EQUITY JURISPRUDENCE IN PHILIPPINE LAW

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"These three give place in court of conscience,
Fraud, accident, and breach of confidence."
—Note by MAITLAND

I. INTRODUCTION

The study of equity jurisprudence is decidedly of paramount importance to students as well as members of the bench and practitioners of law. In the words of a recognized writer on the subject, it has become a necessity of our modern civilization.[1] This is especially so when we consider the complexity of our social and business relations brought about by scientific and technological progress. Experience and practice have shown that positive civil law and positive common law combined cannot cope with the multitude of problems arising from such highly complex relationship. Without the principles of equity which offer more flexible and more comprehensive solutions to those problems, the latter would practically remain without any remedy.

At this juncture, it is significant to note that in this jurisdiction courts are vested with the power to administer both law and equity.[2] As in the United States of America, there is no separate court exclusively concerned with the administration of equity in this country.

A sad commentary it may be, but the fact remains that there exists no official systematization of equity principles in this jurisdiction. Much less has there been a codification. To date, they remain scattered among the statute books and the court decisions. It is therefore the object of this paper to make a brief yet comprehensive survey of equity jurisprudence in the Philippine legal system. This will include both statutory provisions and judicial decisions on the subject, careful choice being made with respect to the latter.

II. BRIEF HISTORICAL BACKGROUND

The origin of equity may be traced to the English Court of Chancery.[3] Although it is not easy to ascertain the beginning of the equitable jurisdiction of the Court of Chancery,[4] it has been

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[1] MERWIN, THE PRINCIPLES OF EQUITY AND PLEADING 2 (1896).

[2] Reyes Villavicencio v. Dimaano, G.R. No. 47087, June 19, 1940 cited in II MORAN, COMMENTS ON THE RULES OF COURT 928 (1952).

[3] STORY, EQUITY JURISPRUDENCE 39 (1886).

[4] *Id.* at 37.

established that such jurisdiction was principally applied to remedy defects in common-law proceedings[5] as the only dispenser of the king's conscience.[6]

At the end of the thirteenth century, three great courts came into existence, namely, the King's Bench, the Common Bench or Court of Common Pleas, and the Exchequer. The last was an administrative or executive bureau. The so-called "civil service" of the country was transacted by the Exchequer which was the fiscal department, and the Chancery which was the secretarial department, while above these there rose the king's permanent council. At the head of the Chancery was the Chancellor who was the king's secretary of state for all departments. As such, the Chancellor kept the king's great seal, and all the great mass of writing that had to be done in the king's name had to be done under his supervision.[7]

Although these great courts of law had been established, there was still a reserve of justice in the king. Those who could not get relief elsewhere presented their petitions to the king and his council praying for some remedy. By the end of the thirteenth century, the number of such petitions rose to large proportions. In practice, a great share of the task of reading and considering them fell on the Chancellor as the king's prime minister, member of the council, and the specially learned member of the council. It was in this function that the chancellor began to develop his judicial powers. By the fourteenth century, the judicial powers of the Court of Chancery were classified as the common law side and the equity side.[8]

From the reign of Henry VI, the Court of Chancery constantly grew in importance. In the reign of Henry VIII, it expanded into a broad and almost boundless jurisdiction. From this period down to the time when Lord Nottingham was elevated to the Bench in 1673, little improvement was made either in the principles or in the practice of chancery. During the span of nine years, during which he presided in the court, Lord Nottingham built up a system of jurisprudence and jurisdiction upon wide and rational foundations which served as a model for succeeding judges. This ushered in a new era and gave a new character to the court. Hence, he has been

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[5] *Id.* at 46.

[6] *Id.* at 39.

"Originally the Lord Chancellor was the only judge sitting in the Court of Chancery. It is a very ancient office, dating back as early as the Norman Conquest. As the keeper of the King's conscience, such matters as were not remedial in the courts of common law were presented by bill or petition to the chancellor for relief, and thus originated and grew up the system of equity jurisprudence." *Supra* note 1, at 9.

[7] CHAFEE AND SIMPSON, CASES ON EQUITY 2 (1946).

[8] *Id*, at 3.

fittingly called "the father of Equity." Worthy of mention among his successors is Lord Hardwicke who, like Lord Mansfield, combined with his judicial character the still more embarrassing character of a statesman, and in some sort of a minister of state. Notwithstanding political opposition to them, it is fortunate that their judicial labors, which evince the most thorough learning, the most exquisite skill, and the most elegant juridical analysis, are embodied in solid volumes, so that when the prejudice and the passions of the times have passed away, they may remain open to the severest scrutiny, and claim from posterity a just and unimpreachable award.[9] It may be relevant to note that, in the work of constructing this jurisprudence, the chancellor drew largely from their own knowledge of Roman Law.[10]

With respect to the growth of equity in the United States of America, it may be observed that the American colonies were settled before English equity had been reduced to a system under Lord Eldon.[11] At the time the equity of the English Chancery Court was becoming settled under Lord Eldon and the time was ripe for the building of an American equity jurisprudence, Joseph Story became a Justice of the Supreme Court of the United States of America and began to sit in equity cases in the Circuit Court for Massachusetts, and James Kent became Chancellor of New York. The judicial labor of Kent and Story did much to domesticate equity in the United States of America. Their writings, perhaps, did even more.[12]

There is no question that the United States of America derived her system of equity from the High Court of Chancery of England, except insofar as the practice of that court has been modified by legislation. The decisions of that court made prior to the American Declaration of Independence have the authority of precedents. Although its decisions subsequently made are not strictly binding upon the courts of the United States of America, they are nevertheless properly considered as of the highest value as exposi'ions of the law. The U.S. Supreme Court in its ninetieth equity rule has also made the practice of the High Court of Chancery of England the guide in all matters of practice not specially provided for by its own rules.[13] At present, the equity jurisprudence exercised in America is founded upon, co-extensive with, and in most respects conformable to, that of England.[14]

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[9] *Id.* at 3-4.
[10] POMEROY, A TREATISE ON EQUITY JURISPRUDENCE 18 (1941).
[11] *Supra* note 7, at 9.
[12] *Id.* at 10.
[13] *Supra* note 1, at 9.
[14] *Supra* note 3, at 54.

In the case of the Philippine legal system, it has been said at times that our courts do not have equity jurisdiction. Nevertheless, as observed by Mr. Justice Malcolm, the principles of equity are in force and are repeatedly applied. The Code of Civil Procedure is a fulcrum on which Anglo-American principles of law are being forced into our jurisprudence.[15] Recent legislations as well as decisions of our Courts have made the encroachment of equity into our system of law more evident.

