CIVIL LAW

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Article 16 construed

In the case of *Aznar v. Garcia*,[1] Edward Christensen, a citizen of California but domiciled in the Philippines at the time of his death left a will declaring that he had only one child, Maria Lucy and bequeathed to her his entire estate after reserving the sum of ₱3,600.00 in favor of Maria Helen Cristensen Garcia. In accordance with this provision, the executor ratified the payment of ₱3,600.00 to Maria Helen and the residue of the estate to Maria Lucy. Maria Helen opposed it in so far as it deprived her of her legitime she having been declared by the Court an acknowledged natural child of the said testator. *Held*: Article 16 of the New Civil Code provides: "Real property as well as personal property is subject to the law of the country where it is situated. However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found." The national law of the decedent was that of California. According to California law, the law of the domicile of the decedent at the time of his death shall govern. Since Christensen was domiciled in the Philippines at the time of his demise, the valdity of the provision of the decedent's will depriving his acknowledged natural child of her legitime should be governed by Philippine law.

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Joinder of husband does not make him solidarily liable with the wife

Does Article 113 of the New Civil Code, which requires the joinder of the husband in actions against the wife, make the husband solidarily liable with the wife? No said the Court in the case of *Ace-*

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[1] G.R. No. L-16748, Jaunary 31, 1963.

nas v. Sison.[2] Angela Sison executed a promissory note to pay Emma Acenas the sum of ₱8,160.00 in 26 installments. The note provided that the failure to pay the consecutive installments would make the balance due and demandable. Upon her failure to pay the balance of the note, she was sued. Her husband, Teofilo Sison, was joined as a defendant pursuant to Article 113 of the New Civil Code. *Held*: The law requires the joinder of the husband not because he is thereby bound with his wife but because he is the administrator of the conjugal partnership which might be held liable in the action. To make the husband solidarily liable with his wife simply because his joinder is required would be to subvert the basic rule that the wife cannot bind the conjugal partnership without the husband's consent (Article 172 Civil Code). The only exceptions are (1) when the husband consents; (2) when the wife spends for the usual daily needs of the family; and (3) when she is given the management of the partnership (Articles 157, 168, 178 and 196). There was no allegation in the complaint that Mrs. Sison incurred her obligation under any of these exceptions so as to bind the conjugal partnership.

Article 114 of the New Civil Code will apply only if property was acquired when man and woman were living as husband and wife

Article 114 of the New Civil Code provides that "When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership." According to *Novino v. Court of Appeals and PHHC*,[3] this article will apply only if the property was acquired when the man and woman were living as husband and wife.

Sale of conjugal property by the surviving spouse is valid to the extent of her share

In the case of *Margate v. Rabacal*,[4] J. Rabacal sold a residential land in favor of J. Margate. The latter applied for the registration of said land. After hearing, the registration court confirmed the title of J. Margate to the parcel of land in question and ordered that the same be registered in his name. J. Rabacal together with her children claimed that the registration court erred in holding that the Deed of Sale is valid and in ordering the registration of the property in applicant's name. *Held*: The residential land sold by J. Rabacal was admittedly the conjugal property of the deceased Dr. J. Berina and

[2] G.R. No. L-17011, August 30, 1963.
[3] G.R. No. L-21089, May 31, 1963.
[4] G.R. No. L-14302, April 30, 1963.

J. Rabacal. Upon the former's death, said property descended to J. Rabacal, the surviving spouse, and his minor children. Under the old Civil Code (whose provisions should apply)—J. Rabacal was entitled to ½ as her share in the conjugal property. This being the case, at least, the ½ portion belongs to her which was included in the sale of the entire property to J. Margate. The sale therefore, of the whole property was not altogether null and void, since it was valid to the extent of J. Rabacal's share in the conjugal property.

PATERNITY AND FILIATION

The canonical baptismal certificate does not constitute the authentic document to prove legitimate filiation of the children

In *Aballe v. Santiago*,[5] plaintiff and defendant lived together as husband and wife since 1947. As a consequence of such relation two boys were born. After the birth of her second child, plaintiff learned that defendant was married, so she separated from him and since then stayed in Bacolod City, in a house bought for her by defendant in 1957. Subsequently, plaintiff filed an action for support, successional rights and damages against defendant. The trial court dismissed her complaint on the ground that the canonical baptismal certificates do not constitute the authentic document to prove legitimate filiation of the children. *Held*: Decision affirmed.

