this "credible witness" requirement was further clarified when the Court held that the affidavit of the character witnesses attesting to the qualifications of the petitioner and to his lack of disqualifications must be attached to the petition (Section 7, Commonwealth Act No. 473, as amended), thus becoming part and parcel thereof as a pleading. As a consequence, the petition must be denied unless the material statements in said affidavit are established in the witness stand by the testimony of the respective affiants that they are not mere ordinary acquaintances of the applicant, but possessed of such intimate knowledge as to be competent to testify of their own personal knowledge, as to the applicant's fitness to become a member of the Filipino citizenry.

8. Similarly, when the vouching witnesses of the petitioner knew the latter casually only from 1947 to 1952 as a waiter in a restaurant where they used to eat, without adequate opportunity to observe the petitioner personally or obtain the appraisal of mutual friends during that periods, the years 1947 to 1952 cannot be considered as part of the requisite ten-year period in order to qualify the witnesses to vouch for the character of the applicant. Such recognition, can hardly be called acquaintance, much less personal knowledge, so as to make the witnesses sufficiently competent to testify on petitioner's moral character and to determine if he is qualified to acquire Philippine citizenship.[50]

Effect of failure to register after the grant of the petition for Naturalization—

1. The failure of an applicant for naturalization to register as an alien during the two-year intervening period from the promulgation of the decision granting the petition is a patent violation of the government policy requiring aliens to register annually. Such failure, clearly falls within the provisions of section 12, Republic

[48] G.R. No. L-19642, May 30, 1958.
[49] *Supra*, note 7.
[50] Yu Kui Tian v. Republic, G.R. No. L-15554, November 30, 1962.

Act No. 530 which bars any decision granting an application for naturalization from becoming executory, if within 2 years from its promulgation the Court finds that an applicant has committed any of the acts enumerated therein. And the fact that his failure to register was due to an honest belief that he was exempted therefrom is of no moment.[51]

MARRIAGE

Requisites of a valid marriage—

Article 68 of the new Civil Code provides that it shall be the duty of the person solemnizing the marriage to furnish to either of the contracting parties one of the three copies of the marriage contract referred to in Article 55, and to send another copy of the document not later than fifteen days after the marriage took place to the local civil registrar concerned, whose duty it shall be to issue the proper receipt to any person sending a marriage contract solemnized by him including marriages of an exceptional character. And marriage, being one of those acts or events concerning the civil status of persons, is required by law to be entered in the civil register.[52] In the case of *Pugeda v. Trias et al.*[53] the effect of noncompliance with these provisions of law upon the validity of a marriage was put into issue. It appears in that case that in an action instituted by the plaintiff to recover his share of the conjugal properties allegedly acquired by him and the deceased wife Maria Ferrer, his supposed marriage with the deceased wife on January 15, 1916 was denied by the latter's children by the first marriage by producing a photostatic copy of the record of marriages in the municipality concerned for January, 1916 which showed that no record of the alleged marriage existed therein. Plaintiff, however, presented the testimony of the Justice of the Peace who solemnized the supposed marriage and of the three other witnesses to the ceremony, and the evidence as to the uncontradicted fact that after the marriage, the two lived as husband and wife for 16 years in the wife's house until her death in 1934. *Held:* Failure on the part of the solemnizing officer to send a copy of the marriage contract to the local civil registrar concerned will not invalidate the marriage, as long as all the requisites of marriage are present. The sending of a copy of the marriage contract to the local civil registrar is not one of the requisites under the law.[54]

---

[51] Go Kay See v. Republic, G.R. No. L-17318, December 28, 1962.
[52] Article 408, NEW CIVIL CODE OF THE PHILIPPINES.
[53] G.R. No. L-16925, March 31, 1962.
[54] Madridejo v. De Leon, 55 Phil. 1.

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Conjugal partnership property; what constitutes—

Article 153 (3) of the new Civil Code classifies as conjugal partnership property the fruits, rents or interests received or due during the marriage, coming from the common property or from the exclusive property of each spouse. In the case of *Pugeda v. Trias et al.*,[55] the husband bought in installment certain lots of the friar lands under Act No. 1120 and the certificate of sale was issued solely in his favor. The husband died without complete payment of all the installments and the certificate of sale was thereby assigned to his widow, as provided by Act No. 1120. She continued paying the price in full out of the fruits of the land itself during her second marriage with the plaintiff, who now claims his ½ share of the supposed conjugal estate. The Court held that the said friar lands purchased and paid for as above described, had the character of conjugal property of the spouses by the first marriage and not of the second marriage. The provision of the Friar Lands Act to the effect that upon the death of the husband, the certificate of sale is transferred to the name of the wife is merely an administrative device designed to facilitate the documentation of the transaction and the collection of installments; it does not produce the effect of destroying the character as conjugal property of the lands purchased. The issuance of the title, after completion of the installments, in the name of the widow does not make the friar lands purchased her own paraphernal properties. Accordingly, the only portion of the produce of the land in which the plaintiff (second husband) could claim any participation is the ½ share therein produced from the paraphernal properties of his wife which were adjudicated to her in the settlement of the estate of the first husband; the other ½ already belonging to the children of the first marriage.

Charges upon and obligations of the conjugal partnership—

The case of *Laperal Jr. et al. v. Katigbak et al.*[56] lays down the rule on the liability of the wife when she is sued personally to make her paraphernal property liable for the obligations contracted by the husband alone and which do not redound to the benefit of the family. It appears in that case, that Laperal et al. filed Civil Case No. 11767 in the Manila court against defendant spouses Ramon Katigbak and Evelina Kalaw to collect ₱14,000.00 as payment for a promissory note and ₱97,000.00 as payment for jewelry, all of which

[55] *Supra*, note 53.
[56] G.R. No. L-16951, February 28, 1962.

were received and receipted by the husband alone. The trial court and later the Supreme Court in G.R. No. L-4299 dismissed the complaint against the wife on the ground that as to the promissory note, the wife is not personally liable because the husband was not her agent; and as to the jewelry, it was not alleged that the obligation contracted by the husband redounded to the benefit of the family. The plaintiffs filed another action, Civil Case No. 125235, praying that the defendants should be made to pay their debts with the plaintiffs out of the couple's conjugal partnership property including the fruits of the paraphernal property of the wife. From the adverse decision rendered by the lower court against them, the defendants argued that the lower court erred on the theory that the same issues had been resolved by the Supreme Court in G.R. No. L-4299 that neither the wife nor her paraphernal property or fruits thereof is liable for the husband's pesonal obligations in favor of the plaintiffs. *Held*: Defendant wife is absolved from liability for the husband's personal obligations. The trial court seems to have believed that the original action is limited to making the wife personally responsible for the obligations, and that the subsequent suit, which is to make the conjugal properties or the fruits of the paraphernal property responsible is of different nature. This view is incorrect. The demand or claim has always been against both spouses not only personally but also to make their properties or the fruits thereof responsible. The prayer of the complaint is to make all their properties liable. An action to make a wife personally liable is not different from one to make the paraphernal properties of the wife subject to the same obligation. But even assuming that there is a difference, the rule against multiplicity of suits [57] prohibits the wife from being sued personally in one suit then and making the fruits of her paraphernal property responsible subsequently in another.

Existence of a cause of action where wife attacks the sale by the husband as in fraud of her conjugal rights and interests—

Article 166 of the new Civil Code provides that unless the wife has been declared a *non compos mentis* or a spendthrift, or is under civil interdiction or is confined in a leprosarium, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. And to further effectuate this provision in favor of the wife, Article 173 states that the wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is

[57] Section 3, Rule 2, RULES OF COURT.

required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property . . . The case of *Reinares v. Arrastia* [58] illustrates the application of these two provisions as basis for the existence of a valid cause of action by the wife to annul a sale of real property of the conjugal partnership made by the husband without the wife's consent. Plaintiff Reinares alleges that her defendant husband sold to Hizon lands belonging to the conjugal partnership without her knowledge and consent, that said fact was known to Hizon, that the purchase price was grossly inadequate and that because her defendant husband has no properties of his own which may be charged for the damages caused her by reason of the illegal sale, the said sale must be voided as one made in fraud of her conjugal rights and participation in said conjugal properties. Defendant filed a motion to dismiss on the ground that the complaint states no cause of action because the authority of the husband to alienate conjugal properties is full absolute and complete (Article 1413 of the old Civil Code) and that under Article 166 of the new Civil Code the wife's consent is not necessary for the alienation made by the husband of properties acquired before the effectivity of the new Civil Code, as in the instant case. The trial court granted the motion to dismiss which gave rise to the present appeal. *Held:* There exists a valid cause of action by the wife against the husband. Article 1413 of the old Civil Code (now Article 166) giving the husband authority to alienate conjugal properties without the consent of the wife provides that "no alienation or agreement which the husband may make with respect to such property in contravention of this Code or in fraud of the wife shall prejudice her or her heirs. Since fraud was prominently averred in the complaint and phrases conveying the same meaning and/or amounting to fraud were used and/or stated and since a motion to dismiss on the ground of lack of cause of action impliedly admits the truth of the allegations of the wife's complaint, a claim that no allegation of fraud is made is untenable.

Effects of husband's death upon the conjugal partnership property and the right of the widow to mortgage her ½ undivided share of the conjugal properties—

The case of *Taningco v. Ramos* [59] is authority for the rule that a widow can alienate or mortgage her ½ share of the conjugal partnership property without previous liquidation of the conjugal properties and the subsequent registration in her name of the share

[58] G.R. No. L-17983, July 31, 1962.
[59] G.R. No. L-15242, June 29, 1962.

pertaining to her. It appears in that case, that plaintiff-petitioners took a mortgage for a loan extended to them by Mededrito, on all the "rights, interests and participation of the latter in six parcels registered as conjugal properties of herself and her deceased husband." The properties were under judicial administration in the corresponding intestate proceeding and had not yet been partitioned between the widow and the heirs. The Register of Deeds refused to register the deed of mortgage despite its due and proper execution on the sole ground that the "mortgagor, surviving spouse alienated ½ of the conjugal porperties without previous liquidation of the conjugal properties and does not therefore appear to be registered owner of the property being mortgaged." From a similar ruling by the Land Registration Commissioner, this action is brought to the Supreme Court. *Held*: Registration of the deed of mortgage over the undivided share of the widow in the conjugal properties is valid and proper. The interest of the wife is registrable, the title to the lands being in the name of the spouses. After the dissolution of the conjugal partnership by the death of the husband, the interest cease to be inchoate and becomes actual and vested with respect to an undivided ½ share of the said properties. It is one thing to say that the widow's share being undivided does not consist of determinate and segregated properties and an entirely different thing to consider her interest as still inchoate. The partnership having been dissolved, if the deceased leaves heirs other than the wife, as in this case, the properties came under the regime of co-ownership among them until final liquidation and partition.[60]

And as provided in Article 493 of the new Civil Code, each co-owner shall have the full ownership of his part of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it although the effect of the alienation or the mortgage with respect to the co-owners shall be limited to the portion which may be alloted to him in the division upon the termination of the co-ownership.[61]

Neither will the registration of the mortgage affect the right of the deceased husband's creditors, if any, or of his heirs, for their interest is limited to the husband's half of the estate not covered by the wife's mortgage. As far as debts, if any, of the conjugal partnership are concerned, their payment is provided for by law before

---

[60] Article 484, NEW CIVIL CODE OF THE PHILIPPINES; Marigsa v. Macabuntoc, 17 Phil. 107, 110.

[61] *See* Maria Lopez v. Cuaycong, *et al.*, 17 Phil. 601.

the ½ share of the wife-mortgagor is finally determined and therefore should not be affected by the mortgage.[62]

PATERNITY AND FILIATION

Adult natural child cannot be acknowledged without his consent—

The case of *Tabotabo et al. v. Tabotabo et al.*[63] involves the application of Article 281 of the new Civil Code, which provides that "a child who is of age cannot be recognized without his consent." The facts show that Gaudencio Tabotabo, married, died in 1908 leaving no issue. In his last will and testament which was executed in the same year before his death, mention was made by the testator that he had a natural son named Vicente, who was then of age, already married and with 10 children. In the course of the probate of the will of the deceased, the 10 legitimate children of Vicente filed a motion with the probate court, asking that they be declared sole heirs of the deceased by reason of their father's having been acknowledged in the will as a natural son of the testator. The lower court denied the motion holding that Vicente had not been solemnly acknowledged in any of the provisions of the will, either expressly or impliedly. On appeal, the appellants contended that under Article 133 of the old Code (now Article 281) a voluntary acknowledgment in the will of a putative father is self-executing even without the subsequent judicial confirmation.

In sustaining the appealed decision, the Court cited the provisions of Article 281 of the new Civil Code which states that an adult natural child cannot be acknowledged without his consent, or if such child is a minor, he may impugn the recognition within 4 years following the attainment of his majority. The Court held that there being proof that Vicente, who at the time of the supposed acknowledgment was well of age, and had already 10 children, did not show, however scanty, of his consent to his acknowledgment but instead opposed the probate of the will of the testator, Vicente had no successional rights to the properties of the testator, for not being acknowledged by the latter. Consequently, his legitimate children, the

---

[62] Article 182, NEW CIVIL CODE, provides:

The debts, charges and obligations of the conjugal partnership having been paid, the capital of the husband shall be liquidated and paid to the amount of the property inventoried.

Article 185, NEW CIVIL CODE, provides:

The net remainder of the conjugal partnership of gains shall be divided equally between the husband and the wife or their respective heirs, unless a different basis of division was agreed upon in the marriage settlements.

[63] G.R. No. L-10909, April 30, 1962.

herein appellants cannot inherit from the testator as they are complete strangers to the latter.

Status and rights of illegitimate children under Article 287 recognized only if illegitimate father dies after effectivity of the New Civil Code—

In the case of *Bulos v. Tecson*,[64] appellant Jose Tecson, an illegitimate son of the testator who died on April 30, 1949, filed a motion in the proceedings for the probate of the will of the deceased, to have himself declared as an illegitimate son of the deceased with the right to share 4/5 of the legitime of a legitimate child of the deceased. The lower court denied the motion on the ground that being an adulterous son of the deceased who died in 1940, his rights shall be governed by the old Spanish Civil Code and that under such Code, an illegitimate son is entitled only to support, which he may no longer avail of, he being already of age. Appellant maintains that the lower court erred in denying his motion because the estate of the deceased is still undistributed, and under Article 2264 of the new Civil Code the status and rights of illegitimate children under Article 287 of same Code are also extended to children born before the effectivity of said Code (of which appellant claims to be one). In dismissing the appellant's contention, the Court reiterated its previous ruling in *Uson v. Del Rosario*[65] and *Montilla v. Montilla*[66] to the effect that although the status and rights of illegitimate children under Article 287 of our new Civil Code are extended by Article 2264 thereof, to children born before the effectivity of said Code, said Article 2264 insofar as relevant to cases of succession applies only when the illegitimate father dies *after* said Code has become effective for Article 2263 thereof explicitly provides that "rights to the inheritance of a person who died with or without will *before* the effectivity of this Code shall be governed by the Civil Code of 1889, by other previous laws and by the Rules of Court." In the instant case, the testator died April 30, 1939 or more than ten years before the new Civil Code took effect on August 30, 1950.

SUPPORT

Support is proper even before final judgment as to the relationship of natural father and child—

Article 282 of the new Civil Code gives the recognized natural child the right to receive support from the recognizing parent in

[64] G.R. No. L-18285, October 30, 1962.
[65] G.R. No. L-4962, January 29, 1953.
[66] G.R. No. L-14462, June 30, 1961.

conformity with Article 291. Whether this right can be demanded even pending the appeal by the alleged natural father from the decision of the lower court requiring him to acknowledge the minor child is the sole issue decided by the Court in the case of *Garcia v. Court of Appeals*,[67] wherein the petitioner contends that support *pendente lite*, being in the nature of a temporary relief, final judgment as to the relationship of natural father and child is not essential. Respondent, however, attacks the jurisdiction of the lower court in issuing an order granting the minor's prayer for a monthly support pendente lite on the ground that the filiation between him and the child has not yet been established by final judgment. *Held:* Although the law gives the right of support to acknowledged natural children, and although the petitioner child has not yet been actually acknowledged because the decision has not yet become final and executory, still as the confirmation of the order of recognition may be said to relate back to the date of the original decision, it lies within the sound discretion of the trial court to direct the father to give support pending the appeal. . . . There being at least *prima facie* evidence of the child's right to support, the lower court acted within its power and discretion in issuing the appealed order.

Authority of the Court to modify awards in proceedings for support—

The case of *Atienza v. Hon. Judge Almeda Lopez*[68] illustrates the validity of the order of the Court which sought merely the performance of an obligation to support assumed by the husband in the compromise agreement entered into with his wife. Petitioner Agustin Atienza and respondent Lucena Arena were married in 1919, but have been living separately from each other since 1937. In 1948, Mrs. Atienza filed with the Court, presided over by respondent judge, a complaint against the husband—petitioner for support of their 7 children. Both parties later submitted to a compromise agreement which became the basis of the Court's decision on February 19, 1958 wherein the petitioner agreed to pay directly to Mrs. Atienza the sum of ₱25.00 every pay day or every 15 days and to give her later a "portion of his retirement pay." In July 1960, petitioner retired from the MRR and upon motion by Mrs. Atienza, respondent judge in an order dated August 13, 1960 required the petitioner to turn over to the wife one-half of his retirement pay. His motion for reconsideration having been denied, petitioner brought the present

[67] G.R. No. L-14758, March 30, 1962.
[68] G.R. No. L-18327, August 24, 1962.

action on the following grounds: (1) the appealed order had in effect amended the decision of February 10, 1958 which is already final and executory; (2) that no evidence was shown to justify an increase in the amount for support as required in Articles 296 and 297 of the new Civil Code; and (3) the appealed order amounted to a declaration of separation of property without authority therefore. *Held:* Appeal is untenable. Under Articles 296 and 297 of the new Civil Code, the courts are authorized to modify awards in proceedings for support. Consequently, petitioner cannot assail the order of the court complained of, not only because petitioner had agreed in the compromise agreement to share his retirement pay with his wife but also because said order sought merely the performance of an obligation assumed by him in said agreement and the execution of the decision (dated February 10, 1958) based thereon. . . . The general nature of the stipulation in question (that petitioner will pay to Mrs. Atienza a "portion of his retirement pay") indicates clearly that the parties thereto and the court contemplated subsequent proceedings to fix the share of Mrs. Atienza in the absence of another agreement between the parties.