III. DEFINITION AND CLASSIFICATION OF EQUITY

Definition.—According to one author, in the year 1875 we might have said that "equity is that body of rules which is administered only by those Courts which are known as Courts of Equity." But even this author himself considers this definition as unsatisfactory.[16]

In the most general sense, as Mr. Justice Story puts it, we are accustomed to call that Equity which in human transactions is founded in natural justice, in honesty and right, and which properly arises *ex aequo et bono*.[17] The same writer states that in a more limited sence the term is used in contradistinction to strict law, or *strictum et summun jus*.[18]

Equity in its popular sense signifies whatever is right and just between man and man. But, as commented by a well-known author, no system of law has ever undertaken to accomplish all that. There are many duties and obligations continually arising with which neither courts nor legislations can deal, and which must be left to the forum of conscience.[19] This, then, is the nature of equity. a correction of law where it fails by reason of its generality.[20]

For lack of a better definition, we have to be guided by that given by Merwin. As defined by him, "equity" means that system of jurisprudence which was originally administered by the High Court of Chancery in England, and which is now administered by the courts of this country that have full chancery jurisdiction.[21]

Classification.—Mitford (afterward Lord Redesdale) gives the following classification under which a court of equity can exercise jurisdiction: (1) where the principles of law, by which ordinary courts are guided, give a right, but the powers of those courts are

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[15] Footnote 1 in the case of *In re* Shoop, 41 Phil. 213, 247 (1920).
[16] *Supra* note 7, at 1.
[17] *Supra* note 8, at 1.
[18] *Id.* at 3.
[19] *Supra* note 1, at 3.
[20] Book V of the Nicomachean Ethics of Aristotle, cited in FULLER, THE PROBLEMS OF JURISPREDENCE 53 (1949).
[21] *Supra* note 19.

insufficient to afford a complete remedy, or their modes of proceeding are inadequate for the purpose; (2) where the courts of ordinary jurisdiction are made instruments of injustice; (3) where the principles of law, by which the ordinary courts are guided, give no right, but upon the principles of universal justice the interference of the judicial power is necessary to prevent a wrong, and the positive law is silent; (4) to remove impediments to the fair decisions of a question in other courts; (5) to provide for the safety of property in dispute pending a litigation, and to preserve property in danger of being dissipated or destroyed by those to whose care it is by law entrusted, or by persons having immediate but partial interests; (6) to restrain the assertion of doubtful rights in a manner productive of irreparable damage; (7) to prevent injury to third persons by the doubtful title of others; (8) to put a bound to vexatious and oppressive litigation, and to prevent multiplicity of suits; (9) to compel a discovery, or obtain evidence which may assist the decision of other courts, and to preserve testimony, when in danger of being lost, before the matter to which it relates can be made the subject of judicial investigation.[22]

Merwin makes a simple, but by no means exhaustive, classification as follows: [23]

1. equitable subject-matter
2. peculiar remedies:
   a. remedies to prevent injury
   b. remedies to compel performance of a legal duty
   c. remedies to correct or cancel written instruments
   d. remedies to discover evidence
3. equitable parties

Pomeroy gives the following classification:

A. Equitable Primary Rights
   1. Rights arising from payment of sealed obligations
   2. Rights arising from past performance of contract
   3. Rights and duties arising from married women's contracts
   4. Rights affected by death of one of several joint debtors or or creditors
   5. "Equitable Estates":
      a. interest for executing contract for the sale of land
      b. interest arising from implied trust
      c. interest arising from express passive trust-mortgage

[22] *Supra* note 1, at 14-15.
[23] *Supra* note 1, at 14-24.
[24] *Supra* note 10, at 126-153.

B. Equitable Remedies
   1. Declarative remedies
   2. Resortative remedies
   3. Preventive remedies
   4. Remedies for specific performance
   5. Remedies for reformation, correction, or re-execution
   6. Remedies of rescission or cancellation
   7. Remedies of pecuniary compensation
   8. Remedy of accounting
   9. Remedies of conferring or removing official functions
   10. Remedies of establishing or destroying personal status

C. Equitable Doctrines with Respect to Parties

D. Equitable Doctrines with Respect to Relief

With a glimpse into the nature of equity jurisprudence as set forth in the preceding discussion, let us now proceed to examine specific equities in the Philippine legal system.

IV. SPECIFIC EQUITIES IN PHILIPPINE LAW

1. *Specific Performance*

This has two aspects, namely, the affirmative and the negative. This is so because an obligation is a juridical necessity to give, to do or not to do.[25]

Affirmative Aspect.—From the aforecited provision, it is clear that the affirmative aspect of specific performance consists of the juridical necessity to give or to do.[26] Every person obliged to give something is also obliged to take care of it with the proper diligence of a good father of a family, unless the law or the stipulation of the parties requires another standard of care.[27] The obligation to give a determinate thing includes that of delivering all its accessions and accessories, even though they may not have been mentioned.[28]

With respect to the obligation to do something, if the person obliged to do so fails to do it, the same shall be executed at his expense.[29] However, the obligor cannot be compelled to do it. To force him to comply with this obligation would amount to involuntary servitude which is prohibited by law.[30]

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[25] Art. 1156, NEW CIVIL CODE OF THE PHILIPPINES.
[26] *Id.*
[27] Art. 1163, CIVIL CODE.
[28] Art. 1166, CIVIL CODE.
[29] Art. 1167, par. 1, CIVIL CODE.
[30] PHIL. CONST. Art. III, Sec. 1(13).

Negative Aspect.—The negative aspect of specific performance consists of the juridical necessity not to do somehing.[31] Under the obligation of not doing, if the obligor does what is forbidden him, it shall be undone at his expense.[32]

In a leading case, the Supreme Court had occasion to elaborate on this aspect of specific performance. A contract in this case was entered into by the employer and the employee whereby the latter bound himself, among others, to refrain for a length of time after the expiration of the term of his employment from engaging in a business competitive with that of his employer. When the employee violated this stipulation, the employer commenced an action for injunction to prevent any further breach of that part of the contract. Speaking thru Mr. Justice Fisher, the Supreme Court upheld the validity of the contract and sustained the decision of the lower court enjoining the employee for the term therein stipulated from engaging in the Philippines in any business similar to or competitive with that of the employer.[33]