SUPPORT

Adulterous children are entitled to no more than the right to support prior to the adoption of the New Civil Code

Claudia Mejia, with her brothers and sisters, alleged that they were voluntarily recognized as illegitimate children of Teofilo Mejia, who died in 1942. They instituted the action against the widow of the deceased, defendant Casilda M. de Mejia, for the partition of eight (8) parcels of land, which were said to belong to the conjugal partnership of said spouses. The lower court dismissed the complaint upon the ground that according to Article 845 of the Civil Code of Spain, which was in force in the Philippines at the time of the demise of Teofilo Mejia "adulterous children are entitled to no more than the right to support" and that although the New Civil Code now grants to said children some successional rights, the same cannot be given retroactive effect. *Issue*: Whether plaintiffs are entitled to successional rights granted by the New Civil Code considering that said code was enacted and became effective several years after the death of their alleged father. *Held*: Plaintiffs have no right to share

[5] G.R. No. L-16307, April 30, 1963.

in the estate of the deceased Teofilo Mejia since adulterous children were entitled to no more than the right to support prior to the adoption of the New Civil Code.[6]

Obligation to furnish support ceases upon the death of the obligor, even if he be bound to give it in compliance with a final judgment

An illegitimate child is entitled to support from his father under Articles 287 and 291 (5) of the New Civil Code. Article 290 states that, "Support is everything that is indispensable for sustenance, dwelling, clothing and medical attendance, according to the social position of the family. Support also includes the education or training for some profession, trade or vocation, even beyond the age of majority." In the case of *Falcon v. Falcon*,[7] an action was filed against Basilio Falcon for support by Roberto Falcon, represented by his mother on the allegation that he is an illegitimate child of the defendant. The trial court dismissed the complaint. On appeal, the Court of Appeals reversed the decision and based on the finding that Roberto is an illegitimate son of Basilio ordered the latter to support the former. In compliance therewith, Basilio gave Roberto the adjudged monthly support until December 31, 1960, when he stopped doing so because Roberto had reached the age of majority. On February 9, 1961, Roberto filed in the trial court a petition praying that Basilio be ordered to continue supporting him until he has completed his education and training for a trade or vocation. The trial judge ordered Basilio to continue supporting Roberto. Basilio filed a petition for certiorari seeking annulment of respondent judge's order. However, during the pendency of the proceeding, Basilio died. *Held*: The law expressly provides that support includes education until the recipient shall have completed his training for some profession or trade or vocation, even beyond the age of majority. But since Basilio died during the pendency of the proceedings, his obligation to furnish support ceased (Article 300, New Civil Code).

ADOPTION

Non-resident aliens cannot adopt

Article 335 (4) of the New Civil Code provides: "The following cannot adopt . . . (4) non-resident aliens . . ." In *Ellis v. Republic*,[8] the issue was whether not being permanent residents in the Philippines, petitioners were qualified to adopt. *Held*: Article 335 (4) of the New Civil Code is too clear to require interpretation. The law

[6] G.R. No. L-18882, November 29, 1963.
[7] G.R. No. L-18135, July 31, 1963.
[8] G.R. No. L-16922, April 30, 1963.

unqualifiedly denies to petitioners the power to adopt anybody in the Philippines.

Article 335 of the New Civil Code is mandatory while Article 338 is directory

In *Brehm v. Republic*,[9] Brehm was a non-resident alien of the Philippines. He filed a petition however, to adopt his step-child. He argued that Article 335 of the New Civil Code which prohibits a non-resident alien to adopt was inapplicable because it covers adoption only for the purpose of establishing a relationship of paternity and filiation where none existed, but not where the adopting parents are not total strangers to the child. Petitioners further contended that they could adopt pursuant to Article 332 of the New Civil Code which expressly authorizes the adoption of a step-child by a step-father. *Held*: Article 338 should be construed in connection with Article 335. Article 335 clearly states that "The following cannot adopt . . . (4) non-resident aliens." It is therefore mandatory because it contains words of positive prohibition and is couched in negative terms, importing that the act required shall not be done otherwise than designated (50 Am. Jur. 51). On the other hand, Article 338 provides that "the following may be adopted: (3) step-child by the step-father or step-mother." This provision is merely directory and can only be given operation if the same does not conflict with the mandatory provisions of Article 335. Moreover, it is Article 335 that confers jurisdiction to the court over the case and before Article 338 may or can be availed of, such jurisdiction must first be established. There is no question that petitioner Brehm is a non-resident. By his own testimony, he supplied the conclusive proof of his status, and no amount of reasoning will overcome the same. For this reason he cannot adopt.