The Court, however, ruled that insofar as the order had split the retirement pay between the spouses without any proof or allegation as to their needs, said order in effect, had either established a separation of property among the spouses or liquidated their conjugal partnership, neither of which is authorized either by the facts or record or by the pleadings therein. In sustaining the third ground of the petitioner's appeal, the Court further held that as head of the family, and even if actually separated from his wife, petitioner is still legally entitled to the possession of the full amount of his retirement pay and to administer the same,[69] Mrs. Atienza being merely entitled by way of support, to share in the fruits or profits resulting from the investment of the proceeds of his retirement insurance. Accordingly, the appealed order is set aside in this respect, without prejudice to the authority of the respondent judge to fix the amount to which Mrs. Atienza shall be entitled by way of support in said retirement pay, after due notice and hearing.

---

[69] Article 157, NEW CIVIL CODE, provides:

The right to an annuity, whether perpetual or for life and the right of usufruct, belonging to one of the spouses shall form part of his or her separate property, but the fruits, pensions and interests due during the marriage shall belong to the partnership.

Article 165, NEW CIVIL CODE, provides:

The husband is the administrator of the conjugal partnership.

PARENTAL AUTHORITY

Member of the United States Air Force temporarily assigned in the Philippines cannot adopt—

In two separate cases [70] of adoption decided by the Court for 1962, the petitioners are both American citizens, staff sergeants in the USAF and have been assigned at Clark Air Field for more than three years, and who both intend to settle down permanently in the Philippines with their Filipino wives after their tour of duty. Both petitions were opposed by the Solicitor General on the ground that the petitioners are non-resident aliens and are therefor disqualified to adopt under Article 335(4) of the new Civil Code. *Held:* Petitions to adopt denied. Actual or physical presence or stay of a person in a place not of his free and voluntary choice and without intent to remain there indefinitely does not make the petitioners residents of that place. Petitioners being temporarily detailed in the Philippines, conditioned on their assignment with the USAF, they are classified as non-resident aliens who pursuant to Article 335(4) of the new Civil Code are disqualified to adopt a child in the Philippines.

Revocation of adoption—

The case of *Ragudo et al. v. Pasno et al.*[71] lays down the rule that the grounds for revocation of an adoption referred to in Article 348 of the new Civil Code refer only to an adoption validly decreed—not to an adoption void from the beginning because it is tainted with fraud. The plaintiff spouses in this case filed a complaint in the Court of First Instance of Quezon to annul the final order of the Justice of the Peace court of Tayabas declaring Estelita Pasno their adopted child, on the ground of fraud and misrepresentation. Defendants moved for the dismissal of the complaint arguing that as the Justice of the Peace has concurrent jurisdiction with the Court of First Instance to take cognizance of adoption cases, it follows that the latter (CFI) has no jurisdiction to interfere in said adoption proceeding. Upholding this contention, the court dismissed the case and held further that fraud is not one of the grounds for the revocation of an adoption under Article 348 of the new Civil Code. *Held:* Court of First Instance has jurisdiction because the instant case is not an adoption case, but a civil action to annul an order of a Justice of the Peace allegedly obtained through fraud. Hence, such

---

[70] Carballo v. Republic, G.R. No. L-15980, April 25, 1962; Katancik v. Republic, G.R. No. L-15472, June 29, 1962.

[71] G.R. No. L-16642, April 18, 1962.

action based on Section 43 of the Judiciary Act of 1948, as amended falls within the general jurisdiction of the Court of First Instance over which the Justice of the Peace cannot take cognizance. As to the second issue, the Court held the defense that fraud is not a ground to revoke the adoption is untenable because the grounds enumerated therein apply only to a valid adoption and not to one obtained through fraud, and hence void *ab initio*.

USE OF SURNAMES

In the case of *Elisea Laperal v. Republic* [72] the petitioner asked the lower court, that in view of the order decreeing her legal separation from her husband who has in fact ceased to live with her for several years, she should be allowed to resume using her maiden name. The court denied the petition on ground that it violates Article 372 of the new Civil Code, but upon a new motion field by the petitioner, and which the lower court treated as a petition for a change of name, the original decision was reconsidered and petition was finally granted. This is an appeal by the Solicitor General. *Held:* Appealed order is a violation of Article 372 of the new Civil Code. Said article is mandatory that the wife even after the legal separation has been decreed shall continue using her name and surname employed before the legal separation because her married status is unaffected by the separation, there being no severance of the vinculum. It is the policy of the law that the wife should continue to use the name indicative of her unchanged status for the benefit of all concerned.

Baptism not a condition sine qua non to a change of name—

In *Ong Te v. Republic* [73] the petitioner's application for change of name was based primarily on the ground that there are several persons having the same name as his and that he has long been known by the name "Antonio". Lower court denied the position on the ground that he was not given the name "Antonio" when he was baptized. *Held*: Baptism is not a condition *sine qua non* to a change of name, otherwise there will be no possibility of persons changing names because most if not all, the applicants have not been baptized of the names which they would want to adopt subsequently. The petition should be dismissed however, but for some other ground, that is of the settled rule that the more fact that the applicant has been using a different name and has become known by it does not *per se*

[72] G.R. No. L-18008, October 30, 1962.
[73] G.R. No. L-15549, June 29, 1962.

alone constitute "proper and reasonable cause" or justification to legally authorize a change of name.

What is the real and official name of a person—

In the case of *Jayme S. Tan v. Republic* [74] the petitioner was registered with the local civil registrar and the Bureau of Immigration as Go Chang, baptized as Jaime Descals Go Chang, and enrolled in schools as Jayme S. Tan. In applying for a change of name, his name was spelled as Jaime S. Tan in the published order while in the verified petition it was spelled as Jayme S. Tan. The petition was denied for lack of strict compliance with the proceedings prescribed by law for the change of name. *Held:* Denial of the petition affirmed. Petitions for change of name being proceedings *in rem*, strict compliance with the requirements of publication is essential, for it is by such means that the court acquires jurisdiction.[75] The defect in the petition and the order as to the spelling of the name of the petitioner is substantial because it did not correctly identify the party to said proceedings. The difference of one letter in a name may mean the distinction of identity of one person with that of another. As to the sufficiency of the petitioner's basis for changing his name the Court, citing *Chomi v. Civil Registrar of Manila* [76] held that if the purpose of changing his name is to correct an error or confusion, the petitioner should retain the use of his name Go Chang appearing in the civil registrar and Bureau of Immigration, the real and official name rather than change it. The real name of a person is that given him in the civil registrar, not the name by which he was baptized in his church or by which he has been known in the community or which he had adopted.

CLASSIFICIATION OF PROPERTY

Demolition of a house destroys its character as an immovable property—

The case of *Becerra v. Tereza* [77] involves the question of whether a house worth ₱300.00 after having been unlawfully destroyed by the defendant remains as an immovable property and thus be the basis of an action for recovery of damages in the Court of First Instance on the theory that the action involves real property. *Held:* A house is classified under Article 415(i) of the new Civil Code as an immovable property by reason of its adherence to the soil on which it

[74] G.R. No. L-16384, April 26, 1962.
[75] Jacobo v. Republic, 52 O.G. No. 9, p. 2928.
[76] G.R. No. L-9203, September 28, 1956.
[77] G.R. No. L-16218, November 29, 1962.

is built. This classification holds true regardless of the fact that the house may be situated on land belonging to a different owner. But once the house is demolished, it ceases to exist as such and hence its character as an immovable likewise ceases. Consequently, since the house in this case has been demolished by the defendant, there is no real property to be litigated, the house having ceased to exist, and since the amount of the demand does not exceed ₱5,000.00, the case pertains to the jurisdiction of the Justice of the Peace and not the Court of First Instance because it involves no real property.

OWNERSHIP

Builder in good faith is not bound to pay rental pending reimbursement—

In the case of *San Diego v. Hon. Judge Agustin Montesa*[78] the lower court found the defendant as a builder in good faith of a house constructed on the plaintiff's land. Accordingly, defendants were ordered to vacate the land upon reimbursement by the plaintiff of the sum of ₱3,500.00. The order was affirmed by the Court of Appeals and became final and executory but the plaintiffs opposed the execution of the judgment on the ground that as absolute owner of the land, they have the right under Article 448 of the new Civil Code to either reimburse the defendant of the value of the improvements or to demand reasonable rent if they do not choose to appropriate the building and that they have in fact demanded a monthly rent because the ₱3,500.00 fixed by the court is exorbitant. Respondent judge denied the motion to execute the judgment. Hence this petition for mandamus. *Held:* The right to exercise the options granted by Article 448 of the new Civil Code is no longer available to the plaintiffs because the decision in the former suit limits them to the first alternative by requiring the defendants to vacate the premises upon payment of ₱3,500.00. The bringing of a suit to recover the property was evidently an exercise of their right to choose to appropriate the improvements and pay the indemnity fixed by the court. Having allowed the judgment to become final without any modification, they can not insist on securing another alternative, nor complain that the ₱3,500.00 set by the court is exorbitant, for the same reason that the judgment fixing that amount is no longer subject to alteration.

The indemnity fixed by the court for the improvements made on the land by the defendants is a mere recognition of the right of retention granted to possessors in good faith under Article 546 of the

[78] G.R. No. L-17985, September 29, 1962.

new Civil Code, and which is expressly made applicable to builders in good faith by Article 448 thereof. The right of retention thus granted is merely a security for the enforcement of the possessor's right to indemnity for the improvements made by him. As a result, the possessor in good faith, in retaining the land and its improvements pending reimbursement of his useful expenditures, is not bound to pay any rental during the period of retention, otherwise the value of his security would be impaired.[79]

ACCRETION

Accretion to registered land is not ipso jure *entitled to the protection of the rule of imprescriptibility—*

An accretion to registered land, while declared by Article 457 of the new Civil Code to belong to the owner of the original estate, does not become automatically registered land and is therefore subject to acquisition by prescription. Thus, in the case of *Grande et al. v. Court of Appeals*,[80] the Court declared that the respondents who were in possession of the alluvial lot since 1934 openly, continuously and adversely under a claim of ownership are the lawful owners thereof by prescription because the petitioners never sought registration of said alluvial property not until after the present action was originally instituted in 1958. Ownership, according to the Court, of a piece of land is one thing and registration under the Torrens System of the ownership is quite another. Ownership over the accretion received by the land adjoining a river is governed by the Civil Code. Imprescriptibility of registered land, on the other hand, is provided in the registration laws. Furthermore, registration under the Land Registration and Cadastral Acts does not give or vest title to the land, but merely confirms and thereafter renders imprescriptible the title already possessed by the owner. But to obtain this protection the land must be placed under the operation of the registration laws pursuant to certain judicial procedures, with which the petitioners in this case failed to comply.

Accretion is present where fish traps are not expressly intended to cause it—

The case of *Zapata v. Director of Lands* [81] is authority for the rule that even admitting that the fish traps have slowed down the current of the creek and might have brought about or caused the ac-

---

[79] Cf. Tufexis v. Chunaco (C.A.), 36 O.G. 2455.
[80] G.R. No. L-17652, June 30, 1962.
[81] G.R. No. L-17645, October 30, 1962.

cretion; in the absence of any evidence to show that the setting up or erection of the fish traps was expressly intended or designed to cause the accretion, the riparian owner may still invoke the benefit of the provisions of Article 457 of the new Civil Code to support her claim of title thereto.

CO-OWNERSHIP

Co-owner has absolute right to sell his undivided share of the property—

In the case of *Mercado v. Liwanag,*[82] wherein Mercado sold to Liwanag his undivided half interest in a parcel of land which he owned in common with his sister, the sale was made without the sister's consent, but the deed of sale specifically designated the portion sold as the vendor's "chosen portion" of the property. The sister sought to annul the sale but applying Article 493 of the new Civil Code, the lower court dismissed the complaint on the ground that in the deed of sale sought to be annulled, the vendor-co-owner disposed of a divided and determined half of the common property and since the names of Liwanag and the sister-appellant were named in the deed of sale, as the new "co-owners pro-indiviso" of the land, the latter had no cause of action. *Held:* Sale by the co-owner is valid. The title is the final and conclusive repository of the rights of the new co-owners. The question of whether the deed of sale should be annulled must be considered in conjunction with the title issued pursuant thereto. Since according to this title in question, what appellee acquired by the virtue of the sale is only an undivided half-share of the property which under Article 493 of the new Civil Code, the vendor-co-owner had the absolute right to dispose of, the dismissal of the plaintiff's complaint is proper.

POSSESSION

Possession acquired in good faith is presumed to continue in the same character—

The new Civil Code provides that possession acquired in good faith does not lose this character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully.[83] Consequent-

---

[82] G.R. No. L-14429, June 30, 1962.
[83] NEW CIVIL CODE OF THE PHILIPPINES, Article 528.

ly a possessor in good faith is entitled to the fruits received before the possession is legally interrupted.[84]

The case of *Rodriguez, Sr. v. Francisco*[85] illustrates the above principles. Ampil, the registered owner of the land in question, covered by OCT No. 2497 which was issued in 1918, sold the land to Maximo Francisco. However, the deed of sale was never registered and the Torrens title continued until 1937 in the name of Ampil, although the owner's duplicate was delivered to Francisco. Defendant took possession of the land from the date of the sale which upon his death was continued by his heirs up to the present, publicly and in the concept of an owner. Ampil was later indebted to several creditors, payment of which was guaranteed by plaintiff Rodriguez, Sr., as evidenced by a document of "conditional sale" which was duly registered in 1933. The conditional sale became absolute in 1936, and upon filing of an affidavit of consolidation of ownership over the land covered by O.C.T. No. 2497, the Register of Deeds, after due notice and hearing issued to Rodriguez, Sr. T.C.T. No. 31024 in lieu of O.C.T. No. 2497 which could not then be located and therefore declared lost and cancelled. Plaintiff was declared the lawful owner, but defendant refused to deliver possession thereof and denied any liability for damages on the ground that he is a possessor in good faith. The trial court upheld the ownership of the plaintiff but ruled that since the defendant is a possessor in good faith he is liable only to return the fruits of the land from the time he was served with judicial summons which was issued in connection with the plaintiff's affidavit for consolidation. Both parties appealed. *Held:* Mere discrepancy in the description of the land in the deed of sale of 1924 and the vendor's certificate of title, No. 2497 or the non-registration of the deed of sale cannot give rise to an inference of bad faith in the possession of the land. Having acquired the deed of sale without any flaw which would invalidate it, and having been in long possession of the land, the possession by the defendant is deemed to have started in good faith and is presumed to have continued in the same character until proven otherwise. This, according to the court, can be shown by the fact that despite the consolidation of ownership in plaintiff and the issuance of a transfer certificate of title in his name in 1937, he never attempted to exercise possessory rights over the property or paid taxes thereon (which defendant did up to 1955) or demanded its possession from the defendant until this action was instituted in 1958. Accordingly, the defendant's possession in good faith is deemed legally interrupted only from the service upon him of the judicial

[84] NEW CIVIL CODE OF THE PHILIPPINES, Article 529.
[85] G.R. No. L-13343, December 29, 1962.

summons and his duty to return the fruits of the land only started from that date.

Squatter's occupancy of the land cannot prejudice possession of the lawful owner—

The case of *Yu v. De Lara* [86] is one which applies the various correlated provisions on possession of the new Civil Code. The dispute revolves around a parcel of land, registered in 1916, and purchased by the Philippine Realty Corporation in 1945. In the same year, several persons constructed houses on the land without permission from, or contract with the corporation. Between 1947 and 1952 the herein appellants bought the houses built on said land and continued in occupancy thereof without paying any rentals to the owner. In 1956 Yu purchased the land and obtained the corresponding certificate of title in his name. Yu filed a complaint for unlawful detainer against the appellants because of the latter's refusal to vacate the land despite a previous demand in writing made by Yu in 1957. From an adverse decision of the Justice of the Peace Court which was later sustained by the Court of First Instance of Rizal, the appellants brought this appeal contending that (1) the corporation from which the plaintiff purchased the land had abandoned the land in failing to proceed against them since they started their occupancy and (2) they cannot be considered as unlawfully withholding possession of the land because there was no promise on their part, express or implied to return the land to its owner. *Held:* Both contentions are untenable. (1) The circumstances adverted to, are insufficient to constitute abandonment, which requires not only physical relinquishment of the thing but also a clear intention not to reclaim or resume ownership or enjoyment thereof. Indeed, abandonment which according to Manresa [87] converts the thing into *res nullius,* ownership of which may be acquired by occupation, can hardly apply to land as to which said mode of acquisition is not available [88] let alone to registered land to which "no title in derogation to that of the registered owner shall be acquired by prescription or adverse possession.[89] No possessory rights whatsoever can be recognized in favor of the appellants because they are in fact nothing but squatters who settled on the land without any agreement with the owner, paying neither rents to him nor land taxes to the government who impliedly recognized their squatter's status by purchasing only the houses built by the original settlers. The occupancy of the land

[86] G.R. No. L-16084, November 29 1962.
[87] Volume 4, 5th ed., p. 277.
[88] NEW CIVIL CODE OF THE PHILIPPINES, Article 714.
[89] Land Registration Act (Act No. 496), Section 46.

at the owner's sufferance and acts done by mere tolerance of the owner cannot affect the possession of the lawful owner.[90] (2) A person who occupies the land of another at the latter's tolerance or permission without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which, a summary action for ejectment is the proper remedy against him.