2. *Specific Reparation and Prevention of Tort*

a. *Quasi-delicts.*—Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. If there is no pre-existing contractual relation between the parties, such fault or negligence is called a quasi-delict.[34] Although the responsibility for such fault or negligence is entirely separate from the negligence under the Revised Penal Code, the plaintiff cannot recover twice for the same act or omission of the defendant.[35] When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. However, if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the court shall mitigate the damages to be awarded.[36] The obligation to pay damages for quasi-delicts is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.[37]

b. *Trespass.*—Every possessor has a right to be respected in his possession. Should he be disturbed therein, he shall be protected in or restored to said possession by means established by the laws and the Rules of Court. A possessor deprived of his possession

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[31] See *supra* note 25.
[32] Art. 1168, CIVIL CODE.
[33] Ollendorff v. Abrahamson, 38 Phil. 585 (1918).
[34] Art. 2176, CIVIL CODE.
[35] Art. 2177, CIVIL CODE.
[36] Art. 2179, CIVIL CODE.
[37] Art. 2180, CIVIL CODE.

through forcible entry may within ten days from filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession.[38] So much so that the possessor in bad faith is required to reimburse the fruits received by him as well as those which the legitimate possessor could have received. He shall, however, have a right only to reimbursement for necessary expenses.[39]

The law does not stop at merely punishing civilly the trespasser. Under the Revised Penal Code, any private person who enters the dwelling of another against the latter's will may be subject to imprisonment and fine.[40] Any person who enters the closed premises or the fenced estate of another, while either of them is uninhabited, if the prohibition to enter is manifest and the trespasser has not secured the permission of the owner or the caretaker thereof, shall likewise be liable under the same code.[41]

In the cases above referred to, the trespasser may be further held liable for damages which are the natural and probable consequences of the act or omission complained.[42]

c. *Private nuisance.*—A nuisance is any act, omission, establishment, business, condition of property, or anything else which: (1) injures or endangers the health or safety of others; or (2) annoys or offends the senses; or (3) shocks, defies or disregards decency or morality; or (4) obstructs or interferes with the free passage of any public highway or street or any body of water; or (5) hinders or impairs the use of property.[43] According to the new Civil Code, a private nuisance is one that does not affect the community or neighborhood or any considerable number of persons.[44]

The remedies against a private nuisance is either a civil action or abatement without judicial proceedings.[45] Any person injured by a private nuisance may abate it by removing, or if necessary by destroying the thing which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. It is indispensable, however, that the procedure for extrajudicial abatement of a public nuisance by a private person be followed.[46]

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[38] Art. 539, CIVIL CODE; Rule 70, Sec. 3, REVISED RULES OF COURT.
[39] Art. 549, CIVIL CODE.
[40] Art. 280, REVISED PENAL CODE.
[41] Art. 281, REVISED PENAL CODE.
[42] Art. 2202, CIVIL CODE; also Art. 2176, CIVIL CODE.
[43] Art. 694, CIVIL CODE.
[44] Art. 695, CIVIL CODE.
[45] Art. 705, CIVIL CODE.
[46] Art. 706, CIVIL CODE; see *infra* note 58.

The abatement of a nuisance does not preclude the right of any person injured to recover damages for its past existence.[47]

d. *Disturbances of private easements.*—An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. The immovable in favor of which the easement is established is called the dominant estate; that which is subject to the easement is known as the servient estate.[48]

If the owner of the servient estate should make use of the easement in any manner whatsoever, he shall be obliged to contribute proportionately to the expenses incurred in the construction of any works necessary for the use and preservation of the servitude, saving an agreement to the contrary.[49]

The owner of the servient estate is prohibited from impairing, in any manner whatsoever, the use of the servitude. Nevertheless, if by reason of the place originally assigned, or of the manner established for the use of the easement, the same should become very inconvenient to the owner of the servient estate, or should prevent him from making any important works, repairs or improvements thereon, it may be changed at his expense. The conditions imposed on him however are that he offers another place or manner equally convenient and in such a way that no injury is caused thereby to the owner of the dominant estate or to those who may have a right to the use of the easement.[50]

e. *Obstruction of public rights.*—The public rights enumerated by the Civil Code in Article 32 thereof cover the constitutional rights enumerated in the Bill of Rights under Article III and Suffrage under Article IV of the Constitution. Any public officer or private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of these civil liberties, shall be liable to the person injured thereby for damages. Whether or not the said act or omission constitutes a criminal offense in these cases, the aggrieved party has a right to commence a civil action for damages, which shall include both moral and exemplary, and for other relief. Such civil action shall proceed independently of any criminal prosecution, if the latter is instituted, and may be proved by a preponderance of evidence. A judge may be held liable for this responsibility if his act or omission constitutes a violation of the Penal Code or other penal statute.[51]

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[47] Art. 697, CIVIL CODE.
[48] Art. 613, CIVIL CODE.
[49] Art. 628, par. 2, CIVIL CODE.
[50] Art. 629, CIVIL CODE.
[51] Art. 32, CIVIL CODE.

Violations of said rights, such as arbitrary detention and unauthorized expulsion from the Philippines or compelling a person to change his residence,[52] violation of domicile or of the right against illegal searches and seizures,[53] prohibition, interruption, and dissolution of peaceful meetings,[54] interruption of religious worships,[55] offending against religious feelings,[56] preventing the meeting [57] or disturbing the proceedings of the legislature or similar bodies,[58] and violation of parliamentary immunity,[59] are penalized under the Revised Penal Code.

f. *Public nuisance.*—As defined in the new Civil Code, a public nuisance is one which affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal.[60] With respect to the definition of nuisance itself, a definition of this term has been made earlier.[61]

The following are the remedies against a public nuisance: (1) a prosecution under the Penal Code or any local ordinance; or (2) a civil action; or (3) abatement without judicial proceedings.[62]

A private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by destroying the thing which constitutes the same without committing a breach of the peace, or doing unnecessary injury. But in this connection, he must comply with the following requisites:

1. That demand be first made upon the owner or possessor of the property to abate the nuisance;
2. That such demand has been rejected;
3. That the abatement be approved by the district health officer and executed with the assistance of the local police; and
4. That the value of the destruction does not exceed three thousand pesos.[63]

However, it is the duty of the district health officer to take care that one or all of the remedies against a public nuisance are availed of.[64] It is also the obligation of such officer to determine whether

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[52] Art. 127, REVISED PENAL CODE.
[53] Arts. 128-130, REVISED PENAL CODE.
[54] Art. 131, REVISED PENAL CODE.
[55] Art. 132, REVISED PENAL CODE.
[56] Art. 133, REVISED PENAL CODE.
[57] Art. 143, REVISED PENAL CODE.
[58] Art. 144, REVISED PENAL CODE.
[59] Art. 145, REVISED PENAL CODE.
[60] Art. 695, CIVIL CODE.
[61] See *supra* note 38.
[62] Art. 699, CIVIL CODE.
[63] Art. 704, CIVIL CODE.
[64] Art. 700, CIVIL CODE.