USE OF SURNAMES

The surname of the husband cannot be used by the adopted child, if the one adopting her is only the wife

In the case of *Johnston v. Republic*,[10] the issue was whether the surname of the husband could be used by the adopted child even if the one adopting her is only the wife. *Held*: Article 341 (4) of the New Civil Code which entitles the adopted minor to use the adopter's surname, refers to the adopter's own surname and not to her surname acquired by virtue of marriage. Since adoption gives the person adopted the same rights and duties as if he were a legitimate

[9] G.R. No. L-18566, September 30, 1963.
[10] G.R. No. L-18284, April 30, 1963.

child of the adopter (Article 341 (1), New Civil Code) much confusion would result if the minor herein were allowed to use the surname of the spouse who did not join in the adoption. For one thing, to allow the minor to adopt the surname of the husband of the adopter, would mislead the public into believing that he also had been adopted by the husband, which is not the case and when later, questions of successional rights arise, the husband's consent to the adoption might be presented to prove that he had actually joined in the adoption. It is to forestall befuddling situations pointed out above, and other possible confusing situations that may arise in the future, that the Court is inclined to apply strictly the provision in the New Civil Code to the effect that an adopted child can use the surname of the adopter herself, and not that which is acquired by marriage.

Legitimate child should use the surname of his father

In *Moore v. Republic,*[11] petitioner was an American citizen formerly married to J. Velarde, also an American citizen. Out of this wedlock William M. Velarde was born. This marriage was subsequently dissolved by a decree of divorce. After the finality of the divorce decree, petitioner contracted a second marriage with Don C. Moore. Thereafter the child, William Velarde, lived continously with the spouses up to the present time. The second husband treated the child as if he were his true father. In view of this harmonious relation, petitioner desired that the minor be able to use the surname Moore. *Held*: Article 364 of the New Civil Code specifically provides that legitimate children shall principally use the surname of their father. Indeed if the child, William M. Velarde be allowed to bear the surname of the second husband of the mother, should the second husband die or be separated by virtue of a decree of divorce, there may result a confusion as to his real paternity. In the long run the change may redound to the prejudice of the child in the community.

There is no legal prohibition against obtaining a judicial confirmation of a legal right

In *Asensi v. Republic,*[12] a child born out of wedlock was legitimated by the subsequent marriage of her parents. Hence a petition was filed for the change of the surname of the child to that of her father's since the child was formerly using the mother's surname. This petition was opposed by the Government on the ground that the judicial change of name is not necessary as the legitimate child can, without judicial approval, adopt her parent's surname (Article 272 in relation to Article 264 of the New Civil Code was cited). *Held*:

[11] G.R. No. L-18407, June 26, 1963.
[12] G.R. No. L-18047, December 26, 1963.

There is no legal prohibition against obtaining a judicial confirmation of a legal right. It may be a superfluity but it is not against the law, customs or morals.

CIVIL REGISTER

Errors or mistakes in the entries in the record of birth in the office of local Civil Registry if substantial cannot be summarily corrected

In two separate cases,[13] decided by the Court, the ruling laid down in *Ansaldo v. Republic*,[14] *Tan Su v. Republic*,[15] *Shualtz v. Republic*,[16] *Balete v. Republic* [17] and *Tian Sang v. Republic*,[18] were merely reiterated. The Court held that what are contemplated in Article 412 of the New Civil Code are mere corrections of mistakes that are clerical in nature and not those which may affect the civil status, or the nationality or the citizenship of the person involved. For if the matter refers to a substantial change which may affect the status or citizenship of a party, it should be threshed out in a proper action depending upon the nature of the case involved. What are authorized in the aforementioned article are merely harmless and innocuous changes, such as, the correction of a name that is merely misspelled, occupation of the parents, etc.

Civil Registry Law

In *Dy Kim Liong v. Republic*,[19] that Court held that the petition for the correction of an alleged mistake committed in the names of the petitioner and of his son in the registry was properly dismissed by the trial court but the grant of additional relief which authorized the registration and attachment to the birth certificate of the child, Reynaldo, of a certified true copy of the record of the Bureau of Immigration showing petitioner's name to be Dy Kim Liong is unauthorized as in effect it would be a virtual circumvention of Sections 10, 11, and 12 of Act No. 3753 or the Civil Registry Act.