Seven-year old child is incompetent to prove possession—

In the case of *Alano et al. v. Ignacio et al.*[91] the plaintiffs claim the ownership and possession of the land in question, by presenting as their witness a 7-year old child who testified that the second husband of his mother (one of the children of the original owner of the land who brought the action) worked on the land but without any assertion that said land was the one inherited from their grandfather. *Held:* The testimony of the minor child, if not corroborated by other witnesses is of no value whatsoever to support any claim of ownership. A minor, 7 years of age, could not be in a position to state what the nature of the possession was. Neither can the mere fact of working on the land without expressing the concept in which the land was being worked, a sufficient proof that the land is owned by the plaintiff's predecessor in interest.

Possessor entitled to a writ of preliminary mandatory injunction; when to file the petition—

The case of *City of Legaspi v. Hon. Mateo Alcasid et al.*[92] involves a petition for certiorari, alleging that the respondent judge committed grave abuse of discretion in issuing a writ of preliminary mandatory injunction in favor of the Republic of the Philippines in behalf of the Albay Trade School. The land in question belonged to the Republic of the Philippines and had been long prior to World War II in the continuous and uninterrupted possession of the Albay Trade School. On March 22, 1960 the City of Legaspi took possession of the land under authority of a presidential proclamation issued in 1953 reserving said land for the use of the city hall building. The Republic, when sued by the City for the recovery of the possession of the land, alleged that by the reversion of the City into a municipality prior to 1960, the City lost its ownership over said land, and consequently the taking of possession of said land by its agents, with force, stealth, violence and strategy justify the issuance of a writ of preliminary mandatory injunction under Article 399 of the new

[90] NEW CIVIL CODE OF THE PHILIPPINES, Articles 537 and 1119.
[91] G.R. No. L-16434, February 28, 1962.
[92] G.R. No. L-17936, January 29, 1962.

Civil Code. In sustaining the appealed order, the Court held: It appearing that the City admitted in its complaint that the Republic was in the physical possession of the premises in question even prior to the notice to vacate them was served upon it and there having been findings of fact to support the Republic's allegation that the City through its agents took possession of the premises with force, stealth, violence and strategy, the trial court was justified in granting the writ prayed for in order to restore the Republic in the physical possession of the premises even prior to the notice to vacate is served upon the City.

The case of *Tuason v. Hon. Judge Mencias* [93] reiterates the rule that the period of 10 days mentioned in Articles 539 and 1674 of the new Civil Code within which to file a petition for a writ of preliminary mandatory injunction should be counted from the date when the petitioner is notified of the perfection of the appeal.[94] In this case, the appeal was perfected on July 29, 1957 while the appellee filed his petition for the issuance of the writ on September 2, 1957. *Held:* Petition for the writ of preliminary mandatory injunction was filed within the prescribed period, it appearing that on September 22, 1957, appellee had not even received from the trial court the notice of the appealed case, and therefore the period of limitations had not commenced. An appellee in a case appealed from the Justice of the Peace Court or Court of First Instance is not always called upon to be always on guard in the Justice of the Peace Court to ascertain the exact date and hour the appeal is perfected. He is expected only to wait for the official notice to him of said perfected appeal from the Court of First Instance where the appeal is taken. Otherwise said appellee may be prematurely filing a petition for the issuance of a writ of preliminary mandatory injunction in the Court of First Instance before the appeal is actually received by the said court and said appellee would not know how to entitle or number his petition and the clerk of court may not admit said petition because there is as yet no case on record of a case to which it may be incorporated.

NUISANCE

Ramcar Inc. operates and conducts a truck body-building business under a license granted by the City of Manila to operate garage and gasoline service stations in a legally designated commercial zone. Respondents brought this action in the Court of First Instance of Manila to abate said establishment as a nuisance on the ground that it involves the use of tools and machinery that gave rise to much noise

[93] G.R. No. L-16227, September 29, 1962.
[94] Cf. De la Cruz v. Bocar, *et al.*, G.R. No. L-8814, June 30, 1956.

and annoyance during all hours of the day up to nightime. On appeal from a decision of the Court of First Instance dismissing the complaint, the Court of Appeals declared the establishment a public nuisance and ordered its removal including all buildings and structures therein plus damages and attorney's fees. Hence this present appeal. *Held:* A truck-body-building shop is not within the purview of "garage" much less of a gasoline service station; and is therefore in violation of the city ordinance under which the appellant's license was granted. The appellant's business is not a nuisance *per se*, but only a public nuisance, because only its location and operation within an area designated for specified businesses of which it is not one of those specified by law makes it a nuisance. But to abate it, it is not necessary to remove all the buildings and structures therein as these may be utilized for pursuits that are not forbidden by law or ordinance.[95]

In dismissing the appellant's contention that only the City of Manila under its Charter, can determine whether a business or building is a nuisance or not the Court held that this power of the City under Section 18 of Rep. Act 409 (City Charter of Manila) does not preclude the power of courts to determine the existence of a nuisance in a particular case tried before them.[96]

DONATION

In order that the donation can be considered inofficious such as to deprive plaintiff's rights as a forced heir, he should have proved that the property donated exceeds the value of the free portion plus the donee's share in the properties of the donor. This was the rule enunciated in the case of *Ramos et al. v. Cariño*,[97] wherein the property involved were 3 parcels of land, two of which were originally registered in the name of Angela de Guzman. Subsequently she donated the land to her son, Alejandro who received a new title in his name. After Alejandro's death his wife and children sold the 3 lots to the herein co-defendants Cariño, Sonday and Mejia, and the sales were duly registered at the back of the title.

Gliceria Ramos, sister of the deceased Alejandro brought this action for the nullification of the aforementioned donation on the ground that she was deprived of her share as a forced heir. Plaintiff, however, failed to prove that the properties donated by her mother and which were later purchased by the defendants from the donee are the only properties of which the donor was seized at the

[95] Ramcar Inc. v. Millar *et al.*, G.R. No. L-17760, October 31, 1960.
[96] Iloilo Cold Co. v. Municipal Council, 24 Phil. 471.
[97] G.R. No. L-17429, October 31, 1962.

time of the donation. *Held:* Plaintiff's failure to show that the donation is inofficious as defined by law in Articles 750 and 752 of the new Civil Code is fatal to a claim to share as an heir of the donor-mother.[98] Consequently, no evidence having been produced by plaintiff that the donated property was purchased by the co-defendants in bad faith, their purchase thereof and acquisition of transfer certificates of title may no longer be revoked.

SUCCESSION

When a person is considered an heir or a legatee—

Article 782 of the new Civil Code defines an heir as a person called to the succession either by the provision of a will or by operation of law; and a legatee as one who receives personal property by will. In the case of *Blas et al. v. Hon. Judge Palma et al.*,[99] it appears that pending the execution of the judgment of the respondent judge in a civil case involving the distribution of the estate of the late Maxima Santos vda. de Blas, Pinpin and Avendaño filed a complaint intervention alleging that they are legatees named in the last will and testament of the late Simeon Blas, and therefore entitled to participate in the one-half share of the widow Maxima Santos in the conjugal partnership property. Petitioners opposed the complaint intervention on the ground that intervenors were not heirs and legatees named in the will in question. A study of the will shows that the testator used two terms (herederos and legatarios) in the distribution of his estate. With respect to the legitimate heirs, to whom the deceased devised the strict legitime and *mejora* he used the expression "*ibinibigay ko at ipinamamana.*" With respect to the mejora he used only the term "*ipinamamana*", followed by the amount of property given to each of the designated heir. And as regards the ⅓ subject to free disposal he used only the term "*ipinagkakaloob*", followed by the names of the intervenors and other persons, all of whom were not relatives of the deceased. The issue is whether under the terms of the will, the intervenors were properly named as heirs and legatees

---

[98] Article 750, NEW CIVIL CODE, provides:

The donation may comprehend all the present property of the donor or part thereof, provided he reserves in full ownership or in usufruct, sufficient means for the support of himself, and of all relatives who, at the time of the acceptance of the donation are by law entitled to be supported by the donor. Without such reservation, the donation shall be reduced on petition of any person affected.

Article 752 provides:

The provisions of Article 750 notwithstanding no person may give or receive, by way of donation, more than he may give or receive by will.

The donation shall be inofficious in all that it may exceed this limitation.

[99] G.R. No. L-19270, March 31, 1962.

in the will. *Held:* Taking into account all the terms of the will in question, it stands to reason that the word *"ipinamamana"* refers only to persons not related to him or his heirs at law. Accordingly, the herein intervenors cannot claim any right as an heir or legatee of the testator and are disqualified from any share in the one-half of the widow's participation in the conjugal properties.

Interpretation of wills—

The case of *Villanueva v. Juico* [100] reiterates the settled rule that the intention and wishes of the testator when clearly expressed in his will, constitute the fixed law of interpretation and all questions raised at the trial relative to its execution and fulfillment must be settled in accordance therewith, following the plain and literal meaning of the testator's words, unless it clearly appears that his intention was otherwise.[101] Clause 6 of the will executed by Don Nicolas Villaflor in 1908 bequeathed in favor of his wife Doña Fausta ½ of all his real and personal properties and the other ½ to his brother Don Fausto. Clause 8 further provided that the wife shall have the "use and possession of the properties enumerated in clause 7 while alive and unmarried" (uso y posesion mientras viva y no se case en segunda nupcias), otherwise said properties shall pass to his niece Leonor Villanueva. Upon the testator's death, the wife secured the settlement of the husband's estate and received the use and possession of all the properties referred to in the will. She died in 1956 without having contracted a second marriage. Leonor Villanueva filed this action claiming that upon the widow's death, she acquired full ownership of all the properties bequeathed to the latter by her husband pursuant to clause 8 of the will. The trial court held that the plaintiff was a mere reversionary legatee and could thus succeed to the properties in question only in the event that the widow remarried, so that there having been no remarriage the properties become absolutely vested in the widow upon her death. *Held:* The testator plainly did not give his widow the full ownership of the properties, but only the use and possession thereof during her lifetime even if she did not remarry at all. This is in contrast with the remainder of the estate in which she was instituted under clause 6 of the will as the universal heir together with the testator's brother. The lower court's theory has unwarrantedly discarded the expression "mientras vivas" and considered the words "use and possession" as equivalent to "dominio" or ownership. In so doing, the trial court violates Article 791 of the new Civil Code as well as Section 59, Rule 123 of the

[100] G.R. No. L-15737, February 28, 1962.

[101] NEW CIVIL CODE OF THE PHILIPPINES, Articles 790 and 791; In re Estate of Calderon, 26 Phil. 233.

Rules of Court which provide in effect that speculations as to the motives of the testator in imposing the conditions contained in his testament should not be allowed to obscure the clear and unambiguous meaning of his plain words, which are ever the primary source in ascertaining his intent.

Fideicommissary substitution must be expressly made—

In the case of *Crisologo v. Singson*,[102] the will of the late Doña Leona Singson provided: "½ of the land shall go to her three brothers (among them is the defendant) while the other ½ to her grandniece Consolacion Crisologo (the herein plaintiff), that upon the death of Consolacion whether before or after that of the testatrix the property bequeathed to her shall be delivered (se dara) or shall belong in equal parts to the three brothers of the testatrix." The issue is whether the will provided for a *substitucion vulgar* or only *substitucion fideicommissaria*. In the former case, the plaintiff would have acquired nothing more than usufructuary rights over the half portion of the land with the defendant as the lawful owner. Should it be considered as a substitucion vulgar, the plaintiff becomes the owner of the same half portion of the land, upon the death of the testatrix.

Held: The will merely provided for a substitucion vulgar that upon the plaintiff's death—whether before or after that of the testatrix—her share shall belong to the three brothers of the testatrix. A perusal of the testamentary clause in question shows that the substitution of heirs provided for therein is not expressly made of the fideicommissary kind nor does it contain a clear statement to the effect that the plaintiff-appellee, during her lifetime shall only enjoy usufructuary rights over the land bequeathed to her, naked ownership thereof being vested in the brothers of the testatrix. It is the essence of a fideicommissary substitution under Article 785 of the old Civil Code [103] (made applicable in this case because the testatrix died on January 13, 1948 before the new Civil Code took effect) that an obligation be clearly imposed upon the first heir to preserve and transmit to another heir the whole or part of the estate bequeathed to him upon his death or upon the happening of a particular event.

Reserva troncal—

According to Article 891 of the new Civil Code the ascendant who inherits from his descendant any property which the latter may

[102] G.R. No. L-13876, February 28, 1962.

[103] Now Article 865 of the NEW CIVIL CODE which provides:

Every fideicommissary substitution must be expressly made in order that it may be valid.

have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came. This rule on "reserva troncal" was applied in the case of *Aglibot et al. v. Mañalac et al.*[104] The land involved in this case originally belonged to the conjugal partnership of spouses Anacleto Mañalac and Maria Aglibot who had only one child, Juliana Mañalac. Maria died in 1906, whereupon Anacleto remarried Andrea Acay with whom he begot six children. Juliana died intestate in 1920 leaving no other relatives except her father and her half brothers and sisters. Upon the death of Anacleto in 1920 his widow and six children took possession of the land and since then have refused to surrender the ownership and possession thereof to the appellees, who are both sisters of Maria Aglibot and who petition the Court for the partition of the land left by Juliana Mañalac among her rightful heirs.

Held: Appellees are the ones entitled to the land in question which is concededly a reservable property in accordance with the provisions of Article 891 of the new Civil Code. Upon the death of the mother Maria Aglibot, her only daughter, Juliana inherited ½ of the property, the other half pertaining to her father as his share in the conjugal partnership; that upon Juliana's death without leaving any descendant, her father inherited her ½ portion of said property. In accordance with law therefore, Anacleto Mañalac was obliged to reserve the portion he had thus inherited from his daughter for the benefit of the appellees, aunts of Juliana on the maternal side, and who are therefore her relatives within the third degree belonging to the line from which said property came.

PRESCRIPTION

Acquisitive prescription is inconsistent to a former recognition of ownership by another—

In the case of *Corpuz v. Padilla,*[105] the disputed parcel of land known as Lot 4 was included in the title to a bigger parcel of land known as Lot 2 which was owned by Corpuz. In 1937 Corpuz and Domingo executed a deed of sale, whereby the former expressly admitted the title of Domingo to said Lot 4 and paid ₱100.00 to the latter in consideration of the transfer to him of the ownership over certain portions of lot 4. The southern part of Lot 4 (not included

[104] G.R. No. L-14530, April 25, 1962.
[105] G.R. Nos. L-18099 and 18136, July 31, 1962.

in the first sale) was later sold to Padilla but this was claimed by the herein petitioner on the ground that said land belonged to his deceased father, Corpuz by virtue of adverse possession of the lot since 1925.

Held: Claim of ownership through acquisitive prescription is untenable. One cannot recognize the right of another and at the same time claim adverse possession which can ripen the ownership through acquisitive prescription. The admission by the petitioner's father that Lot 4 belonged to respondent's predecessor in interest negated the claim that same was acquired by prescription. For prescription to set in the possession must be adverse, continuous, public and to the exclusion of all.

Prescription precludes an action for recovery of title to land on the ground of fraud—

In the recent case of *Garcia et al. v. Guzman* [106] a complaint was filed on March 24, 1959 to recover title to a parcel of land and damages on the ground that the defendant secured registration thereof in his name through fraud practiced upon the plaintiff's father. The lower court granted the defendant's motion to dismiss the complaint after having found that the decree on registration in favor of the defendant was entered on January 29, 1923, that the O.C.T. upon said decree was issued on July 18, 1923 and that the deed of donation claimed to have been fraudulently secured by the defendant from the late father of the plaintiff who died only in 1950 was executed way back in 1918. *Held:* Even assuming that the land in question was not registered in the name of the appellee under the Torrens System, he would have acquired title to it by prescription [107] (32 years) no matter how the possession thereof had begun or originated; which precludes an action for its recovery on the ground of fraud.

Only title of registered owners are imprescriptible—

In the case of *Alzona et al. v. Capunitan et al.*[108] the parcels of land subject of the litigation were originally owned by spouses Perfecto Alomia and Cipriana Almendras, both deceased. They were survived by children Arcadio, Eulogio and Cipriana, the latter two now deceased and survived by their children, the herein plaintiffs. In 1915 Arcadio purchased Lot 2968 of the said land and obtained a

---

[106] G.R. No. L-15988, August 30, 1962.

[107] NEW CIVIL CODE, Article 1137 provides:

Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

[108] G.R. No. L-10228, February 28, 1962.

patent title in his own name. He also purchased Lot 2524 by installments, but because of his death in 1924, completion of the installments was made by his widow, Almeda, in whose name the certificate of title was finally issued. After Almeda's death in 1929, the plaintiffs instituted this action alleging that the land was conjugal property of Arcadio and Almeda; that upon the death of Arcadio, ½ of the land went to Almeda in her own right while the other ½ was inherited by the plaintiffs as nephews and nieces of Arcadio, so that in law Almeda held in trust the half share belonging to the plaintiffs, and therefore they have a right to ask for the reconveyance of their share. Lower court dismissed the complaint on ground of prescription of action.