or not abatement, without judicial proceedings, is the best remedy against a public nuisance.[65]

Generally, a civil action, which is instituted by reason of the maintenance of a public nuisance, should be commenced by the city or municipal mayor.[66] However, if a public nuisance is especially injurious to him, a private person may commence an action on account of such nuisance.[67]

As adverted to earlier, the abatement of a nuisance does not preclude the right of the injured party to recover damages for its previous existence.[68]

g. Interference with trade and copyright interest.—Even during the Spanish regime interests in patents, copyrights and trademarks were protected under the so-called Law on Intellectual Property of January 10, 1879 and Article 428 of the Civil Code.[69] Under the Treaty of Paris, particularly Article 13 thereof, it became the duty of the American Government to protect the holders of patents, copyrights, and trademarks which had been issued to residents of the Philippine Islands during the Spanish regime.[70]

At present these interests find protection in the provisions of the New Civil Code [71] and the special laws.[72]

A certificate of registration of a mark or trademark is evidence of the validity of the registration, the registrant's ownership of the mark or tradename, and of the registrant's exclusive right to use the name in connection with the goods, business or services specified in the certificate, subject to any condition and limitation stated therein.[73] Any person who shall use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation with the sale, offering for sale, or advertising of any goods, business or services on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers or others as to the source or origin of such goods or services, or identity of such business, shall be liable for damages.[74] In such case, the registrant may avail himself of the remedy of injunction.[75] Furthermore, any per-

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[65] Art. 702, CIVIL CODE.
[66] Art. 701, CIVIL CODE.
[67] Art. 703, CIVIL CODE.
[68] See *supra* note 42.
[69] Serrano Laktaw v. Paglinawan, 44 Phil. 855, 863-865 (1918).
[70] Gsell v. Yap-Jue, 6 Phil. 143, 146 (1906).
[71] Arts. 721-724. CIVIL CODE.
[72] Republic Act No. 165, June 20, 1947; Republic Act No. 166, June 20, 1947; Act No. 3134 (1924).
[73] Republic Act No. 166, Sec. 20.
[74] Republic Act No. 166, Sec. 22.
[75] Republic Act No. 166, Sec. 23.

son who shall employ deception or any other means contrary to good faith by which he shall pass off goods manufactured by him or in which he deals or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce such result, shall be guilty of unfair competition, and shall be subject to an action therefor.[76]

A patentee shall have the exclusive right to make, use and sell the patented machine, article or product, and to the patented process for the purpose of industry or commerce, throughout the territory of the Philippines for the term of the patent; and such making, using, or selling by any person without authorization of the patentee constitutes infringement of the patent.[77] The patentee whose rights have been infringed may bring an action to recover from the infringer damages sustained by reason of the infringement and to secure an injunction for the protection of his rights.[78]

In the case of infringement of copyright, the owner thereof is entitled to claim damages from the infringer, and to an injunction restraining such infringement.[79]

For the infringement of a patent,[80] and a copyright,[81] the infringer may be criminally prosecuted.

It is significant to note that the Constitution of the Philippines provides that "the exclusive right to writings and inventions shall be secured to authors and inventors for a limited period." [82]

h. *Interference with business relations.*—In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.[83] There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. The following circumstances shall be considered: the confidential, family, spiritual and other relations between the parties, or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress.[84] A contract where consent is given through mistake, violence, intimidation, un-

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[76] Republic Act No. 166, Sec. 29, par. 2.
[77] Republic Act No. 165, Sec. 37.
[78] Republic Act No. 165, Sec. 42, par. 1.
[79] Act No. 3134, Sec. 19.
[80] Republic Act No. 165, Sec. 48.
[81] Act No. 3134, Sec. 20.
[82] PHIL. CONST. Art. XIV, Sec. 4.
[83] Art. 24, CIVIL CODE.
[84] Art. 1337, CIVIL CODE.

due influence, or fraud is voidable.[85] In case of doubt, a contract purporting to be a sale with right to repurchase [86] or an absolute sale [87] shall be construed as an equitable mortgage. From the time final judgment is rendered in a civil action on the basis that the contract was a true sale with right to repurchase, the vendor may still exercise the right to repurchase within thirty days.[88] A stranger to a contract may be held liable for damages if he advises or assists one of the parties to evade the performance thereof.[89] Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by a person who thereby suffers damage.[90]

i. *Interference with social relations.*—Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief: (1) prying into the privacy of another's residence; (2) meddling with or disturbing the private life or family relations of another; (3) intriguing to cause another to be alienated from his friends; and (4) vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.[91]

Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.[92] He who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.[93] One 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.[94]

j. *Defamation.*—A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.[95] This offense is punishable under

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[86] Art. 1603, CIVIL CODE.
[85] Art. 1330, CIVIL CODE.
[87] Art. 1604, CIVIL CODE.
[88] Art. 1606, par. 3, CIVIL CODE.
[89] Daywalt v. Corporacion de PP. Agustinos Recoletos, 39 Phil. 587, 601 (1919); Gilchrist v. Cuddy, 29 Phil. 543, 549 (1915).
[90] Art. 28, CIVIL CODE.
[91] Art. 26, CIVIL CODE.
[92] Art. 19, CIVIL CODE.
[93] Art. 20, CIVIL CODE.
[94] Art. 21, CIVIL CODE.
[95] Art. 353, REVISED PENAL CODE.

the Revised Penal Code.[96] Any person who shall perform any act not included and punished under the provisions referred to above, which shall cast dishonor, discredit or contempt upon another shall be guilty of slander by deed.[97] By an act not constituting perjury, a person, who shall directly incriminate or impute to an innocent person the commission of a crime, is also liable criminally.[98] The same is true with a person who intrigues for the principal purpose of blemishing the honor or reputation of another.[99]

k. *Reconveyance of property registered through fraud.*—After the expiration of the period within which a decree may be reviewed under Act No. 496, otherwise known as the Land Registration Act, the aggrieved party whose land is registered through fraud in the name of another may file an ordinary civil action for the reconveyance of his property. This is so when special circumstances attend the registration of the land in the name of the offending party, provided that the same has not been transferred to an innocent purchaser for value.[100] Examples of such special circumstances may be given as follows: breach of trust,[101] a contract incompatible with registration of the land,[102] and when the offending party subsequently recognizes the right of his co-owner.[103] The new Civil Code gives a specific instance, namely, if an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, and if the fulfillment of the obligation is offered by the grantor when it becomes due, the latter may demand the reconveyance of the property to him.[104]