PROPERTY

A house may be treated as chattel by the parties

Defendants, in *Navarro v. Pineda*,[20] obtained a loan from plaintiff and to assure the indebtedness, they executed a deed of real

[13] Castro v. Republic, G.R. No. L-17431, April 30, 1963; Lui Lin v. Republic, G.R. No. L-18213, December 24, 1963.
[14] G.R. No. L-10226, February 4, 1958.
[15] G.R. No. L-12140, April 29, 1959.
[16] G.R. No. L-10055, September 30, 1958.
[17] G.R. No. L-17332, November 29, 1961.
[18] G.R. No. L-15101, September 30, 1960.
[19] G.R. No. L-18608, December 26, 1963.
[20] G.R. No. L-18456, November 30, 1963.

estate and chattel mortgage whereby defendant Gonzales hypothecated a parcel of land and defendant Pineda, by way of chattel mortgage, mortgaged his residential house erected on a lot belonging to another. When the debt became due and demandable, defendants failed to pay. Hence plaintiff filed a complaint for the foreclosure of the chattel mortgage and for damages. *Issue*: Whether the chattel mortgage on the house is valid. *Held*: Yes. A house constructed on another's land may be mortgaged as personal property if so stipulated by the document of mortgage. The principle is predicated on the statement by the owner declaring his house to be a chattel, a conduct that estops him from subsequently claiming otherwise. However, with respect to persons who are not parties to the contract, and especially in execution proceedings, the house is considered as immovable property.

Possession—Use of force to recover possession of land

In *Savellano v. Diaz*,[21] defendant executed a public instrument conveying to plaintiff the exclusive and unlimited enjoyment of two hectares of land until such time that said defendant shall have returned the consideration thereof to the plaintiff. Since then, plaintiff took possession of the property until 1956 when defendant, without returning the consideration, forcibly entered upon the property. Hence a complaint for forcible entry was filed by plaintiff against defendant. Judgment was rendered in favor of plaintiff. On appeal, defendant contended that he had already served notice of his intention to withdraw the possession of the property from plaintiff but the latter ignored the demand. *Held*: According to Article 536, "possession may not be acquired through force or intimidation as long as there is a possessor who objects thereto. He who believes that he has an action or a right to deprive another of the holding of a thing must invoke the aid of the competent court if the holder should refuse to deliver the thing."

Usufruct—Usufructuary not entitled to indemnity for improvements

Antonia and her brother Arturo were lessee of two lots. Antonia's husband built a house, well and water tanks on the leased property. Later on, Antonia and Arturo bought the lots. A small part of the eaves of the house of Antonia abutted on the lot of Arturo. The improvements covered 24.90 square meters of Arturo's lot. After the death of Antonia and her husband, Juanita inherited the property. Arturo also died and left three children who succeeded to the pro-

[21] G.R. No. L-17944, July 31, 1963.

perty. Subsequently, two of Arturo's children sold their shares to Soriente, petitioner herein. Soriente advised Juanita to remove the aforementioned improvements on his lot. In reply, Juanita offered to buy the property. Soriente refused. The question arose as to whether Juaunita should be reimbursed for the improvements made by her parents on the lots. *Held*: No. The rights of the parties are governed by Article 1573 and 487 of the Spanish Civil Code because the well, water tanks and house were constructed in 1912, when the Spanish Civil Code was in force in the Philippines. Article 1573 states that "a lessee shall have with respect to the useful and voluntary improvements, the same rights which are granted to usufructuaries." And Article 487 provides that "the usufructruary may make on the property held in usufruct any improvements, useful or recreative which he may deem proper, provided he does not change its form or substance; but he shall have no right to be indemnified therefor. He may, however, remove such improvements, should it be possible to do so without injury to the property." [22]

DONATION

Annulment due to incapacity of the other party

In a donation *inter vivos*, the three elements of a contract are present, namely: consent, subject matter and consideration. Hence the rules on contracts are suppletory in effect. In *Davao City Women's Club v. Ponferada*,[23] the Provincial Board of Davao City approved a resolution donating a city lot to the Women's club of Davao. Afterwards, at the request of Ponferada, the Board passed an application granting her application to lease a portion of the lot donated to the Club. Later, the Board passed a resolution revoking both donation and lease. But still later, the Board again approved another resolution donating to the same Women's Club, the entire lot. The donation was accepted by the Club's officers and approved by the Secretary of the Interior. Moved by representations of Ponferada, the Office of the President suggested, and the Board passed, a resolution aggregating the portion for lease. The Club protested. The Board contended that it had the right to annul the donation on the ground that the gift had been made to the Women's Club of Davao City and not to plaintiff corporation, Davao City Women's Club, Inc. *Held:* The Province of Davao, having duly approved the donation, may not allege the incapacity of the Club to enter into the contract of donation because persons *sui juris* cannot avail them-

[22] Soriente v. Court of Appeals, G.R. No. L-17343, August 31, 1963.
[23] G.R. No. L-11843, May 31, 1963.

selves of the incapacity of those with whom they contracted in order to annul their contracts.[24]

SUCCESSION

Lower court has authority to pass upon the question whether or not certain persons are related to the decedent and entitled to share in the estate