Held: It is true that no title to registered land in derogation to that of the registered owner shall be acquired by prescription, but the protection given by law is in favor only of the registered owner. Plaintiffs cannot invoke the rule laid down in *Eugenio et al. v. Perdido et al.*[109] which was later affirmed in *Guinoo v. Court of Appeals*[110] wherein the Court upheld the imprescriptibility of action against the heirs, for being the continuation of the personality of their ascendants. The plaintiffs in the Eugenio and Guinoo cases were children of parents whose properties were registered in the names of said parents. In the present case, the lands were not registered in the names of the plaintiffs' parents but of their uncle and aunt. Dismissal of the complaint on ground of prescription is therefore valid.

OBLIGATIONS

Liability arising from negligence of a debtor may be regulated by the court—

In the case of *Hodges v. Javellana,*[110a] plaintiff sought to recover several sums of money under three causes of action. The first cause is based upon a promissory note of respondent in favor of petitioner, dated June 11, 1936 for ₱16,000.00 payable on or before June 11, 1937 with interest at 1% per month until paid, and guaranteed by a real mortgage; the second cause, upon a sale of ice machineries made by petitioner to respondent on January 6, 1937, for ₱17,500.00 of which ₱220.00 was paid, the balance to be paid in 72 monthly installments with the same rate of interest on the amounts unpaid, and guaranteed by a chattel mortgage on the machineries; the third cause, upon the sale of ice plant machinery,

[109] G.R. No. L-7083, May 19, 1955.
[110] G.R. No. L-5541, June 25, 1955.
[110a] G.R. No. L-17247, April 28, 1962.

soft drinks machinery, and ice drop equipment and furniture, on April 27, 1937 for ₱8,000.00 of which ₱2,000.00 was paid, the balance to be paid in monthy installments of ₱100.00 each with the same rate of interest, and the same machineries were mortgaged to secure payment. The three deeds evidencing the three transactions provided that unpaid interest shall be added to the capital and bear interest at a like rate. The complaint was filed in June 6, 1956. The Court of Appeals reduced the amounts granted by the lower court, denying interests during the war up to the filing of the action. Petitioner claims that the regular interest as well as the compounded interest having been stipulated in valid contracts between the parties, the court should have required respondent to pay both.

Held: Under Article 1172 of the new Civil Code, the courts have the power to regulate or moderate the liability of a debtor arising from negligence, and because it is inequitable to have required the debtor during the war to discharge his liability when the creditor may not be in a position to accept the payment, the interests that respondent will pay is reduced by eliminating that which accrued during the war years.

Pure obligation—

When the obligation contains no term or condition whatever upon which depends the fulfillment of the obligation contracted by the debtor, the obligation is a pure obligation and it is immediately demandable.[111]

In *Schenker v. Gemperle*,[112] it appears that the plaintiff and defendant entered into an oral agreement to organize a Philippine corporation and to divide the capital stock equally between themselves and/or their associates. Said verbal agreement was later on acknowledged and confirmed in writing. Defendant caused the articles of incorporation to be drafted and sent to plaintiff in Zurich, Switzerland, which, according to the latter he signed in moment of indiscretion and mistaken trust, although the articles placed in his name only 24% of the total subscription and the balance in the name of the defendant and his relatives. Together with the articles sent to plaintiff was a letter of the defendant explaining that he has to place 75% of the shares in his name because there is a local law which provides that when a corporation intends to make contracts with the government, 75% of the subscribed capital stock has to be Filipino. Defendant in said letter however, assured the plaintiff that

[111] Article 1179, NEW CIVIL CODE.
[112] G.R. No. L-16449, August 31, 1962.

he would give the latter the same share-holding as he has. Plaintiff then paid the sum of ₱7,000.00 for his subscription. Thereafter, he demanded from the defendant the transfer to him of 26% of the entire capital stock to his name pursuant to their agreement but defendant refused notwithstanding repeated demands. Hence this present action for specific performance and damages.

Held: The obligation of defendant is pure, because its performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties and as such is demandable at once. Defendant in his letter says, "I will give you however exactly the same share-holding as I have," which imparts an unconditional promise. It was so understood and treated by the defendant himself. The immediate payment by the plaintiff of his subscription after the organization of the corporation can only mean that the obligation should be immediately fulfilled giving only such time as might be reasonably necessary for its actual fulfillment.

It may be noted that Article 1179 of the new Civil Code which defines a pure obligation "is not violated when the Court fixes a reasonable period within which the debtor should pay (perform the obligation), in as much as this does not alter the character of the obligation as pure and immediately demandable." [113] According to the Tribunal Supremo of Spain, the courts may however grant the debtor a reasonable time to comply with the obligation if circumstances so justify.[114]

In case of breach of obligations, the parties shall bear their own losses if the infractor can not be determined; contract is deemed extinguished—

Article 1192 of the new Civil Code which provides that "if it can not be determined which of the parties first violated the contract, the same shall be extinguished, and each shall bear his own damage was applied in *Camus v. Price, Inc.*,[115] and *Price, Inc. v. Court of Appeals*,[116] in considering the contract of lease between Camus and Price, Inc. extinguished.

The two cases were consolidated by the Court. It appears that on March 30, 1951, Manuel Camus and Price, Inc., executed a contract of lease on a parcel of land located in Malabon, Rizal for 10

[113] TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Vol. IV (1956), p. 136.
[114] REYES, J. B. L., AN OUTLINE OF PHILIPPINE CIVIL LAW, Vol. IV, 3rd ed. (1958), p. 23.
[115] G.R. No. L-17858-9, July 18, 1962.
[116] G.R. No. L-17865-6, July 18, 1962.

years with ₱300.00 as monthly rental. It was stipulated that the lessee, Price, Inc., shall erect, build or construct a factory building and warehouse of strong materials appropriate to its business and that the building shall be insured with a competent insurance company by the lessee; that lessor Camus shall likewise make the necessary filling at his expense, within a year from the signing of the contract, the vacant portion of the lot along the river to increase its elevation and construct or build the necessary concrete wall provided with barbed wires on top thereof. The lessor started the filling and fencing but did not entirely comply with his obligation, the fence being only of adobe stone without barbed wires and the filling being 40 cms. lower than the elevation of the lot under lease. On the other hand, notwithstanding the completion of the factory building and warehouse, the lessee in turn failed to secure insurance therefore as stipulated, likewise, defaulting in the payment of rental as of February 16, 1953. Lessee brought action for specific performance, damages and extension of lease while lessor brought another action for unlawful detainer.

Held: As the obligation of the lessor matured in March, 1952 and even assuming that the lessee's obligation to insure the building arose after the completion of the construction of the building in September, 1951, as the lessor also defaulted in the performance of his corresponding obligation, it could not really be determined with definiteness who of the parties committed the first infraction of the terms of the contract. Under the circumstances, the parties are actually in *pari-delicto* and the contract is deemed extinguished with the parties suffering their respective losses.

Effect of the Moratorium Laws—

The Moratorium laws extend the period for the performance of the obligation, because they suspend the running of the statute of limitations and no action could be taken to collect money obligations falling within the purview of the laws during the period that they are still enforced.[117] These laws however do not extinguish nor condone the obligation. The moratorium laws after World War II, Executive Order Nos. 25 and 32, promulgated in 1945 and Republic Act No. 342, enacted in 1948 were declared void, but not void *ab initio,* for they continued operation in 1953.[118]

Court may fix period if duration depends upon the will of debtor—

Applying Article 1197 of the new Civil Code which gives the courts authority to fix the period if the obligation does not fix one,

[117] Quiambao v. Manila Motor Co., G.R. No. L-17384, January 30, 1962.
[118] Rutter v. Esteban, G.R. No. L-3708, May 18, 1953.

or when the duration of the period depends upon the will of the debtor, it has been held that the court may fix a period when the term of the lease has been left to the will of the lessee.[119] Following this rule, the Court in *Divino v. Marcos, et al.*,[120] where the lessee was allowed to occupy the lot under lease as long as he pays the corresponding rents, affirmed the decision of the lower court fixing the termination of the contract of lease two years from February 19, 1957.

Liability is joint in the absence of express declaration to the contrary—

Under Article 1207 of the new Civil Code, liability of debtors is solidary when the obligation expressly so states or when the nature of the obligation requires solidarity so that when a final judgment rendered against several defendants does not specify that they shall pay the amount thereof solidarily, the liability thus imposed on defendants is joint—each defendant liable only for a proportionate part of the obligation.[121]

In the case of *Nagtalon v. Segundo*,[122] it was held that the liability of defendants as appearing in the dispositive part of the executed decision was only joint. It appears, in this case, that in the civil case of *Castillo, et al. v. Nagtalon et al.*, the 12 defendants therein were ordered by the court to pay plaintiffs ₱210.00 every year from 1943 until delivery of the land in question to the plaintiffs. The decision was executed and 10 parcels of land, 3 belonging to the plaintiff herein, were levied and sold at public auction to satisfy the judgment. On the last day of the legal one-year period of redemption, plaintiff herein deposited with the Deputy Provincial Sheriff the sum of ₱317.44 representing 1/12 or the consideration of the sale plus 1% interest thereon and prayed for issuance of the deed of redemption with regards to her 3 parcels of land. Purchaser at public auction opposed on the ground that the amount did not cover the full redemption price of the said parcels which is ₱1,291.00. *Held:* Liability of defendants under the executed decision there being no express declaration of solidarity was only joint, hence the tender by Nagtalon of the sum corresponding to 1/12 of the purchase price was sufficient to redeem her properties sold at public auction.

---

[119] Eleizegui v. Lawn Tennis Club, 2 Phil. 309.

[120] G.R. No. L-13924, January 31, 1962.

[121] Contreras v. Judge, 78 Phil. 570; Ramos v. Gibbon, 67 Phil. 371; Cacho v. Valles, 45 Phil. 107; Bachrach v. La Protectora, 37 Phil. 180; Sharuff v. Tayabas Lard Co., 37 Phil. 655.

[122] G.R. No. L-17079, January 29, 1962.

Creditor can hold one or some of the solidary debtors for the whole obligation—

In *PNB v. Concepcion Mining Co., Inc., et al.*,[123] the plaintiff filed an action against the defendant Mining Company and Jose Sarte to recover the amount of a promissory note executed jointly and severally by defendant Company, Jose Sarte and Vicente Legarda. Defendants alleged that the estate of Vicente Legarda should be included as party defendant.

Held: As the promissory note was executed jointly and severally, the payee PNB had the right to hold any one or any two of the signers of the note responsible for the payment of the whole amount of the note.

Liquidated damages may be reduced by courts when such are iniquitous or unconscionable—

Article 1229 of the new Civil Code, which grants the courts authority to reduce penalty when the obligation has not been performed if it is iniquitous or unconscionable, was relied upon by the Court in *Geniza, et al. v. Sy and Asia Mercantile Corporation*,[124] in reducing the 30% of the ₱50,000.00 loaned to petitioners, to 5% as attorney's fees and liquidated damages in case the mortgagee is forced to foreclose the mortgages executed upon failure of mortgagors to pay the amounts loaned within 30 days after the execution of the deeds of mortgage.

The order of the Court in the above case in reducing the liquidated damages can also be properly or validly justified under Article 2227 of the same Code which provides, "Liquidated damages whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable."

Payment of obligation incurred during the Japanese time and payment be made after liberation—

It is a settled rule that pursuant to the terms of an agreement, when an obligation assumed during the Japanese occupation is not payable until liberation, the parties to the agreement are deemed to have intended that the amount stated in the contract be paid in such currency as may be legal tender at the times when the obligation becomes due.[125]

---

[123] G.R. No. L-16968, July 31, 1962.

[124] G.R. No. L-17165, July 31, 1962.

[125] Dizon v. Arrastia, G.R. No. L-15383, November 29, 1961; Aguilar v. Miranda, G.R. No. L-16510, November 29, 1961; Romasanta v. Sanchez, G.R. No. L-15125, April 29, 1960; Fong v. Javier, G.R. No. L-11059, March 25, 1960;

In the case of *Quioque, et al. v. Bautista, et al.*,[126] action was filed to foreclose two deeds of mortgage executed to secure the payment of two loans, one for ₱2,000.00 and another for ₱6,000.00. The deeds, covering two parcels of land in Manila, were executed on May 9, 1944 and it was stipulated therein, as common provision, that the two loans can not be repaid within one year from the date of the termination of the last world war. The trial court ordered the defendants to pay the amounts of ₱8,000.00 and ₱4,829.81 with interests of 6% and 3% respectively, and in default of payment the properties mortgaged shall be sold at public auction. On appeal, defendants contended among other things that the amounts recoverable should be converted into money according to the Ballantyne scale of values in as much as they received the loans in military war notes.

Held: The contention cannot be sustained, it having been agreed between the parties that said loans shall be payable after the termination of the last world war. The rule is well-settled that "where the obligation was made payable after a fix period, the maturity falling after the liberation, the promissor must pay in Philippine currency the same amount stated in the obligation, that is the obligation must be settled peso for peso in Philippine currency." [127] Defendants can not discharge their debt by paying only the equivalent in Philippine currency of the military notes they had received.

Payment of indebtedness in backpay certificates—

After Republic Act No. 1576 took effect on June 16, 1956, the Philippine National Bank or any government owned or controlled corporations may not be compelled to accept payment or discharge of debts or obligations to such entities by means of a backpay certificate of indebtedness; but before the effectivity of said Act, acceptance of such certificates to discharge indebtedness to such entities was held obligatory under Republic Act No. 897 which took effect on June 20, 1953.[128]

Impossibility of performance releases the debtor from obligation if he is without fault—

Article 1266 of the new Civil Code, which provides that when the obligation becomes legally or physically impossible of perform-

---

Nicolas v. Matias, G.R. No. L-8093, October 29, 1955; De Asis v. Agdamag, G.R. No. L-3709, October 25, 1951.

[126] G.R. No. L-13159, February 8, 1962.

[127] Nicolas v. Matias, *supra*, note 125.

[128] Macaraeg v. PNB, G.R. No. L-15915, May 26, 1962; Dickno v. RFC, 48 O.G. 2717; Florentino, *et al.* v. RFC, 52 O.G. 2522.

ance without debtor's fault, the obligation is extinguished and the debtor released from liability, taken in connection with Article 2076 of the same Code was applied in the case of *McConn v. Haragan, et al.*,[129] where the bond posted to guarantee Haragan's return to the Philippines was released.

In that case, it appears that the defendant Haragan, then defendant in a civil case in the Court of First Instance of Manila, applied for an immigration clearance and a re-entry permit to enable him to leave the Philippines for 15 days only. By order of the court where the civil case was pending, Haragan was allowed the permit after filing a bond of ₱4,000.00 to answer for his return to the Philippines and the prosecution of said case against him, with the understanding that upon his failure to return for the trial of his case, said bond will answer *pro tanto* for any judgment that may be rendered. Apellant Associated Insurance and Surety Co. posted the bond with the above condition, and Haragan was granted the immigration permit. He however failed to return because the Philippine Consulate in Hongkong had advised Haragan of a communication from the Department of Foreign Affairs banning him from returning to the Philippines. The civil case was however tried on the designated date with Herbert Fallis impleaded as defendant. Haragan was sentenced to pay ₱5,500.00 with 6% interest. After judgment became final and executory, plaintiff moved for the execution of the bond. Surety company objected on the basis of Articles 1266 and 2076 of the new Civil Code.

Held: It is clear that the bond will answer for any judgment in case defendant Haragan should fail to return to the Philippines. But since it was the Republic of the Philippines, obligee under the bond, who rendered the return to the Philippines of the principal obligor, impossible without the fault of Haragan, such obligation of returning is extinguished and the accessory obligation of the surety is likewise extinguished.

Novation—

Novation, to extinguish or discharge an obligation, is never presumed,[130] it is necessary that the will or the intent to novate (*animus novandi*) appears by express agreement of the parties, or that the old and new obligations are incompatible in all points.[131] It does not exist when the old contract is merely ratified by new instrument

[129] G.R. No. L-16550, January 31, 1962.

[130] Duñgo v. Lopena, *et al.*, G.R. No. L-18377, December 29, 1962; Luneta Motor Co. v. Baguio Bus Co., G.R. No. L-15157, June 30, 1960.

[131] Article 1292, NEW CIVIL CODE; Tui Suico v. Havana, 45 Phil. 707; Pascual v. Lacsamana, 53 O.G. 2467; Martinez v. Cavives, 25 Phil. 58.

changing only the terms of payment and/or adding other obligations not incompatible with the old,[132] or where the old contract is supplemented by the new one.[133]

In order that the debtor may claim novation as a defense to an action to enforce an obligation on the ground that a third person is substituted to assume the obligation, it must be shown that the old debtor was released from the obligation and the third person or new debtor took his place, as held in *Duñgo v. Lopena et al.*[134]

In the *Duñgo* case, it appears that petitioner and one Rodrigo Gonzales purchased 3 parcels of land from respondents Adriano Lopena and Rosa Ramos for ₱269,804.00 of which amount ₱28,000.00 was paid as down payment, with the agreement that the balance would be paid in six monthly installments. To secure the payment of the balance a mortgage was executed over the same land with the condition that failure of the vendees to pay any of the installments on their maturity date shall automatically cause the entire unpaid balance to be due and demandable. Vendees defaulted in their first installment. Upon petition of vendors, a judgment of foreclosure was issued. Before the execution of the judgment, an agreement was entered into between petitioner and Gonzales as debtors and the spouses Lopena and Ramos as creditors with Emma Santos as payor, wherein the payor Santos obligated herself with the consent of the debtor to pay the indebtedness of ₱503,000.00 to the creditors for and in behalf of debtors in four installments, that failure in any of the installments would entitle the creditors to execute the order of sale by the Court of First Instance of Pasig with regard to the three parcels of land. Prior to this agreement, a compromise agreement was entered into between the same parties, petitioner being represented therein by his attorney, with the exception of the payor Santos. This prior agreement which was approved by the court, granted the debtors an extension of time to pay their debt. Upon default of the payor under the later agreement, the lands were sold at public auction in accordance with the order of the court. Later on, the petitioner filed action to annul the proceedings and claiming among other things that the novation of the first compromise agreement by the second one relieved him from liability, alleging that when the third party Santos came in and assumed the motrgage obligation, novation resulted.