3. *Reformation of instruments*

When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.[105] When a mutual mistake of the parties raises the failure of the instrument to disclose their real agreement,[106] or even if only one party was mistaken and the other acted fraudulently

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[96] Arts. 355-358.
[97] Art. 359, REVISED PENAL CODE.
[98] Art. 363, REVISED PENAL CODE.
[99] Art. 364, REVISED PENAL CODE.
[100] VENTURA, LAND TITLES AND DEEDS 190 (1955).
[101] Severino v. Severino, 44 Phil. 343 (1923).
[102] Cabanas v. Register of Deeds, 40 Phil. 620 (1919).
[103] Garcia v. Reyes, 51 Phil. 409, 413 (1928).
[104] Art. 1454.
[105] Art. 1359, par. 1, CIVIL CODE.
[106] Art. 1361, CIVIL CODE.

or inequitably in such a way that the instrument does not show their true intention,[107] or that the latter knew or believed that the instrumen did not state their real agreement, but concealed that fact from the latter,[108] the instrument may be reformed. The same is true when the instrument does not express the true intenion of the parties through ignorance, lack of skill, negligence or bad faith on the part of the person drafting the instrument or of the clerk or typist.[109]

a. *Bilateral transactions.*—In bilateral transactions, it is submitted that the foregoing principles on reformation of instruments are applicable. The new Civil Code is explicit that whenever an absolute sale or a sale with right to repurchase is construed as equitable mortgage or pledge, the apparent vendor may ask for the reformation of the instrument.[110] In the cases of *Ignacio v. Chua Hong* [111] and *Aquino v. Deala,*[112] the Supreme Court construed the sale *con pacto de retro* as equitable mortgage.

b. *Unilateral transactions.*—It is likewise submitted that the above provisions on reformation are also applicable to unilateral transactions in general, the guiding principle in this matter being that the evident intention of the parties prevails over the words in a contract.[113]

The new Civil Code expressly provides, however, that in the following cases there shall be no reformation:

(1) Simple donation *inter vivos* wherein no condition is imposed;

(2) Wills;

(3) When the real agreement is void.[114]

c. *Mistake of law.*—Mistake upon a doubtful or difficult question of law may be the basis of good faith.[115] However, mutual error as to the legal effect of an agreement, when the real purpose of the parties is frustrated, may vitiate consent.[116] In the latter case, the remedy is not reformation but annulment.[117]

As to the effect of mutual mistake or only of one of the parties causing the failure of the instrument to express their true agree-

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[107] Art. 1362, CIVIL CODE.
[108] Art. 1363, CIVIL CODE.
[109] Art. 1364, CIVIL CODE.
[110] Art. 1605; also Art. 1365.
[111] 52 Phil. 940 (1929).
[112] 63 Phil. 582 (1936).
[113] Art. 1375, par. 2, CIVIL CODE.
[114] Art. 1366, CIVIL CODE.
[115] Art. 526, par. 3, CIVIL CODE.
[116] Art. 1334, CIVIL CODE.
[117] Art. 1359, par. 2, CIVIL CODE.

ment, in which case reformation is in order, this has been discussed earlier in this paper.[118]

4. *Rescission*

Rescission is a remedy granted by law to the contracting parties and even to third persons, to secure the reparation of damages caused to them by a contract, even if this should be valid, by means of the restoration of things to their condition at the moment prior to the celebration of said contract.[119]

a. *Requisites of rescission.*—In order that an action for rescision of a contract may prosper, the following requisites must concur:[120]

(1) The contract must be rescissible, such as those mentioned in Articles 1381 and 1382.

(2) The party asking for rescission must have no other legal means to obtain reparation for the damages suffered by him (Article 1383).

(3) The person demanding rescission must be able to return whatever he may be obliged to restore if rescission is granted (Article 1385).

(4) The things which are the object of the contract must not have passed legally to the possession of a third person acting in good faith (Article 1385).

(5) The action for rescission must be brought within the prescriptive period of four years (Article 1389).

b. *Rescission on legal grounds.*—The following contracts are rescissible: (1) those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof; (2) those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number; (3) those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them; (4) those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority; and (5) all other contracts specially declared by law to be subject to rescission.[121]

One specific instance declared by law to be subject to rescission is a partition, judicial or extra-judicial, when any one of the co-heirs

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[118] See *supra* notes 101-103.
[119] 8 MANRESA 748-749 cited in TOLENTINO, *infra* note 120, at 520.
[120] IV TOLENTINO, CIVIL CODE OF THE PHILIPPINES 522 (1956).
[121] Art. 1381, CIVIL CODE.

received things whose value is less, by at least one-fourth, than the share to which he is entitled, considering the value of the things at the time they were adjudicated.[122] Another instance concerns payments made in a state of insolvency for obligations to whose fulfillment the debtor could not be compelled at the time they were effected.[123]

c. *Rescission in reciprocal obligations.*—The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.[124] If after choosing fulfillment, this should become impossible, the injured party may still seek rescission.[125] In one case, the Supreme Court stated that "inasmuch as the obligation arising from the contract of purchase and sale, Exhibit A, which was entered into by the plaintiff-appellee and the defendant-appellant are reciprocal, and the former had failed to comply with what is incumbent upon him, the latter has the implied right to resolve (rescind) them . . ."[126]

5. *Quieting of title*

The action to remove clouds from title to real estate is a well-established remedy in American law. It has for its purpose the quieting of title or removal of a cloud therefrom when there is an apparently valid or effective instrument or other claim which in reality is void, ineffective, voidable or unenforceable. Equity comes to the aid of him who would suffer if the instrument were enforced. He is in good conscience entitled to a removal of the cloud or doubt upon his title. On the other hand, the respondent has no legal or moral ground to hold the instrument against the petitioner's title.[127]

Under the present law, whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which apparently is valid or effective but in truth and in fact is invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or quiet the title. An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.[128] There may also be an action to quiet title or remove a cloud therefrom when the contract, instru-

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[122] Art. 1098, CIVIL CODE.
[123] Art. 1382, CIVIL CODE.
[124] Art. 1191, par. 1, CIVIL CODE.
[125] *Id.*, par. 2.
[126] Hodges v. Granada, 59 Phil. 429, 432 (1934).
[127] Code Commission Report, p. 55.
[128] Art. 476, CIVIL CODE.

ment or other obligation has been extinguished or has terminated, or has been barred by extinctive prescription.[129]

But in order to be entitled to bring the action aforementioned, the plaintiff must have legal or equitable title to, or interest in the real property which is the subject matter of the action, although he need not be in possession of said property.[130] He is also under obligation to return to the defendant all benefits he may have received from the latter, or reimburse him for expenses that may have redounded to the plaintiff's benefit.[131]

6. *Natural Obligations*

The Code Commission gives the following reasons for the legal recognition of natural obligations:

> "In all the specific cases of natural obligation recognized by the present code, there is a moral but not legal duty to perform or pay, but the person thus performing or paying feels that in good conscience he should comply with his undertaking which is based on moral grounds. Why should the law permit him to change his mind, and recover what he has delivered or paid? Is it not wiser and more just that the law should compel him to abide by his honor and conscience? Equity, morality, natural justice—these are, after all, the abiding foundations of a positive law. A broad policy justifies a legal principle that would encourage persons to fulfill their moral obligations.
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> Furthermore, when the question is viewed from the side of the payee, the incorporation of natural obligations into the legal system becomes imperative. Under the laws in force, the payee is obliged to return the amount received by him because the payor was not legally bound to make the payment. But the payee knows that by all considerations of right and justice he ought to keep what has been delivered to him. He is therefore dissatisfied over the law, which deprives him of that which in honor and fair dealing ought to pertain to him. Is it advisable for the State thus to give grounds to the citizens to be justly disappointed?
>
> To recapitulate: because they rest upon morality and because they are recognized in some leading civil codes, natural obligations have again become part and parcel of the Philippine law."[132]

The new Civil Code contains provisions on natural obligations in addition to those on civil obligations.[133] However, natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof.

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[129] Art. 478, CIVIL CODE; Rule 64, Sec. 1, REVISED RULES OF COURT.
[130] Art. 477, CIVIL CODE.
[131] Art. 479, CIVIL CODE.
[132] Code Commission Report, pp. 58-59.
[133] Art. 1423 *et seq.*, CIVIL CODE.

Instances covered by the aforecited provisions are given in the new Civil Code. When a right to sue upon a civil obligation has lapsed by extinctive prescription, the obligor who voluntarily performs the contract cannot recover what he has delivered or the value of the service he has rendered.[134] If without the knowledge or against the will of the debtor, a third person pays a debt which the obligor is not legally bound to pay because the action thereon has prescribed, but the debtor later voluntarily reimbursed the third person, the obligor cannot recover what he has paid.[135] When a minor between eighteen and twenty-one years of age, who has entered into a contract without the consent of the parent or guardian, voluntarily returns the whole thing or price received after the annulment of the contract, notwithstanding the fact that he has not been benefited thereby, there is no right to demand the thing or price thus returned.[136] When a minor of the same age aforesaid, who has entered into a contract without the consent of the parent or guardian, voluntarily pays a sum of money or delivers a fungible thing in fulfillment of the obligations, there shall be no right to recover the same from the obligee who has spent or consumed it in good faith.[137] When the defendant voluntarily performs an obligation after an action to enforce the same has failed, he cannot demand the return of what he has delivered or the payment of the value of the service he has rendered.[138] When a testate or intestate heir voluntarily pays a debt of the decedent exceeding the value of the property which he has received by will or by the law of intestacy from the estate of the deceased, the payment is valid and cannot be rescinded by the payer.[139] Payment is also considered effective and irrevocable when a will is declared void because it has not been executed in accordance with the formalities required by law, but one of the intestate heirs, after the settlement of the debts of the deceased, pays a legacy in compliance with a clause in the defective will.[140]

It is significant to observe, however, that obligations which are contrary to morals and good customs do not constitute natural obligations, and, therefore, whatever is paid under such obligations can be recovered, without prejudice to the provisions of Articles 1411 and 1412.[141] At this juncture, it is submitted that the above cases enumerated by the Civil Code are not exclusive.

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[134] Art. 1424, CIVIL CODE.
[135] Art. 1425, CIVIL CODE.
[136] Art. 1426, CIVIL CODE.
[137] Art. 1427, CIVIL CODE.
[138] Art. 1428, CIVIL CODE.
[139] Art. 1429, CIVIL CODE.
[140] Art. 1430, CIVIL CODE.
[141] *Supra* note 120, at 593.

7. Trusts

A trust is created when one reposes confidence in another as regards certain property for the benefit of a third person. A person who establishes a trust is called the trustor. The one in whom the confidence is reposed is known as the trustee. The person for whose benefit the trust has been created is referred to as the beneficiary.[142] Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties, while implied trusts come into being by operation of law.[143] The Civil Code has expressly adopted the principles of the general law of trusts as far as they are not in conflict with the Civil Code, the Code of Commerce, the Rules of Court and the special laws.[144]

8. Quasi-Contracts

The Civil Code expressly recognizes that certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.[145] Whoever voluntarily takes charge of the agency or management of the business or property of another, without any power from the latter, is obliged to continue the same until the termination of the affair and its incidents, or to require the person concerned to substitute him, if the owner is in a position to do so.[146] If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.[147] This covers payment by reason of a mistake in the construction or application of a doubtful or difficult question of law.[148] The Civil Code enumerates specific instances of quasi-contracts,[149] which enumeration is not, however, exclusive.[150]

9. Estoppel

Estoppel is an important branch of American law. It is a source of many rules which work out justice between the parties, through the operation of the principle that an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.[151] When a person who is not the owner of a thing sells or alien-

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[142] Art. 1440, CIVIL CODE.
[143] Art. 1441, CIVIL CODE.
[144] Art. 1442. CIVIL CODE.
[145] Art. 2142. CIVIL CODE.
[146] Art. 2144, CIVIL CODE.
[147] Art. 2154, CIVIL CODE.
[148] Art. 2155, CIVIL CODE.
[149] Arts. 2164-2175, CIVIL CODE.
[150] Art. 2143, CIVIL CODE.
[151] Code Commission Report, p. 59; *see* also Art. 1431, CIVIL CODE.

ates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee.[152] If a person in representation of another sells or alienates a thing, the former cannot subsequently set up his own title as against the buyer or grantee.[153] A lessee or bailee is estopped from asserting title to the thing leased or received, as against the lessor or bailor.[154] When in a contract between third persons concerning immovable property, one of them is misled by a person with respect to the ownership or real right over the real estate, the latter is precluded from asserting his title or interest therein, provided the following requisites are present: (1) there must be fraudulent representation or wrongful concealment of facts known to the party estopped; (2) the party estopped must intend that the other should act upon the facts as misrepresented; (3) the party misled must have been unaware of the true facts; and (4) the party defrauded must have acted in accordance with the misrepresentation.[155] One who has allowed another to assume apparent ownership of personal property for the purpose of making any transfer of it, cannot, if he received the sum for which a pledge has been constituted, set up his own title to defeat the pledge of the property, made by the other to a pledgee who received the same in good faith and for value.[156]

When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to anyone, as partner in an existing partnership or with one or more persons not actual partners, he is liable to any such persons to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.[157]

So far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent.[158]

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[152] Art. 1434, CIVIL CODE.
[153] Art. 1435, CIVIL CODE.
[154] Art. 1436, CIVIL CODE.
[155] Art. 1437, CIVIL CODE.
[156] Art. 1438, CIVIL CODE.
[157] Art. 1825, par. 1, CIVIL CODE.
[158] Art. 1900, CIVIL CODE.

Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it.[159] The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them.[160] According to the law on family relations, the father is obliged to recognize the child as his natural child when the child is in continuous possession of the status of a child of the alleged fatheer by the direct acts of the latter or of his family.[161] Of course, as to the child's being natural, other requisites have to be complied with.

In the case of *Tañada and Macapagal v. Cuenco*,[162] the Supreme Court, speaking thru Mr. Justice Concepcion, made it clear that the rule on estoppel applies to questions of fact, not of law, about the truth of which the other party is ignorant.

With respect to its scope, estoppel is effective only as between the parties thereto or their successors in interest.[163]

10. Declaratory relief

Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute or ordinance, may bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder.[164] A contract or statute may be construed before there has been a breach thereof.[165] The declaratory judgment differs in no essential respect from any other judgment except that it is not followed by a decree for damages, injunction, specific performance, or other immediately coercive decree. It has been employed mainly for the construction of instruments of all kinds, for the determination of status in marital or domestic relations, for the determination of contested rights, of property, real or personal, and for the declaration of rights contested under a statute or municipal ordinance, where it was not possible or necessary to obtain an injunction.[166]

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[159] Rule 123, Sec. 68(a), RULES OF COURT; Rule 131, Sec. 3(a), REVISED RULES OF COURT.

[160] Rule 123, Sec. 68(b), RULES OF COURT; Rule 131, Sec. 3(b), REVISED RULES OF COURT.

[161] Art. 283, par. 2, CIVIL CODE.

[162] G.R. No. L-10520, February 28, 1957.

[163] Art. 1439, CIVIL CODE.

[164] Rule 66, Sec. 1, RULES OF COURT; Rule 64, Sec. 1, REVISED RULES OF COURT.

[165] Rule 66, Sec. 2, RULES OF COURT; Rule 64, Sec. 1, REVISED RULES OF COURT.

[166] FRANCISCO, SPECIAL CIVIL ACTIONS 8 (1956) citing Report to United States Senate by Senator King in 1934, and Bochard, The Federal Declaratory

11. Perpetuation of evidence

A person who desires to perpetuate his testimony or that of another person regarding any matter that may be cognizable in any court of the Philippines, may file a verified petition in the court of the province of the residence of any expected adverse party.[167] The reason for this may be gleaned from the comments on this subject by a well-known author. According to him, a person may have a personal action against a non-resident who having no property in the Philippines cannot be sued therein. The plaintiff, however, expects the non-resident to come to the Philippines in the future or to have some property therein through inheritance. Since the plaintiff cannot anticipate when he may be able to bring the suit, and he may die, before that time comes, he may perpetuate his own testimony for future use by his heirs. Again, a person expects to be sued in the future and has a witness who is about to leave for his home country, or is so weak or old that he may not be available at the trial of the case, the testimony of such witness may be perpetuated.[168]

The same is true if an appeal has been taken from a judgment of a Court of First Instance or before the taking of an appeal if the time therefor has not expired. In this case, the Court of First Instance in which the judgment was rendered may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the said court.[169] If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken.[170] The necessity for this may arise, for instance, in the trial of a case where the testimony of a witness is offered in evidence and objected to and the objection is sustained. There is the possibility that on appeal such ruling will be reversed and a new trial ordered for the admission of the testimony, and if it may be shown that at the time of such new trial the witness will not probably be available, his testimony may be perpetuated under the aforecited provision.[171]

When a defendant has been held to answer for an offense, he may upon application have witnesses conditionally examined in his

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Judgments Act (1934), 21 Va. L. Rev. 35, 41. *See* also Rule 64, Sec. 6, REVISED RULES OF COURT.

[167] Rule 19, Sec. 1, RULES OF COURT; Rule 134, Sec. 1, REVISED RULES OF COURT.

[169] Rule 19, Sec. 7, RULES OF COURT; Rule 134, Sec. 7, REVISED RULES OF COURT.

[169] Rule 19, Sec. 7, Rules of Court; Rule 134, Sec. 7, Revised Rules of Court.

[170] *Id.*

[171] *Supra* note 168, at 476.

tion must be supported by an affidavit stating: (a) the name and behalf in a manner prescribed in the Rules of Court. The applica- residence of the witness and that his testimony is material to the defense of the action; (b) that the witness is about to leave the province, or so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.[172] In another instance, if it shall satisfactorily appear that the witness cannot procure bail as directed by the order of the court, or has to leave the Philippines with no definite date of returning thereto, he may forthwith be conditionally examined or his deposition immediately taken. Such examination or deposition must be by question and answer, in the presence of the defendant, or after one hour notice to attend the examination or the taking of the deposition has been served on him, and will be conducted in the same manner as an examination at the trial. Failure or refusal on the part of the defendant to attend the examination or the taking of the deposition after said notice, shall be considered a waiver. The statement or deposition of the witness thus taken may be admitted in behalf of or against the defendant. His testimony taken, the witness must thereupon be discharged, if he has been detained.[173]

V. CONCLUSION AND RECOMMENDATIONS

The status of equity jurisprudence in our legal system seems paradoxical, if not altogether uncertain. It is fortunate that there exist in our statute books and court rulings principles of equity which have proved of great and invaluable service particularly to the English and American peoples. At the same time, it is unfortunate that these principles find themselves so scattered in our codes, statutes and decisions that they are practically lost in the legal and judicial process. It is, however, certain that there only exist principles of equity in Philippine law, but that no equity jurisprudence properly so-called has so far been developed or evolved in this jurisdiction. What is worse is that such existence of equitable rules in our law has been identified, if it has not yet become synonymous, with confusion and uncertainty in our legal system.