---

[132] Pablo v. Sapungan, 71 Phil. 482; Padilla v. Levy Hermanos, 69 Phil. 681; Inchausti v. Yulo, 34 Phil. 978; Zapanta v. Rotaeche, 21 Phil. 151.

[133] Duñgo v. Lopeña, *et al.*, *supra*, note 130.

[134] *Ibid.*

Held: It is not enough that the juridical relation of the parties to the original contracts is extended to a third person, it is necessary that the old debtor be released from the obligation and the third person or new debtor take his place in the new relation. Without such release, the third person who has assumed the obligation of the debtor merely becomes a co-debtor or surety. There being no such release in the Tri-Party Agreement, there is no novation.

CONTRACTS

Implied contracts—

Article 1305 of the new Civil Code defines contract as the "meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service." As such, it is the meeting of the minds of the parties and not the setting down of its terms, except in the cases of statutory forms or solemn agreements, that constitutes a binding contract.[135] It being the result of the agreement of the parties, some authors define contract as "an express convention," [136] which is not accurate because a contract can exist by implication.[137] As held by the Court in *Santos v. Cerdenola,*[138] the implied contract of tenancy resulted from the conduct of both the respondent in continuing to cultivate the land after the death of her husband and the landlord, represented by his overseer, in permitting respondent to till the land for a period of six years, which implied contract is also sanctioned by Section 7 of Republic Act No. 1197.

Parties to a contract may make stipulations not contrary to law—

Article 1306 of the new Civil Code, which provides that "the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, was applied in the case of *Soriano, et al. v. Bautista, et al.*[139] In this case the plaintiffs and defendants entered into a contract of mortgage to secure a loan of ₱1,800.00 obtained by the defendants from the plaintiffs. In said deed of mortgage, it was stipulated that the mortgagee can buy the land by paying ₱3,900.00 to the mortgagors. In rejecting the defendants, contention that they cannot be deprived of their right to redeem the mortgaged land by paying their indebtedness, because such right is

[135] Montelibano v. Bacolod-Murcia Milling Co., Inc., G.R. No. L-15092, May 18, 1962.
[136] Tolentino, *op. cit., supra,* note 113 at 374.
[137] Arroyo v. Azur, 76 Phil. 493.
[138] G.R. No. L-18418, July 31, 1962.
[139] G.R. Nos. L-15752 and 17457, December 29, 1962.

inherent and inseparable from a contract of mortgage, the Court held that there is nothing illegal or immoral in the stipulation granting the mortgagee the right to buy the mortgaged property; it is simply an option to buy sanctioned by Article 1479 of the new Civil Code.

Stipulations "pour autrui" in management contracts—

The rule laid down in the cases of *Bernabe & Co. v. Delgado Bros.*,[140] *Ysmael & Co., Inc. v. U.S. Lines and Manila Port Service*,[141] *Delgado Bros., Inc. v. Li Yao & Co.*,[142] and *Villanueva v. Manila Port Service & MRR*,[143] that management contracts entered into by the Bureau of Customs and Port Services pursuant to Act No. 3002 as amended by Republic Act No. 140 are contracts with stipulations "pour autrui" under Article 1311 of the new Civil Code and binding the consignees of goods and other articles imported even though they are not signatories to those contracts, was reiterated in *Atlantic Mutual Insurance Co. v. Manila Port Service and MRR*.[144] This case involves an action to recover loss and damage to pharmaceutical goods unloaded by the Manila Port Service and stored by the MRR; the claim for such damages not having been filed with the contractor by consignee or its representative within the 15-day period from the discharge of the goods as required by the management contract. The Court rejected the argument of the plaintiff-insurer that said contract does not contain stipulation "pour autrui" and hence is not binding upon the consignee or anyone not a party thereto because by the provisions of the Management Contract, the arrastre contractor and the Bureau of Customs deliberately conferred benefit upon the consignees and the importers, since it is to the latter that the merchandise was to be delivered in good order and payment in the event of damage or loss while in the arrastre contractor's control and custody. Besides, the notice in the gatepass authorizing the importer to bring the cargo out of the goods signed the pass and therefore knew its provisions and is estopped from denying the condition therein.

Contract entered into in the name of another by one who has no authority is not binding on the latter—

In *Achonda v. Province of Misamis Occidental*,[145] plaintiff was prevailed upon by the provincial treasurer of Misamis Occidental

[140] G.R. No. L-12058, April 27, 1960.
[141] G.R. No. L-14394, April 30, 1960.
[142] G.R. No. L-12872, April 29, 1960.
[143] G.R. No. L-14764, November 23, 1960.
[144] G.R. No. L-16789, October 31, 1962.
[145] G.R. No. L-10375, March 30, 1962.

to deposit in his office ₱20,000.00 in emergency war notes which was used to pay 50% of the salaries of the employees of the province retained in the service during the occupation. In his action to recover said amount, plaintiff claimed that the money was given in the form of a loan and the defendant having benefited therefrom, it should pay plaintiff.

Held: Whether the transaction between the plaintiff and the provincial treasurer is a loan or a deposit, such is not binding on the province because the provincial treasurer has no authority under Section 2089 of the Revised Administrative Code to borrow money from a third person or entity even if it may be needed to pay the expenses of the province. Such power devolves upon the provincial government itself.

In the *Duñgo v. Lopena*[146] case, the Court held that the compromise agreement entered into by the attorney of the petitioner without special power of attorney as required by law is not void *ab initio,* it is merely unenforceable. This results from the nature of the compromise as a contract.

Contract of lease may be rescinded by virtue of Article 1381—

Although Article 1381 of the new Civil Code does not enumerate lease as a rescissible contract, paragraph 5 thereof expressly includes "all other contracts specially declared by law to be subject to a rescission." And under Article 1659, the lessor or the lessee may ask for the rescission of the lease if the other party should not comply with his obligations. Thus in *Malicsi v. Carpizo,*[147] it was held that the trial court did not err in declaring the contract of lease entered into between the plainiff and Tan Chuan for 17 years rescinded, because defendant failed and refused to pay the monthly stipulated rental.

Article 1388 applied—

Alienations of property to defraud creditors may be rescinded and whoever acquires such property alienated in bad faith shall indemnify the creditors for damages suffered by them on account of the alienation, whenever, due to any cause, it should be impossible for him to return the property.[148]

In the case of *Rivera v. Litam & Co., Inc.,*[149] it appears that Rafael Litam sold shares of the Rafael Litam & Co., Inc. to the de-

---

[146] *Supra,* note 130.
[147] G.R. No. L-17493, June 30, 1962.
[148] Article 1388, NEW CIVIL CODE.
[149] G.R. No. L-16954, April 25, 1962.

fendants William Litam, Luis Litam, Henry Litam and Li Hong Yap, without consideration, while said Rafael Litam was indebted to his Filipino wife in the sum of ₱250,000.00. It was found out by the lower court that the transfers were made to put said property beyond the reach of Marcosa Rivera, Filipino wife of the deceased Rafael Litam. The defendants objected to the order of the court making them pay the amount of ₱300,000.00 for the value of the shares of stocks in case of failure to return them, and ₱6,000.00 as attorney's fees.

Held: The damages sustained by the plaintiff by reason of the fraudulent transfer of the shares of stocks are the value thereof and the expenses of litigation which the plaintiff has testified to be ₱6,000.00. This liability rests upon Article 1388 of the new Civil Code.

In *Hodges v. City of Iloilo,*[150] the petitioner Hodges acquired parcels of land in Iloilo City which included portions of land acquired by the then municipality of Iloilo through extra-judicial negotiations for the purpose of widening the streets adjoining these two lots. The municipality however neglected to claim the portions in question when the parcels to which they originally formed part were surveyed and to take the corresponding cadastral proceedings necessary action to have them registered in its name. As a consequence, notwithstanding that said portions already formed part of the streets of the municipality prior to October 1911, they were surveyed and registered together with the main lots in the names of the original owners and were included when the main lots were subsequently sold to petitioner. In 1936, the then municipality used and occupied the lots in question for which plaintiff asked for the payment of the purchase price.

Held: It is generally recognized that properties dedicated to public use such as streets and public plazas, are beyond the commerce of man. Having purchased something that was beyond the commerce of man, petitioner has no right to recover the lots in question nor to be paid their value.

ESTOPPEL

Government is not estopped—

The ruling that the government is never estopped by error or mistake on the part of its agents and that estoppel can not give

[150] G.R. No. L-17573, June 30, 1962.

validity to an act that is prohibited by law or is against public policy [151] is reiterated in *People v. Ventura,*[152] where Guillermo Ventura appealed from the trial court's decision declaring him guilty of illegal practice of Medicine under Section 770 in connection with Section 2678 of the Revised Administrative Code for engaging in the practice of drugless healing. Appellant pleads that the lower court erred in not holding that the complainants and the government are estopped from prosecuting him because they were the ones who induced him to practice healing after his conviction in 1949, showing that medical practitioners, members of congress, provincial governors, city mayors and municipal board members wrote to him requesting his help for persons suffering from all kinds of ailments, and that municipal ordinances and resolutions were also passed authorizing him not only to practice his method but also to put up clinics in some municipalities.

Held: The plea of appellant can not be sustained. The doctrine of estoppel does not apply to the government. It is never estopped by mistakes or errors on the part of its agents, even assuming without conceding that said municipalities had encouraged appellant's practice.

TRUSTS

Constructive trusts—

The ruling in *Sevilla v. Angeles,*[153] that if a person obtains legal title to property by fraud or concealment, a so-called constructive trust is created in favor of the defrauded party was adopted in *Juan et al. v. Zuñiga, et al.,*[154] and applied in *Lazaro Vda. de Jacinto, et al. v. Rosario Vda. de Jacinto, et al.*[155]

In the *Juan* case, it appears that Ines, Crisanto, Ciriaco and Bartolome, all surnamed Francisco were the only heirs of Luciana Ciderio who died intestate leaving a parcel of land in Polo, Bulacan. In the extra-judicial partition executed by Crisanto, Ciriaco and Bartolome whereby they declared that they were the only existing heirs, Ines Francisco was not given any share in the land in question. On account of said declaration, a Certificate of Title was issued

---

[151] Republic v. Go Bon Lee, G.R. No. L-11499, April 29, 1961; Koppel (Phil.) Inc. v. Collector, G.R. No. L-10550, September 19, 1961; Benguet Consolidated Mining Co. v. Pineda, 52 O.G. 1961; Eugenio v. Perdido, G.R. No. L-703, May 19, 1955. *But see* Bachrach Motor Co. v. Unson, 50 Phil. 581.

[152] G.R. No. L-15079, January 31, 1962.

[153] G.R. No. L-7745, November 18, 1955.

[154] G.R. No. L-17044, April 28, 1962.

[155] G.R. No. L-17955, May 31, 1962.

to Bartolome, Ciriaco and Crisanto in 1932. Later on, two-thirds of the property was sold to defendant Zuñiga as shares of Crisanto and Bartolome. The present action was filed to recover share of Ines Francisco in the property. The Court citing its decision in the Sevilla case, reversed the decision of the lower court that the action has already prescribed. *Held:* Through fraudalent representation or by pretending to be the only heirs of the deceased, Bartolome, Ciriaco and Crisanto succeeded in having the original title cancelled and a new one issued in their names enabling them to possess the land. This way of acquiring title creates what is called "constructive trust" in favor of the defrauded party and grants the latter the right to vindicate the property regardless of the lapse of time.

In the *Jacinto* case, Pedro Jacinto, an heir and administrator of the properties allotted to his co-heirs, withheld delivery to his co-heirs some 5 hectares of land which he later on caused to be registered in his name. Upon discovery of the shortage, the plaintiffs sued for recovery. *Held:* Pedro is a co-heir who, through fraud succeeds in obtaining a certificate of title in his name to the prejudice of his co-heirs, is deemed to hold the land in trust for the latter.

Prescriptibility of action to recover property held in trust—

Under Section 40 of the old Code of Civil Procedure, all actions for recovery of real property prescribe in 10 years, excepting only actions based on continuing or subsisting trusts that were considered by Section 38 as imprescriptible. As held in the case of *Diaz v. Gorricho,*[156] however, the continuing and subsisting trusts contemplated in Section 38 of the Code of Civil Procedure referred only to *express unrepudiated* trusts and did not include constructive trusts—that are imposed by law—where no fiduciary relation exists and the trustee does not recognize the trust at all.[157] This rule was followed in the cases of *J. M. Tuazon & Co. v. Magdangal,*[158] and *Alzona, et al. v. Capunitan, et al.,*[159] where it was declared that an action for reconveyance based on implied or constructive trust prescribes in 10 years.

In the *Tuazon & Co.* case, it appears that plaintiff was able to obtain a certificate of title to a land owned by it in 1914 in which

---

[156] G.R. No. L-11229, March 29, 1962.

[157] *See* J. M. Tuazon & Co., Inc. v. Magdangal, G.R. No. L-15539, January 30, 1962; Marabiles, *et al.* v. Quito, G.R. No. L-10408, October 18, 1956 (dissenting opinion).

[158] G.R. No. L-15539, January 30, 1962.

[159] *Supra,* note 107.

title to the land in question was included. Defendant claimed that the land in question was bought by him from the original owner and since then he has been in possession thereof, and that the plaintiff through fraud and misrepresentation as to the boundaries of its land was able to obtain title which included the herein land. Defendants motion to dismiss the present action for ejectment was denied.

Held: Even if defendant could prove that plaintiff was able to obtain title over the land through fraud or misrepresentation, plaintiff's title can no longer be assailed because action for reconveyance based on constructive trust has already prescribed ten years from 1914.

In the *Alzona* case, Arcadio Alomia purchased from the Friar Lands Administration Lot No. 2968, a residential lot, and Lot No. 2524, a rice land, by installment. In 1924, he died before completing the installment payments. His widow, Ildefonsa Almeda, upon showing through affidavit that she was her husband's only heir was made assignee of his contract with respect to the said lots. Upon payment of the last installment she was issued corresponding certificates of title. These lots were later on sold to defendants Gregoria Capunitan, niece of Ildefonsa, and Manuel Reyes, her husband in 1928. After Ildefonsa's death, the plaintiffs, nephews and nieces of Arcadio Alomia instituted an action in July, 1928 for recovery of the lots. This action was dismissed for failure to appear by both parties. Another was filed in 1938 but was also dismissed.

Held: The case at bar involves an implied or constructive trust upon the defendant-appellees. When Ildefonsa stated to the Bureau of Lands that she is the only heir of her husband, she practiced a legal fraud on the plaintiffs. She was only entitled to ½ of the disputed lots as her share in the conjugal properties while the other half was inherited by the plaintiffs as nephews and nieces of Arcadio Alomia. In law, she held in trust the ½ belonging to herein plaintiffs of which defendants have full knowledge. And the law requires that an action for a reconveyance based on implied or constructive trusts prescribes in ten years.

The first cause of action of the plaintiffs against defendants accrued in 1928 when defendants purchased and took possession of the two lots from Ildefonsa. The action being for recovery of title and possession of real property, the same should have been brought within 10 years or up to 1938. But after dismissal of the second case in August, 1936, the plaintiffs went into a swoon and woke up only when

they filed the present action in 1949 after ten years have already elapsed. Furthermore, the defendants being third persons, and having repudiated the trust and expressed claim of ownership over the litigated properties, they have acquired said properties by the law of prescription.

In so deciding the Court, speaking through Justice Paredes, declared: "The prescriptibility of an action for reconveyance based on implied or constructive trust is now a well-settled question in this jurisdiction. It prescribes in ten years", which is a re-statement of the ruling in *Boñaga v. Soler, et al.*[160] Yet, the Court in deciding the case of *Juan* [161] and *Lazaro Vda. de Jacinto*,[162] some two and three months later, reverted to its former stand that the defrauded parties' right to recover his property does not prescribe. With these two cases, the Court's last stand is that the defrauded party's right to reconveyance based on implied or constructive trust *does not prescribe regardless of time.* It then ruled in the previous case of *Marabiles, et al. v. Quito*,[163] that: "It is a rule well-settled that the defense of prescription can not be availed of when the purpose of the action is to compel a trustee to convey the property registered in his name for the benefit of the *cestui que trust.*[164] . . . And when a person through fraud succeeds in registering the property in his name, the law creates what is called 'constructive trust' in favor of the defrauded party and grants the latter a right to vindicate the property *regardless of the lapse of time.*" (Underscoring supplied.)

As it now stands, the rule on prescriptibility of actions for reconveyance based on implied or constructive trust is still not a "well-settled question" as Justice Paredes declared in the *Alzona* case, for before this, the Court through Justice Bautista Angelo also stated in the *Marabiles* case that the rule is "well-settled that the defense of prescription can not be availed of in such actions." As pointed out earlier, there was only a span of two months when the Court "restated" its stand from a "well-settled rule of prescriptibility" to a rule of "well-settled imprescriptibility", to which it had adhered for quite a time after it had originally changed its stand of prescriptibility in the *Diaz v. Gorricho* [165] case.

---

[160] G.R. No. L-15717, June 30, 1961.
[161] *Supra*, note 154.
[162] *Supra* note 155.
[163] *Supra*, note 113; *see* Ongsiaco v. Ongsiaco, G.R. No. L-7510, March 30, 1957; Claridad v. Benares, G.R. No. L-6438, June 30, 1955.
[164] *See* Manalang, *et al.* v. Canlas, *et al.*, G.R. No. L-6307, April 20, 1954; Castro v. Castro, 57 Phil. 675; Cristobal v. Gomez, 50 Phil. 810.
[165] *Supra*, note 156.

SALES

Existence of a contract of sale—

In two cases, the Supreme Court looked beyond the form and went into the substance of alleged contracts of sale.

In *Alvarez v. Board of Liquidators*,[166] Alvarez relied on an agreement with the National Board of Liquidators denominated "contract of sale" for his title. The agreement allegedly embodied all the essential elements of a contract of sale by installment. The Court considered this merely an application to buy the land, not a perfected contract of sale since it was still subject to revocation in case the applicant is found not to possess the necessary qualifications for acquisition of the land.

In the *Kangleon* [167] case, Valentina Tagle Vda. de Kangleon relied on an agreement with the Rural Progress Administration entitled "Sales Memorandum". The agreement was controverted for the same reasons given in the *Alvarez* case.

Validity of a contract of sale—

1. Sale of an undivided interest is valid.—Pilar Belmonte had an undivided one-half interest in a parcel of land. She sold one-half of her share, but the deeds of sale she executed appeared to convey definite or segregated parts of the parcel of land. This she could not do, according to the Supreme Court, because the one-fourth interest had not yet been subdivided. This defect, however, does not result in the nullity of the deeds of sale she had executed. The sales are valid subject only to the condition that the interest acquired by the vendees were limited to the parts which might be assigned to them in the division upon the termination of the co-ownership.[168]

2. Sale of a parcel of land to alien-owned bank is not valid.—Where a parcel of land is sold to an alien-owned bank by its employee to extinguish said employee's civil liability for the crime of qualified theft, the sale is not valid. While Section 25, par. (c) of Republic Act No. 337 allows any commercial bank to hold real estate in satisfaction of debts previously contracted, this provision refers only to "debts" resulting from ordinary banking transactions.[169]

---

[166] G.R. No. L-14834, Jan. 31, 1962.

[167] Galvez, *et al.* v. Tagle Vda. de Kangleon, G.R. No. L-17197, September 29, 1962.

[168] Mercado v. Viardo, *et al.*, G.R. Nos. L-14127 and L-14128, August 21, 1962.

[169] G.R. No. L-16467, April 27, 1962.

3. Fraudulent transfer is invalid.—In *Rivera v. Li Tam & C., Inc.*[170] a transfer of shares was invalidated because the fraudulent character of the transfer was clearly inferred from the circumstances.

Price—

Velasquez v. Coronel[171] amplified Article 1470 of the Civil Code which provides that gross inadequacy of price does not affect a contract of sale except as it may indicate a defect in consent, or that the parties really intended a donation or some other act or contract.

In that case, two parcels of land were sold at public auction to pay real property taxes. The owners failed to redeem the property within the period of one year. Hence, the purchaser requested the Provincial Treasurer to execute the final deed of sale in his favor. The Treasurer refused on the ground that the prices petitioner paid for the lands were unconscionable.

Held: While in ordinary sales, for reasons of equity, a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere, such does not follow when the law gives to the owner the right to redeem, as when a sale is made at public auction, upon the theory that the lesser the price the easier it is for the owner to effect the redemption. When there is the right to redeem, inadequacy of price is not material, because the judgment debtor may reacquire the property or also sell his right to redeem and thus recover the loss he claims to have suffered by reason of the price obtained at the auction sale.

Binding effect of a contract of sale—

In an executory contract of sale, the obligation of one party to deliver can not arise until the other party tenders payment. This principle, enunciated in *Hanlon v. Hausserman*[172] was applied in *Katigbak v. Court of Appeals.*[173] Katigbak agreed to purchase a winch from Evangelista, advancing an initial amount. For one reason or another, the sale was not consummated and Evangelista sold the winch to a third person for a lesser price. Katigbak sued Evangelista for refund of the initial payment contending that recission should have first been effected before the latter could sell the winch to a third person. Evangelista claimed breach of contract on the part of Katigbak.

---

[170] *Supra*, note 149.
[171] Velasquez v. Coronel, G.R. No. L-18745, August 30, 1962.
[172] 40 Phil. 796, 815-816.
[173] G.R. No. L-16480, January 31, 1962.

Held: The vendor is entitled to resell the goods. If he is obliged to sell for less than the contract price, he holds the buyer for the difference; if he sells for as much or more than the contract price, the breach of contract by the original buyer is *damnum absque injura.* There is no need for an action of rescission to authorize the vendor, who is still in possession, to dispose of the property where the buyer fails to pay the price and take delivery.

However, when more than half of the goods have been delivered to the buyer and the seller has accepted partial payments on the purchase price, the contract can no longer be repudiated. The seller's acceptance of said benefit under the contract of sale constitutes an implied ratification of the contract in question and precludes the rejection of the binding effect of said contract.[174]

Option to buy—

Article 1479 of the new Civil Code was applied in *Soriano v. Bautista.*[175] The article provides: A promise to buy and sell a determinate thing for a price certain is reciprocally demandable. An accepted unilateral promise to buy or sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

In this case, spouses Bautista mortgaged a parcel of land in favor of Ruperto Soriano and Olimpia de Jesus in consideration of a loan of ₱1800. The mortgage stipulated, among other things, that if the financial condition of the mortgagees will permit, they may purchase said land absolutely on any date within the 2-year term of the mortgage at the agreed price of ₱3,900. Within said 2-year term, the mortgagees offered to purchase the property in accordance with the aforesaid stipulation. The mortgagors refused contending that they could not be deprived of the right to redeem the mortgaged property, because such right is inherent in and inseparable from this kind of contract.

The Supreme Court held that while the transaction is undoubtedly a mortgage and contains the customary stipulation concerning redemption, it carries the added special provision aforequoted which renders the mortgagors' right to redeem defeasible at the election of the mortgagees. There is nothing illegal or immoral in said stipulation. It is simply an option to buy sanctioned by Article 1479 of the Civil Code.

---

[174] Federation of United Namarco Distributors, Inc., *et al.* v. National Marketing Corporation, G.R. No. L-17819 and L-17768, March 31, 1962.

[175] *Supra*, note 139.

The mortgagors' promise to sell is supported by the same consideration as that of the mortgage itself, which is distinct from that which would support the sale, an additional amount having been agreed upon, to make up the entire price of ₱3,900, should the option be exercised. The mortgagors' promise was in the nature of a continuing offer, non-withdrawable during a period of two years which upon acceptance by the mortgagees gave rise to a perfected contract of sale.

Offer to sell—

The case of *Perez v. Araneta* [176] enunciated the principle that offers to sell are not competent evidence of the fair market value of a property. Said offers to sell are no better than offers to buy, which have been held to be inadmissible as proof of said value.[177] The Court said that it would indeed be absurd to imagine a sale without a buyer, for if there is no buyer, there would be no sale.

Capacity to buy or sell—

Under Article 1491, par. (b) of the new Civil Code, lawyers can not acquire by purchase property and rights which may be the object of any litigation in which they may take part by virtue of their profession. In *Sotto v. Samson* [178] this provision was held to apply—notwithstanding a number of ratifications and confirmations of the sale—because at the time the sale was agreed upon, Sotto was Samson's lawyer in a litigation involving the property sold, and therefore disqualified to buy under said provision.

The sale by a guardian appointed by a court without jurisdiction is null and void.[179]

Double sales—

The law on double sales of immovables is found in Article 1544 of the new Civil Code which provides that the ownership shall be transferred to the person acquiring it, who, in good faith first recorded it in the Registry of Property. Should there be no inscription, the ownership shall pertain to the person who, in good faith was first in the possession, and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

---

[176] G.R. No. L-16708, October 31, 1962.
[177] City of Manila v. Estrada, 25 Phil. 208; Manila Railroad Co. v. Aguilar, 35 Phil. 118; City of Davao v. Dumbao, G.R. No. L-3741, May 20, 1952.
[178] Sotto v. Samson, G.R. No. L-16917, July 31, 1962.
[179] G.R. No. L-14326.

In *Beatriz v. Cederia*,[180] plaintiff was declared owner because, apart from the fact that the sale to them was executed over 10 years earlier, said sale was recorded in the office of the Register of Deeds whereas defendant's sale was not. Moreover, plaintiff's good faith in registering the former instrument is not disputed whereas defendant's good faith in acquisition is in question.

In a case where two persons claim title under the Torrens system, the one who perpetrated fraud in obtaining her title can not claim indefeasibility thereof. The title issued to her being the product of fraud could not vest in her valid and legal title to the parcel of land in litigation and, in the same way that a thief does not own or have title to the stolen goods, she could not transmit title which she did not have nor possess.[181]

But where one contract is a deed of sale and the other a promise to sell, Article 1544 does not apply.[182]

Proper party to enforce warranty against eviction—

In an action for recovery of a parcel of land, Felix Morada asked leave of the Court to file a third-party complaint against Roman Mendoza from whom Morada's wife bought the parcel of land under litigation. The trial court denied the motion. Morada filed with the Supreme Court a petition for mandamus to compel the trial court to allow the filing of the third-party complaint.

The Supreme Court, in denying the motion, held that as between Morada and the third-party defendant Mendoza, there is no privity of contract in relation to the property in litigation. It was Morada's wife, the purchaser of said property from Mendoza, who had the right to sue the latter to enforce his warranty against eviction.[183]

Sale of friar lands—

Pugeda v. Trias [184] gives the distinction between sale of public lands under the Public Land Act and similar legislation, and the sale of friar lands under Act No. 1120 thus: In the case of public lands, a person who desires to acquire must apply for the parcel of land desired. Thereafter, the land is opened for bidding. If the land is awarded to an applicant or to a qualified bidder, the successful bidder is given a right of entry to occupy the land and cultivate and improve it. It is only after satisfying the requirements of cultivation and improve-

[180] G.R. No. L-17703, February 28, 1962.
[181] Hodges v. Dy Buncio & Co., Inc., G.R. No. L-16096, October 30, 1962.
[182] Dichoso v. Roxas and Borja, G.R. No. L-17441, July 31, 1962.
[183] Morada v. Caluga, G.R. No. L-18055, August 31, 1962.
[184] *Supra*, note 53.

ment of one-fifth of the land that the applicant is given a sales patent.

In the case of friar lands, the purchaser becomes the owner upon issuance of the certificate of sale in his favor, subject only to cancellation thereof in case the price agreed upon is not paid. In the case of sale of public lands, if the applicant dies and his widow remarries, both she and the second husband are entitled to the land; the new husband has the same right as his wife. Such is not the case with friar lands. As indicated in Section 16 of Act No. 1120, if a holder of a certificate dies before the payment of the price in full, the sale certificate is assigned to the widow, but if the buyer does not leave a widow, the right to the friar land is transmitted to his heirs at law.

The provision of the Friar Lands Act to the effect that upon the death of the husband the certificate of sale is transferred to the name of the wife is merely an administrative device designed to facilitate the documentation of the transaction and the collection of the installments; it does not produce the effect of destroying the character as conjugal property of the lands purchased.

Application of Article 1606, Par. 3—

Several 1962 cases dealt with the application of Article 1606, par. 3, of the Civil Code which reads: "However, the vendor may still exercise the right to repurchase within 30 days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase."

In *Morales v. Bagtas, et al.*[185] and *Villalobos v. Catalan, et al.*[186] the Supreme Court held that the right given in the aforequoted article does not apply to pacto de retro sales perfected before the effectivity of the new Civil Code but having redemption period that expired after such effectivity.

Reason for the ruling: The original sale a retro did not confer upon the purchaser a mere expectancy but an actual right of ownership of the property sold that would continue to exist indefinitely unless the vendors exercise in due time their right of redemption. This right of ownership already vested in the purchaser a retro and could not be defeated by the new right created by Article 1606, since the Code itself expressly so declares.[187] The vendee's right of ownership, it is true, was subject to a resolutory condition, the redemption by the

[185] G.R. No. L-17193, September 29, 1962.
[186] G.R. No. L-17723, June 29, 1962.
[187] Art. 2253, last sentence, CIVIL CODE OF THE PHILIPPINES.

vendors a retro.[188] Such being the case, the applicable rule is not Article 2253 which is general, but the specific one, Article 2255, which provides that conditional rights continue to be subject to the law formerly in force.

Consistently with this view, the Court ruled in *Siopongco v. Castro* [189] that ownership that had vested before the approval of the new Civil Code could not be impaired by permitting the former owner to reacquire the land he had previously conveyed to another. If under the old Civil Code of 1889 [190] the plaintiff's right of ownership became absolute immediately upon failure of the vendors to redeem in due time, certainly that right would be impaired, and its value diminished, to his prejudice, if the vendors were now to be given the privilege to redeem beyond the period stipulated.

In *Gonzales v. de Leon*,[191] one of the issues was whether the contract involved was a deed with option to repurchase coupled with lease agreement or simply a mere device to circumvent the Usury Law. The Court upheld the former and accordingly held that Gonzales had the right to redeem the property within 30 days from date decision in the case becomes final under authority of Article 1606 par. 3 of the new Civil Code.

Tender of repurchase price—

Where the vendor a retro was declared, in a final judgment, to have the right to repurchase within a specified time he should tender the full price fixed in the judgment. In *Torrijos v. Crisologo* [192] the vendors were adjudged to have such right and accordingly signified their desire to redeem the property but did not tender the full amount of the repurchase price. The tender was held invalid.

Assignment of credits and other incorporeal rights—

Article 1624, in relation to Article 1475 of the new Civil Code provides that an assignment of credits and other incorporated rights is perfected at the moment there is a meeting of the minds.

But where a deed of assignment of shares of stock is executed pursuant to a judgment, such assignment is not in the nature of a bilateral contract to be consented to by the parties, but one executed

---

[188] Aquino v. Deala, 63 Phil. 582.
[189] G.R. No. L-12167, April 29, 1959.
[190] Article 1509; Basilio v. Encarnacion, 5 Phil. 360.
[191] G.R. No. L-17250, January 31, 1962.
[192] G.R. No. L-17734, September 29, 1962.

in compliance with the judgment of a court. Consent, therefore, of the assignee, is not necessary.[193]

LEASE

Breach in a contract of lease—

In *Camus v. Price* [194] both parties committed breach in a contract of lease but the Court could not determine with definiteness who of the parties committed the first infraction of the terms of the contract. Said parties were held to be in *pari delicto,* the contract deemed extinguished, with the parties suffering their respective losses.

Is a lease contract one of those declared rescissible under Article 1381 of the Civil Code?

The Supreme Court in *Malicsi v. Carpizo,*[195] declared that it is. par. 5 of said article expressly includes "all other contracts specially declared by law to be subject to rescission." And Article 1659 of the same Code expressly provides, among others, that if the lessee should not comply with his obligation of paying the price (rental of the lease) according to the terms stipulated, the aggrieved party may ask for the rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force.

Writ of preliminary injunction under Article 1674—

Article 1674 of the new Civil Code gives the lessor, in ejectment cases where an appeal is taken, the remedy of mandatory preliminary injunction to restore him in his possession, if the higher court is satisfied that the lessee's appeal is frivolous or dilatory, or that the lessor's appeal is *prima facie* meritorious. The petition for the writ must be filed within ten days from the time the appeal is perfected.

In *Tuazon v. Judge Mencias* [196] the Court ruled that the period of ten days mentioned in the above article should be counted from the date when petitioning party is notified of the perfection of the appeal, not from date of perfection of appeal. Reasons: An appellee in a case appealed from the Justice of the Peace Court to the Court of First Instance is not called upon to be always on guard in the Justice of the Peace Court to ascertain the exact date and hour the

[193] Lee Kim Pio v. Francisco Dy Chin and Hon. Gregorio T. Lantin, G.R. No. L-18852, December 20, 1962.
[194] *Supra,* note 115.
[195] *Supra,* note 147.
[196] *Supra,* note 93.

appeal is perfected. All that an appellee is expected to do is to wait for the official notice to him of said perfected appeal from the Court of First Instance where the appeal is taken. Otherwise, said appellee may be prematurely filing a petition for the issuance of a writ of preliminary injunction in the Court of First Instance before the appeal is actually received by the said court.

A literal interpretation given to the provisions of law under discussion would prove the extraordinary remedy of preliminary injunction unavailing. The issuance of such writ in an ejectment case is expressly vested in the appellate court because the law employs the phrase "higher court," and it is the higher court which must satisfy itself that the appeal is either frivolous or dilatory, in the case of the lessee, or *prima facie* meritorious, in the case of the lessor. The record of an appealed case, whether from a municipal court or court of first instance is invariably remanded to or received by, the clerk of the appellate court beyond ten days from the perfection of the appeal. And this happens despite the mandate of the law requiring clerks of court to transmit the record of an appealed case within a specified period,[197] a plain ministerial duty on the part of these court officials of which parties litigants have no intervention whatsoever.[198]

Courts may fix a longer term of lease—

Article 1687 of the Civil Code provides: "If the period for the lease has not been fixed it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the court may fix a longer term for the lease after the lessee has occupied the premises over one year. If the rent is weekly, the court may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the court may also fix a longer period after the lessee has stayed in the place for over one month."

The Supreme Court defined the power of the courts to fix a longer term for lease as "potestative" or "discretionary." "May" is the word—to be exercised or not in accordance with the particular circumstances of the case; a longer term to be granted where equities come into play demanding extension, to be denied where

[197] Within 5 days in the case of municipal or justice of the peace courts (Sec. 5, Rule 40), and within 10 days in the case of courts of first instance (Sec. 11, Rule 41, Rules of Court).