Even the higher courts in our judicial set-up have been wavering in their attitude as well as in their stand with respect to the application of equity, if not toward equity itself. To make this point clearer, it is suggested that we look into the recent decisions of said courts which have some bearing on the subject under discussion.

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[172] Rule 115, Sec. 4, RULES OF COURT; Rule 119, Sec. 4, REVISED RULES OF COURT.

[173] Rule 115, Sec. 7, RULES OF COURT; Rule 119, Sec. 7, REVISED RULES OF COURT.

In the case of *Oriola et al. v. Oriola*,[174] the Court of Appeals made the following pronouncement:

> "Laches 'is a doctrine well established in Equity Jurisprudence,' but Equity Jurisprudence, as such, is not in force in the Philippines. Said jurisprudence is applied only in common-law jurisdiction, and the Philippines does not belong to such class, except inofar as part of our political laws, our remedial laws, the corporation law, the negotiable instruments law, the warehouse receipts law—are based upon common law or are mere reenactments of identical or similar legislations existing in common law jurisdictions, where the Equity Jurisprudence is followed."

Aside from the detrimental effect which the aforecited decision has on the development of equity jurisprudence in this country, it is quite disheartening to note that our courts have lost track of the origin of equity. Even worse than this, they confuse equity jurisprudence with common law to such an extent as to make it appear that equity jurisprudence is part and parcel of the common law system.[175]

Another departure from the progressive tendency toward the development of equity jurisprudence in this jurisdiction took place in the case of *Dumlao v. Toledo*.[176] The Court of Appeals stated that "courts are bound by their sacred oath to enforce and apply the law; recourse to general principles of law and equity is authorized only in the absence of an express provision of law."

The situation is not, however, hopeless for the cause of equity jurisprudence in this country. The Supreme Court, in maintaining the view that the absence of a party may leave the controversy in such a situation that the final determination may be inconsistent with equity and good conscience, went further to state that "the provisions of the code procedure on parties were taken from the rules of equity and not from the rules of common law, and, therefore, a great amount of latitude is allowed in the inclusion of the parties to a case."[177] The Court of Appeals pursued the same tendency in the case of *Binalbagan Estate, Inc. v. Bacolod-Murcia Milling Co.*,[178] when it ruled that "in order to apply the broad doctrine of equity there must be wrongful enrichment of an individual at the expense of another," and also in the case of *Ferriols v. Riesgo*,[179] when it held that "the defendant did not enter the premises in question with clean hands, and hence can not plausibly claim relief for reasons of equity."

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[174] CA-G.R. No. 6771-R, May 30, 1953.
[175] See *supra* note 10.
[176] CA-G.R. No. 1455-R, November 29, 1948.
[177] Fuentebella v. FEATI, G.R. No. L-4958, March 30, 1954.
[178] CA-G.R. No. 7835-R, March 27, 1952.
[179] CA-G.R. No. 381-R, August 20, 1947.

One cannot fail to notice that while the Supreme Court applies equity affirmatively, the Court of Appeals, if it does not find justification for not applying the same, applies it negatively.[180] Just to illustrate further this point, let us consider the case of *Jurado v. Flores* [181] decided by the Supreme Court, and that of *Sajo v. Gulmatico* [182] decided by the Court of Appeals. In *Jurado v. Flores,* the Supreme Court said:

> "It has been repeatedly held that those who seek relief in courts of justice should appear before them with clean hands. When certificates of title were issued tainted with fraud, they should be declared null and void, for there is no kind of legal technicality that may serve as a cloak so that the authors of a fraud may enjoy unhampered the profits of their evil doings and bad faith. The victim is entitled to all the protection of the law. Courts of justice are duty bound to make effective that protection."

Lately the Court of Appeals has shown a more positive attitude on the subject when it made the following ruling in the case of *Sanchez v. De la Cruz:*[183]

> "New trial is an equitable remedy; and the statutes covering the same should be construed liberally. As far as is possible, failure of justice should be avoided. In the absence of a clear lack of merit or intention to delay, we believe that this case should be not allowed to go off on procedural points. We are loathe to see technicality override the actual merits of this case."

while in the case of *Sajo v. Gulmatico,* the same court ruled that "in equity, a party is not entitled to any extraordinary relief if he himself is at fault."

By the foregoing discussion, it is not intended to impress that such has been the attitude of the higher courts ever since. One thing cannot be successfully denied, however, that is, that of late such has been the tendency of the judicial thinking of our appellate courts. This point has been stressed not so much for the sake of making suggestions to the courts themselves as for the purpose of pointing out that the main key in the development of equity jurisprudence in this country, as it was true in England and America, lies with our higher courts, namely, the Supreme Court and the Court of Appeals. Specially under the present state of equity principles so far as our statutes and decisions are concerned, the only chance for the development of equity jurisprudence is in our higher courts.

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[180] See *supra* notes 156-158.
[181] G.R. No. L-1365, March 14, 1947.
[182] 51 O.G. (CA) 788, February, 1955.
[183] CA-G.R. No. 20081-R, January 23, 1959.

The importance of equity jurisprudence as far as our political, social and economic institutions are concerned cannot be underestimated. Earlier the importance of equity jurisprudence has been discussed in this paper. No further elaboration is necessary on this point. At this juncture, it may be pertinent to quote from the decision of the Court of Appeals in *Lim v. Sy*,[184] even if only to have a glance at the active role of equity in our social order, as follows:

> "While courts as a general rule do not interfere in the fixing of rentals, which is an affair that is necessary within the mutual understanding of the lessor and lessee, by reason of equity, like in the instant case, where defendant is not unwilling to pay a reasonable rent, we come to the aid of the parties with a view to preserving their socio-economic relation."

At this stage of equity jurisprudence in this country, if there be such at present, it is premature to make any detailed suggestion for its development, much less for its codification. Suffice it to say for the moment that steps should be taken toward the systematization of the principles of equity as they are now embodied in the statute and case books preparatory to their ultimate codification. At this point, it may not be amiss to mention that a reorientation of the law schools, the bar, and the bench on this subject, specially the first, is in order. For the meantime, every opportunity to foster the development and systematization of equity principles into a jurisprudence should not be allowed to pass without using the same to advantage.

For all these efforts and troubles, we will not be wanting in compensation. One has only to realize that equity jurisprudence in its ripe stage may yet prove one of the most effective instruments which can stand us in our difficult task of ordering society and also one of the strongest pillars which can help us in maintaining the confidence of the people in our legal system.

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[184] CA-G.R. No. 17476-R, April 22, 1957.