[198] *See* Sycip v. Hon. Judge E. Soriano, *et al.*, 52 O.G. 1474.

none appear, always with due deference to the parties' freedom to contract.[199]

In *Divino v. Marcos*,[200] the lot in question has been rented to petitioner Jacobo for about twenty years and his predecessor in interest for more. Even though rentals had been paid monthly, still no period for the duration of the lease had been set. The lease had been consistently and tacitly renewed (*tacita reconduccion*) until the ejectment case was filed.[201] Having made substantial or additional improvements on the lot and considering the difficulty of looking for another place to which petitioner could transfer such improvements, and the length of his occupancy of the lot (since 1936), and the impression acquired by him that he could stay on the premises as long as he could pay his rentals, the Court found that there existed just grounds for granting the extension of lease and that the extension of two years granted by the trial court was both fair and equitable.

Lease of services distinguished from contract of sale—

In a case where one party furnishes cloths and material and the other sews these into wearing apparel, the Court held that the contract is one of lease of services, not of sale.[202]

PARTNERSHIP

Liquidation and return of shares—

In *Magdusa et al. v. Albaran et al.*,[203] the Supreme Court held that a partner's share can not be returned without first dissolving and liquidating the partnership,[204] for the return is dependent on the discharge of the creditors, whose claims enjoy preference over those of the partners and all members are naturally interested in its assets and business and are entitled to be heard in the matter of the firm's liquidation and distribution of its property. Where the liquidation statement is not signed by the members of he partnership besides the litigants and it does not appear that said other members have approved, authorized, or ratified the same, it is not bind-

[199] Acasio v. Corp. de los PP Dominicos de Filipinas, G.R. No. L-9428, December 21, 1956.
[200] *Supra*, note 120.
[201] Co Tiam v. Diaz, 75 Phil. 672; Villanueva v. Canlas, 77 Phil. 381; Art. 1670, NEW CIVIL CODE; Art. 1566, OLD CIVIL CODE.
[202] G.R. No. L-16809, January 31, 1962.
[203] G.R. No. L-17526, June 30, 1962.
[204] Po Yeng Cheo v. Lim Ka Yam, 44 Phil. 177.

ing upon them. At the very least, they are entitled to be heard upon the statement's correctness.

In addition, unless a proper accounting and liquidation of the partnership affairs is first had, the capital shares of the partners who wish to retire can not be repaid, for the firm's outside creditors have preference over the assets of the enterprise,[205] and the firm's property can not be diminished to their prejudice.

Finally, the managing partner can not be held liable in his personal capacity for the payment of the partners' shares, for he does not hold them except as manager of, or trustee for, the partnership It is the partnership that must refund the shares to the retiring partners.

AGENCY

Purchaser deemed agent—

Dee Hong Lue purchased from the Foreign Liquidation Commission (FLC) a stock of surplus goods which he later sold to Central Syndicate, a corporation. The latter sold the goods to various parties, realizing profits.

The Supreme Court, from "overwhelming evidence" concluded that the actual purchaser or importer of the goods from FLC was Central Syndicate, not Dee Hong Lue, this latter having merely acted as agent or trustee of the former. Sales tax liability was thus assessed against the Central Syndicate in accordance with said findings.

Among the circumstances from which the inference of agency was drawn were: Dee Hong Lue sold the goods to Central Syndicate at the same price he bought them; the payment from Dee Hong Lue to FLC was almost exclusively made up of advances from stockholders of Central Syndicate at capitalization disproportionate to the volume of its business; the fact that it was Central Syndicate, not Dee Hong Lue which took over the goods from FLC and exercised acts of dominion over it.[206]

LOAN

Payment of backpay certificates—

Republic Act No. 897 approved on June 20, 1953 allowed payment or discharge of debts to government-owned or controlled corpo-

---

[205] Art. 1839, CIVIL CODE OF THE PHILIPPINES.

[206] Tan Tiong Bio *et al.* v. Commissioner of Internal Revenue, G.R. No. L-15778, April 23, 1962.

rations by means of certificates of indebtedness or "backpay" certificates.

Republic Act No. 1576 approved June 16, 1956 prohibited the acceptance thereof for said purpose.

In reference to a loan subsisting on June 20, 1953 and where a valid tender of payment by means of backpay certificates was made before June 16, 1953 and during the effectivity of Republic Act No. 897, a debtor may pay his indebtedness to the Philippine National Bank by means of said backpay certificates.[207]

Power of the courts to regulate stipulated interest—

In a contract of loan entered into before the Japanese occupation wherein fixed rates of interest were expressly stipulatd, the Court eliminated the interests accruing during the Japanese occupation for the following reasons: No bad faith is imputed to the debtors; payment could not be made during the war years even if the debtor had so desired; the creditor was a British company and an enemy *vis-a-vis* the belligerent occupant, said creditor was indirectly benefited by the debtor's inaction because payment was not made in Japanese military scrip; and under Article 1172[208] of the new Civil Code and Article 1103 of the old Code, the courts have power to regulate or moderate the liability arising from negligence of a debtor.[209]

Application of the Ballantyne Scale—

Quiogue et al. v. Bautista et al.,[210] dealt with two loans contracted in 1944 wherein it was stipulated that "the loans can not be repaid within one year from the date of the termination of the last World War." The Supreme Court reiterated its ruling in *Navarro v. Barredo*[211] that in the legal sense, war formally ended in the Philippines the moment President Harry S. Truman officially issued a proclamation of peace on December 3, 1946. And if defendants meant that there should be a formal treaty of peace, this purpose has also been accomplished when the treaty of peace with Japan was signed in San Francisco, California on September 8, 1951 by the United States and the Allied Powers, including the Philippines.

---

[207] Macaraeg *et al.* v. PNB, *supra*, note 128.

[208] Article 1172, New Civil Code provides: Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances.

[209] Hodges v. Javellana *et al.*, *supra*, note 110a.

[210] *Supra*, note 126.

[211] G.R. No. L-8660, May 21, 1956.

On the issue as to whether the Ballantyne Scale of Values should apply, it adhered to the well-settled rule that where the obligation incurred during the Japanese occupation was made payable after a fixed period, the maturity falling after liberation, the promissor must pay in Philippine currency peso-for-peso the same amount stated in the obligation.[212]

The Moratorium Laws—

In several 1962 cases,[213] the Supreme Court had occasion to rule on the effect of the Moratorium Laws on prescription of action on wartime debts.

On November 18, 1944, Executive Order 25 was issued, imposing a moratorium on wartime debts. On July 26, 1948, Republic Act No. 342 took effect, making the protection of moratorium available only to debtors who had war damage claims. On May 18, 1953, the Supreme Court promulgated its decision on *Rutter v. Esteban,*[214] holding such provisions no longer applicable.

For debtors who have war damage claims, the period of prescription is suspended from November 18, 1944 to May 18, 1953. For all other debtors on which the law applies, from November 18, 1944 to July 26, 1948.

When action to compel acceptance of tender of payment an action in rem—

In deciding a question of venue, the Supreme Court said that an action to compel the vendor to accept tender of payment is an action *in rem* where such action is merely the first step to establish vendee's title to the real property.[215]

COMMODATUM

Liability for loss—

In 1948, Jose Bagtas borrowed from the Republic of the Philippines through the Bureau of Animal Industry three bulls for a period of one year for breeding purposes subject to the government charge of breeding fee. Upon demand, Bagtas failed to return the bulls or to pay the price. The government sued and obtained judg-

[212] Nicolas v. Matias, *supra,* note 125.

[213] Abraham v. Intestate Estate of Ysmael, G.R. No. L-16741, Jan. 31, 1962; Hongkong and Shanghai Banking Corp. v. Paulli, G.R. No. L-15713, March 31, 1962; Rio y Cia. v. Court of Appeals *et al.,* G.R. No. L-15666, June 30, 1962.

[214] *Supra,* note 118.

[215] Lizares, Inc. v. Caluag, G.R. No. L-17699, March 30, 1962.

ment. In the meantime, Bagtas died, and the administratrix filed a motion to quash the writ of execution on the ground hat two bulls had already been returned and the third died from gunshot wounds inflicted during a Huk raid. The case reached the Supreme Court on the issue of whether the administratrix is liable for the payment of the three bulls, the contention being that he conract is *commodatum* and, for that reason, as the Government retained ownership or title to the bull, it should suffer its loss due to *force majeure.*

Held: The administratrix cannot be held liable for the two bulls already returned to, and received by the Government. As to the third bull, she is liable. A contract of *commodatum* is essentially gratuitous. If the breeding fee be considered a compensation, then the contract would be a lease of the bull. Under Art. 1671 [216] of the new Civil Code, the lessee would be subject to the responsibilities of a possessor in bad faith, because she had continued possession of the bull after the expiration of the contract. And even if the contract be *commodatum,* still the appellant is liable, because Article 1942 of the Civil Code provides that a bailee is liable for the loss of the thing, even if it should be through fortuitous event if he keeps it longer than the period stipulated and the thing loaned has been delivered with appraisal of its value, unless there is a stipulation exempting the bailee from responsibility in case of a fortuitous event. The bulls each had an appraised book value and it was not stipulated that in case of loss due to fortuitous event the late husband of the appellant would be exempt from liability.[217]

DEPOSIT

In an action against the arrastre contractor for the Port of Manila for the value of shortages on a shipment released from said arrastre contractor's custody, the Supreme Court held that the case was not maritime matter but one arising from said arrastre contractor's duty as an ordinary depositary.[218]

GUARANTY

A guaranty can not extend to more than what is expressly stipulated—

In *Jao v. Royal Financing Corp., et al. v. Associated Insurance and Surety Co., Inc.,*[219] the trial court held that plaintiff's bond for

---

[216] Article 1671 of the Civil Code provides: If the lessee continues enjoying the thing after the expiration of the contract over the lessor's objection, the former shall be subject to the responsibilities of a possessor in bad faith.

[217] Republic of the Philippines v. Bagtas, G.R. No. L-17474, October 25, 1962.

[218] Insurance Company of North America v. Delgado Bros., Inc., G.R. No. L-15156, March 30, 1962.

[219] G.R. No. L-16716, April 28, 1962.

preliminary injunction issued by the bondsman-appellant was to secure the defendant-appellee Royal Financing Corporation's mortgage credit. On appeal, the Supreme Court held that, from a reading of the provisions, the purpose of the bond is to secure the defendant-appellees for any damages they may sustain by reason of the injunction, if the Court should finally decide that the plaintiff-appellees (spouses Jao) were not entitled thereto. There is nothing which could even remotely be construed to mean as a security for the mortgage credit of the corporation. The bondsman-appellant has nothing to do with the mortgage; it did not issue the bond with the idea of securing said mortgage credit. A guaranty can not extend to more than what is expressly stipulated there; it can not be extended by implication beyond its specified limits.[220]

Novation of the principal contract without surety's consent releases the surety—

In *Overseas Factors Inc., et al. v. South Sea Shipping Co., Ltd. et al.*,[221] the addendum to the charter party contract executed by the parties varying the clauses on the rate and payment of freight without the consent of the surety was deemed a novation of he contract. For that reason, the surety's obligation in the performance bond was extinguished.

Effect of posting a bond for payment of taxes—

When a party agreed to pay taxes due on installment basis and secured the payment thereof with a bond, said party undertakes an entirely new obligation. The new liability is voluntary and contractual. It is in form a direct and primary obligation, not to pay a tax but to pay a sum of money. The bonds are written contracts imposing rights and liabilities according to the terms thereof. If the principals and sureties fail to pay the liabilities in the manner and on the dates indicated in said bonds, the government has a clear legal right to take court action for forfeiture thereof.[222]

MORTGAGE

Validity of mortgage—

In *Dee v. Masloff and Rizal Surety and the RFC*,[223] the trial court held that the mortgage executed by Masloff on the sawmill,

---

[220] Art. 2055, NEW CIVIL CODE OF THE PHILIPPINES; Uy Aloc v. Cho Jan Ling, 27 Phil. 427; Solon v. Solon, 64 Phil. 729.

[221] G.R. No. L-12138, February 27, 1962.

[222] Republic of the Philippines and the Commissioner of Internal Revenue v. Manjares and Manila Surety and Fidelity Co., Inc., G.R. No. L-14789, November 30, 1962.

[223] G.R. Nos. L-15836 and L-16220, September 29, 1962.

machineries, equipment and appurtenances described in the mortgage instrument to the Agricultural and Industrial Bank (predecessor of the Rehabilitation Finance Corporation) is invalid because the mortgagor, Masloff, was not the owner thereof at the time the mortgage was constituted. The court relied upon an agreement between Masloff and other parties relative to ownership of said properties, and on a letter of similar import.

On appeal, the Supreme Court pronounced the mortgage valid, relying on the documentary evidence submitted by Masloff to the Agricultural and Industrial Bank when it filed its loan application (declaration of real property, registration of motor launches, lease contract, etc.)—all tending to show that Masloff was the absolute owner of the properties being mortgaged.

In passing on the agreements relied upon by the trial court for its ruling, the Supreme Court declared that it is true that the statement made by Masloff is binding upon him as far as his contractual relation with the appellees (Dee) is concerned, but not upon the appellant RFC. So that when he applied for a loan to the predecessor of the RFC representing that he was the owner of the properties being mortgaged and backing up his representations by the above-mentioned documents, and upon the representation and documents, he was granted a loan and the loan was released and paid to him by the mortgagee, no other conclusion may be drawn except that the mortgage executed on November 15 by Masloff in favor of the predecessor of the RFC is legal, valid, and binding.

Wife's share in conjugal properties can be mortgaged without previous liquidation—

Nieves Mediarito executed a mortgage in favor of Taningco, *et al.* on all her rights and interests in six parcels of land registered as conjugal properties of herself and her deceased husband. The Register of Deeds refused to register the mortgage on the ground that there has been no previous liquidation of the conjugal properties.

The Supreme Court held that the interest of the wife-mortgagor is registrable, the titles to the lands being in the names of the spouses. After the dissolution of the conjugal partnership, as by the death of the husband, this interest ceases to be inchoate and becomes actual and vested with respect to an undivided one-half share of said properties. And as provided in Article 493 of the new Civil Code, each co-owner shall have the full ownership of his part and of the fruits

and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it.

In the present case, the mortgage sought to be registered refers to the mortgagor's rights and participation in the property—whatever they may actually turn out to be upon liquidation and partition. If such mortgage is admittedly valid, there is no justifiable reason why it should not be registered, registration being an essential requirement in order that the mortgage may be validly constituted.[224]

Mortgagee is entitled to recover deficiency arising from extrajudicial foreclosure sale of mortgaged real property under Act No. 3135 as amended—

The above proposition was arrived at by the Supreme Court in *Philippine Bank of Commerce v. de Vera* [225] by a process of reasoning which goes in this wise:

A reading of the provisions of Act No. 3135, as amended, discloses nothing as to the mortgagee's right to recover such deficiency. But neither is there any provision thereunder which expressly or impliedly prohibits such recovery.

Article 2131 of the new Civil Code, on the contrary, expressly provides that "the form, extent and consequences of a mortgage, both as to its constitution, modification and exinguishment, and as to other matters not included in the chapter, shall be governed by the provisions of the Mortgage Law and of the Land Registration Law." Under the Mortgage Law which is still in force, the mortgagee has the right to claim for the deficiency resulting from the price obtained in the sale of the real property at public auction and the outstanding obligation at the time of the foreclosure proceedings.[226]

Under the Rules of Court,[227] upon the sale of any real property under an order for sale to satisfy a mortgage or other encumbrances thereon, if there be a balance due to the plaintiff after applying the proceeds of the sale, the court, upon motion, should render a judgment against the defendant for any such balance for which, by the record of the case he may be personally liable to the plaintiff. It is true that this refers to a judicial foreclosure, but the under-

---

[224] Taningco v. Register of Deeds of Laguna, *supra*, note 59.
[225] G.R. No. L-18816, Dec. 29, 1962.
[226] *See* Soriano v. Enriquez, 24 Phil. 584; Banco de las Islas Filipinas v. Concepcion e. Hijos, 53 Phil. 86; Banco Nacional v. Barretto, 53 Phil. 101.
[227] Rule 90, Sec. 2, RULES OF COURT.

lying principal is the same—that the mortgage is but a security and not a satisfaction of indebtedness—that the mortgage does not, in any way, limit nor minimize the amount of the obligation. Its only purpose is to guarantee the fulfillment of said obligation.

As the trial court observed, by following a contrary view, there may occur a ridiculous situation in which, when the amount of the loan is very much bigger than the value of the mortgaged property, by abandonment or default of the debtor-mortgagor, his obligation may automatically be reduced in quantity, against the will and consent of the creditor-mortgagee, and to the prejudice of the latter. Such a situation is absurd and could not have been contemplated by Act No. 3135, as amended.

It must be noted that when the Legislature intends to foreclose the right of a creditor to sue for any deficiency resulting from the foreclosure of the security given to guarantee the obligation, it so expressly provides. Thus, in respect to pledges [228] and chattel mortgages [229] such prohibition is clearly expressed.

As stated by the Supreme Court in *Medina v. Philippine National Bank*,[230] a case analogous to the one under discussion, the step taken by the mortgagee-bank in resorting to extrajudicial foreclosure under Act No. 3135 was "merely to find a proceeding for the sale, and its action can not be taken to mean a waiver of its right to demand the payment of the whole debt."

QUASI-DELICT

Employer is liable for acts of employees committed in the performance of their functions—

Whoever by act or omission causes damage to another, through fault or negligence, is obliged to pay for the damage done and if there is no pre-existing contractual relation between the parties, the wrongdoer is liable for *quasi-delict*.[231] This liability is not only for one's act or omission, but also for those of persons for whom one is responsible. Thus, owners and managers of an establishment or enterprise are responsible, under Article 2180 of the new Civil Code, for damages caused by their employees in the performance of their functions or employment. And when the civil action alleges the fact of negligence, damage and employer-employee relationship, the action is one for a *quasi-delict* and not for a civil liability arising

[228] Art. 2115, CIVIL CODE OF THE PHILIPPINES.
[229] Art. 1484, Par. 3, CIVIL CODE OF THE PHILIPPINES.
[230] 56 Phil. 651.
[231] Article 2176, NEW CIVIL CODE.

from a crime, although the right to a civil action is reserved in the criminal action and the conviction thereof was mentioned in the complaint for damages.[232]

In the *De Leon* case, it appears that the driver of the petitioner was charged and convicted in a criminal case of homicide with physical injuries through reckless imprudence. The right to a civil action for damages was reserved. In the complaint filed for damages, the conviction of the driver was alleged. Petitioner claims that he was not able to plead the proper defense because the allegations in respondent's complaint were so ambiguous that it was not clear whether she was suing for damages resulting from a *quasi-delict* or for civil liability arising from crime.

Held: The court of origin and the Appellate Court correctly considered respondent's complaint to be based on *quasi-delict.* She alleged that she suffered injuries because of the carelessness and imprudence of the petitioner's driver, who was then driving the cargo truck which collided with the passenger jeepney wherein respondent was riding. Since averment had been made of the employer-employee relationship and of the damages caused by the employee on the occasion of his function, there is a clear statement of a right of action under Article 2180 of the new Civil Code. The contention of the petitioner can not be sustained for he was not able to prove that he exercised the diligence of a good father of a family in selecting and supervising his employee to relieve it of liability.

"Diligentissimi patrisfamilias" is a matter of defense—

In a complaint for damages based on *quasi-delict,* the complaint does not have to allege that the employer did not exercise due diligence in selecting and supervising his employees because this is a matter of defense which the employer must allege in its answer and prove in the trial in order to escape responsibility for the negligent act of his employees.[233]

Liability of the owner or operator of vehicle—

The rule laid down in *Necesito v. Paras*[234] and *Timbol v. Osias,*[235] followed by the cases of *Reyes v. Tamayo,*[236] *Tamayo v.*

---

[232] De Leon Brokerage Co. v. Court of Appeals and Steen, G.R. No. L-15247, February 28, 1962.
[233] *Ibid.*
[234] G.R. No. L-10605, June 30, 1955.
[235] G.R. No. L-7547, April 30, 1955.
[236] G.R. No. L-12720, May 29, 1959.

Aquino,[237] *Erezo v. Jepte*,[238] and *Medina v. Cresencia*,[239] that the owner or operator of a passenger vehicle is jointly and severally liable with the driver for damages incurred by passengers or third persons as a consequence of injuries or death sustained in the operation of said vehicle was reiterated in *Vargas v. Langcay, et al.*,[240] and in the *De Leon Brokerage* [241] case. Both cases involved separate civil actions for damages reserved in the trial of the criminal case of serious physical injuries through reckless imprudence commenced after judgments of conviction were rendered in the criminal case. It was held that since both the owners of the vehicles and the drivers are responsible for the *quasi-delict*, the owners should be solidarily liable with their drivers [242] and not subsidiarily under Article 103 of the Revised Penal Code.

Employer's right to reimbursement—

Though the owner's liability for *quasi-delict* is direct and primary, he can recover whatever sums he paid to the person entitled to damages from his employee who caused the damage under Article 2181 of the the new Civil Code, which provides that, "whoever pays for the damage caused by his dependents or employees may recover from the latter what he has paid or delivered in satisfaction of the claim."

Registered owner though not the real owner of vehicle may be held liable—

The registered owner of a passenger jeepney is directly and primarily liable for damages sustained by passengers or third persons as a consequence of the negligent or careless operation of the vehicle registered in his name.[243] But he may have recourse to the real owner of the vehicle for reimbursement.[244]

DAMAGES

Attorney's fees—

To justify allowance of attorney's fees, there must be reasonable and/or equitable grounds for such allowance and the trial court must state in its decision the reason or reasons why such fees are being

---

[237] G.R. No. L-12634, May 29, 1959.
[238] G.R. No. L-9605, September 30, 1957.
[239] G.R. No. L-8194, July 11, 1956.
[240] G.R. No. L-17459, September 29, 1962.
[241] *Supra*, note 232.
[242] Article 2194, NEW CIVIL CODE.
[243] Vargas v. Langcay, *supra*, note 240.
[244] Erezo v. Jepte, *supra*, note 238.

awarded to the winning party. Thus, in *Federation of United Distributors, Inc. v. NAMARCO*,[245] the award of attorney's fees by the trial court was reversed because there were in the text of the decision appealed from no reasonable or equitable bases for allowing award of attorney's fees, as it does not appear that the defendant had acted in gross and evident bad faith in refusing to perform the contract of sale entered into between the plaintiff and defendant.

Cases where attorney's fees may be recovered—

(1) In the case of *Pichay, et al. v. Kairuz*,[246] the Court affirmed the award of attorney's fees on the ground that the action by the plaintiff is completely unfounded,[247] the action involving the same parties, the same subject-matter and the same cause of action as that of a pending action and plaintiffs having been accordingly warned by the counsel of defendant and the lower court not to proceed with the case on that ground.

(2) Action to recover separation pay based on a dismissal without just cause as required by Republic Act No. 1787, is considered by the Court as falling within the meaning of paragraph 7 of Article 2208 of the new Civil Code, which refers to "actions for recovery of wages of household helpers, laborers and skilled workers," entitling the plaintiff to recover attorney's fees.[248]

(3) An employee is entitled to recover attorney's fees where the company's refusal to pay him the severance pay he is entitled to receive forced him to go to court to enforce his right.[249]

(4) Where the defendant based its defense and appeal entirely on pure technicality, resulting not only in the taking up the time of the courts but also in delaying the grant of appropriate relief to the plaintiff for a number of years, attorney's fees may be recovered.[250]

(5) Plaintiff may recover attorney's fees in an action to recover damages based on *quasi-delict*.[251]

(6) Where the defendant published articles which were not fair and true report of the proceeding alluded to and contain information derogatory to plaintiff, attorney's fees may also be recovered.[252]

---

[245] *Supra*, note 168.
[246] G.R. No. L-1265, May 1, 1962.
[247] Article 2208(4), NEW CIVIL CODE.
[248] Nadura v. Benguet Consolidated, Inc., G.R. No. L-17780, August 20, 1962.
[249] *Ibid.*
[250] *Ibid.*; Philippine Milling Co. v. CA, G.R. No. L-9409, December 27, 1956.
[251] *In re* De Leon Brokerage Co., *supra*, note 232.
[252] Policarpio v. The Manila Times Publishing Co. Inc., *et al.*, G.R. No. L-16027, May 30, 1962.

But in all cases, the attorney's fees that may be awarded must be reasonable.[253]

Interest—

Article 2210 of the new Civil Code, which allows the award of interest as part of the damages recoverable in crimes and *quasi-delict*, was applied by the Court in the *De Leon Brokerage* [254] case, where it ordered the petitioner and its employee found responsible for a *quasi-delict* to pay interests on the amounts of actual, moral and attorney's fees awarded against them.

Moral damages—

If a person suffers mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act. The Court so held in *Bugay v. Kapisanan Ng Mga Manggagawa Sa MRR Co.*[255] and *Policarpio v. The Manila Times Publishing Co., Inc., et al.*[256]

In the *Bugay* case, it appears that plaintiff, secretary-treasurer of the MRR Company and auditor of the defendant labor union, was charged with disloyalty and conduct unbecoming of a union member for delivering certain documents in his possession to the MRR Management without consulting the officers of the union. The documents were used by the Company as the basis of its charge of falsification of commercial documents against the president of the union. After investigation by some union officials, plaintiff was expelled, but his expulsion was not approved by the majority of the chapters of the union as required by its constitution and by-laws. Upon filing an unfair labor practice case against the union, his expulsion was declared illegal by the Court of Industrial Relations which ordered his reinstatement as a union member. Thereafter, plaintiff filed the present action for moral damages, alleging that having become the victim of an unfair labor practice acts by the officers of the defendant union, he has suffered moral damages for mental anguish, anxiety, social humiliation and besmirched reputation especially among the thousands of employees of the MRR Company. Defendant's motion to dismiss on the ground that the complaint does not state a sufficient cause of action was granted by the lower court.

Held: The main basis of the action is plaintiff's claim that because of the unfair labor practice committed by the officers of the

[253] Article 2208, NEW CIVIL CODE.
[254] *Supra*, note 232.
[255] G.R. No. L-13093, February 28, 1962.
[256] *Supra*, note 252.

defendant, he has suffered moral damages arising from the mental anguish, anxiety, social humiliation and besmirched reputation to which he has been subjected among the thousands of employees of the MRR Company which finds support in Article 2217 of the new Civil Code.

It is true that the decisions of the Court of Industrial Relations and the Supreme Court do not contain any statement that the charges preferred against the plaintiff which resulted in his separation were fabricated or trumped up or that the officers acted maliciously. But the fact remains that the two courts found his expulsion illegal because of irregularities committed in the investigation. The result of his expulsion was that he was subjected to humiliation and mental anguish with consequent loss of his good name and reputation. It is therefore an error that the lower court held that the complaint does not state a sufficient cause of action.

In the *Policarpio* case, the defendant published articles and news items which were claimed to be defamatory, libelous and false, and to have exposed plaintiff to ridicule with the consequent loss of good name and integrity. Moral damages was awarded because it found out that the articles and news items presented plaintiff in a worse predicament than that in which she, in fact, was and the same contained information derogatory to plaintiff.

Moral damages recoverable in action ex delicto—

The rule stated in *San Jose, et al. v. Del Mundo*,[257] that moral damages may be recovered in an action for damages arising from a crime of serious physical injuries was adopted in the case of *Santos v. Tolentino*.[258] It appears in this case that respondent was bumped by a "Santos Taxi" driven by an employee of petitioner, while backing the taxi without blowing his horns. The driver Vicente Duldulao was found guilty of the crime charged through reckless imprudence and was ordered to pay ₱2,549.00 as compensatory and ₱5,000.00 as moral damages, with petitioner subsidiarily liable under Article 103 of the Revised Penal Code in case of inability of the driver to satisfy the judgment. Petitioner objected to the award of moral damages claiming that it is not authorized by law. The Court held that moral damages may not be available in case of actions for a breach of contract of transportation with physical injuries, but the carrier is liable in case of action *ex delicto*.[259]

---

[257] G.R. No. L-4450, April 28, 1954.
[258] G.R. No. L-17394, May 30, 1962.
[259] Article 2219(1), NEW CIVIL CODE.

In the case of *People v. Asi, et al.*,[260] where defendants were charged and convicted of the crime of robbery in band with multiple rape, the Court awarded ₱4,000.00 as moral damage to the victim of rape.[261]

Recovery of moral damages for malicious prosecution—

In order that moral damages may be recovered for malicious prosecution, malice and want of probable cause must both exist.[262] In *Luna, et al. v. Santos, et al.*,[263] it was held that there is no basis for holding the plaintiffs liable on the counterclaim for moral damages because the present action to annul the contract of sale in question was filed on the honest belief that the real consideration of the sale was not paid.

The same rule was followed in the cases of *Cachuela v. Castillo*,[264] and *Rehabilitation Finance Corp. v. Koh*.[265]

No moral damages are recoverable for physical injuries arising from breach of contract of carriage—

It is a settled rule that moral damages are not recoverable in actions predicated on a breach of contract of transportation resulting in physical injuries in view of the provisions of Article 2219 and 2220 of the new Civil Code.[266] Article 2219 paragraph 1 and 2 mentions among the grounds for recovery of moral damages, a criminal offense and a *quasi-delict* resulting in, or causing physical injuries but does not mention breach of contract result-in or causing physical injuries. And Article 2220 provides that moral damages can be recovered in breaches of contract where the defendant acted fraudulently or in bad faith.

Although Article 2219 allows recovery in cases analogous to those enumerated therein, a breach of contract cannot be considered included in the descriptive term, "analogous cases" not only because Article 2220 specifically provides for the damages that are caused by contractual breach, but because the definition of *quasi-delict* in Article 2176 of the same Code expressly excludes the cases where there is a pre-existing contractual relation between the parties.[267]

---

[260] G.R. No. L-17410, June 30, 1962.
[261] Article 2219(3), NEW CIVIL CODE.
[262] Buchanan v. Vda. de Esteban, 32 Phil. 363.
[263] G.R. No. L-10457, May 22, 1962.
[264] G.R. No. L-1316, August 31, 1962.
[265] G.R. No. L-15512, February 28, 1962.
[266] Cachero v. Manila Yellow Taxicab, G.R. No. L-8721, May 23, 1957; Necesito v. Paras, *et al.*, *supra* note 201; Tamayo v. Aquino, *supra*, note 237.
[267] Verzosa v. Baytan, *et al.*, G.R. No. L-15392, April 29, 1960.

The only exceptions, according to the *Fores v. Miranda* [268] case, where moral damages can be recovered in breach of contract are: (1) where the mishap results in the death of a passenger, and (2) where it is proved that the carrier was guilty of fraud or bad faith even if death does not result.[269]

In the case of *Martinez v. Gonzales*,[270] an action for damages based on a breach of a contract of transportation resulting in physical injuries was filed. The basis for the claim for moral damages was Article 2219 of the new Civil Code. The plaintiff was denied moral damages in view of the above-mentioned rule, there being no proof of bad faith or fraud on the part of the defendant carrier.[271]

Moral damages in actions for breach of promise to marry—

The case of *Hermosissima v. Court of Appeals*,[272] declared that moral damages are not recoverable in actions for breach of promise to marry, which actions according to *De Jesus v. Syquia* [273] have no standing in the civil law aside from recovery of property advanced upon the faith of such promise. This rule was followed in *Galang v. Court of Appeals*,[274] where the decision of the appellate court denying the allowance of moral damages was affirmed.

It may be noted that the *Hermosissima* decision was based upon the fact that the chapter on moral damages for breach of promise to marry proposed by the Code Commission was eliminated by Congress.

These new decisions of the Court overruled the decisions in previous cases where moral damages were awarded on the same actions,[275] which decisions were based on Article 21 in connection with Article 2219 of the new Civil Code.

Exemplary damages are imposed to discourage wanton acts—

In the *Nadura v. Benguet Consolidated Mining Co.*,[276] plaintiff was employed by defendant company as a miner. Due to occasional attacks of asthma, he was laid off without separation pay and without one month notice contrary to Republic Act No. 1787. Thereafter, plaintiff filed an action to recover separation pay equivalent to ½

---

[268] G.R. No. L-12163, March 4, 1959.
[269] Rex Taxicab v. Bautista, *et al.*, G.R. No. L-16392, September 30, 1960.
[270] G.R. No. L-17570, October 30, 1962.
[271] Mercado, *et al.* v. Lira, *et al.*, G.R. No. L-13328, September 29, 1961.
[272] G.R. No. L-14628, September 30, 1960.
[273] 58 Phil. 866.
[274] G.R. No. L-15132, January 29, 1962.
[275] Co Tao v. Vallejo, G.R. No. L-9194, April 25, 1957; Atienza v. Castillo, 72 Phil. 589; Domalagan v. Bolifer, 33 Phil. 471; Cabaque v. Auxilio, 38 O.G. 4823; Victorino v. Nora (C.A.), 52 O.G. 911; Gatus v. Sy (C.A.), 53 O.G. 866.
[276] *Supra*, note 231.

month for every year of service in accordance with the above-cited law or ₱440.96, plus moral and exemplary damages. The trial court found that the dismissal was not justified and awarded the separation pay but denied damages and attorney's fees.

Held: Plaintiff is entitled to exemplary or corrective damages which are imposed by way of example or corrections for the public good. These damages are required by public policy, because wanton acts must be suppressed and discouraged. While the defendant had the right to discharge the plaintiff because his employment was without a definite period, it was duty bound to give him either one month's notice in advance or pay the corresponding severance pay. Instead of complying with its obligation, it resisted Nadura's claim and forced him to litigate for three years.

Without right to moral damages, no exemplary damages—

If the plaintiff is not entitled to moral damages, he is not also entitled to exemplary damages. For to one to recover exemplary damages, he must first show that he is entitled to moral, temperate, liquidated or compensatory damages.[277]

TRANSITIONAL PROVISION

Contracts with a condition executed before the new Civil Code shall be governed by the Old Code—

Article 1606, par. 3 of the new Civil Code grants to the vendor *a retro* the right to repurchase within 30 days from the time final judgment is rendered in a civil action on the basis that the contract was a true sale with a right to repurchase, after the expiration of the period agreed upon for the vendor to repurchase the property sold. This new right of a vendor *a retro* can not, however, be availed of when the sale was entered into before the effectivity of the new Civil Code, because such sale or alienation of property with a right to repurchase is a contract subject to a condition and the applicable law is the old Civil Code pursuant to Article 2255 of the new Civil Code which provides that: "The former laws shall regulate acts and contracts with a condition or period, which were executed or entered into before the effectivity of this Code, even though the condition or period may still be pending at the time this body of laws goes into effect." [278]

---

[277] Article 2234, NEW CIVIL CODE; *supra*, note 40; Estopa v. Piansay, G.R. No. L-14733, September 30, 1962; Yutuk v. Manila Electric Co., G.R. No. L-13016, May 31, 1961.

[278] Morales v. Biagtas, *et al.*, *supra*, note 185; *see* Villalobos v. Catalan, *et al.*, *supra*, note 186.