In *Castellvi v. Castellvi*,[25] Mrs. Raquiza was adopted by Alfonso de Castellvi during his lifetime. When Alfonso died in Spain, his brother Juan, initiated a special proceeding for the settlement of his estate. Mrs. Raquiza who was then about thirteen years old and under the care of Emilia Trono, objected to the intestacy upon the ground that the decedent had left a will, which she presented for probate. Jose and Consuelo Castellvi opposed the probate of the will alleging that they were the acknowledged natural children of the decedent, and that the latter "did not have a sound dispositive mind when his last will and testament was executed," basing their allegations upon an agreement with Emilia Trono who among others recognized the oppositors as the duly acknowledged children of the deceased. *Issue:* Whether the lower court had authority to pass upon the question whether or not oppositors were related to the decedent and entitled to share in the estate, as well as to intervene in the case, considering that the agreement entered into as aforesaid, had been approved by an order of the court, which had become final and executory, no appeal having been taken therefrom. *Held:* Yes. The oppositors cannot insist that they are the acknowledged natural children of the decedent based upon the agreement signed by Emilia Trono, said agreement being null and void in the nature of a compromise expressly invalidated by Article 1814 of the Civil Code of Spain (now Article 2035 of the New Civil Code), which provides that: "No compromise upon the following questions shall be valid: (1) the civil status of a person x x x." Moreover, the agreement had made without any consideration whatsoever, in so far as Mrs. Raquiza was concerned.

When title to property can be passed upon on testate or intestate proceedings

The rulings laid down in Pascual v. Pascual,[26] and Cunanan v. Amparo,[27] were reiterated in Bernardo v. Court of Appeals.[28] The

[24] Art. 1397: The action for the annulment of contract may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted.

[25] G.R. No. L-17630, October 31, 1963.

[26] 3 Phil. 561.

[27] 80 Phil. 229.

[28] G.R. No. L-18148, February 28, 1963.

Court held that as a general rule, questions as to title to property cannot be passed upon on testate or intestate proceedings *except* in the following cases: (1) where one of the parties prays merely for the inclusion or exclusion of property from the inventory, in which case the probate court may pass provisionally upon the question without prejudice to its final determination in a separate action, (2) when the parties interested are all heirs of the deceased, it is optional for them to submit to the probate court a question as to title to property, and when so submitted, said probate court may definitely pass judgment thereon, and (3) with the consent of the parties, matters affecting property under judicial administration may be taken cognizance of by the court in the course of intestate proceedings, provided interested of by the court in the course of intestate proceedings, provided interest of third persons are not prejudiced.

Extra-judicial partition made without the consent of other heirs is fraudulent and vicious

In *Villaluz v. Neme*,[29] the extra-judicial partition of a parcel of land made by three aunts among themselves to the exclusion and without the consent of the other heirs was held by the court to be fraudulent and vicious.

PRESCRIPTION

Moratorium Law

The period of prescription as far as causes of action based on promissory notes are concerned, was suspended on December 8, 1941 and it remained so suspended after the war by reason of the Moratorium Law. It started to run only in May, 1953 when said law was declared void.[30]

Acquisitive prescription of land sold under pacto de retro

Where the sale is subject to the owner's right of redemption, the purchaser's possession is in subordination to the title of the owner prior to the expiration of the redemption period, although it may become hostile thereafter.[31]

Acquisitive Prescription—Possession by mere tolerance of owners

The fact that petitioners were permitted to enter the land for the purpose of gathering fruits thereof did not make them possessors of the property in the concept of owners to entitle them to claim

[29] G.R. No. L-14676, January 31, 1963.
[30] Reich v. Schwesinger, G.R. No. L-16525, January 31, 1963.
[31] Diñoso v. Court of Appeals, G.R. No. L-17738, April 22, 1963.

prescription. Such possession which was sporadic and by mere tolerance of the owners cannot be the basis of a claim of ownership by prescription.[32]

Prescription of action to collect tax based on compromise agreement

In *Republic v. Far East American Commercial Co.*,[33] the Collector of Internal Revenue assessed and demanded from defendant company the payment of deficiency sales tax on its gross sales for 1946-47. The parties reached a compromise, but defendants failed to pay. Hence the Collector filed a complaint praying that judgment be rendered declaring the bond forfeited and defendants to pay the tax due. *Held:* An action to collect tax based on a compromise agreement is one predicated upon contract and the prescriptive period that would bar the action is that provided by the New Civil Code, not by the National Internal Revenue Code.

Action for reliquidation

In *Yusay v. Tugba*,[34] respondent tenants filed in the lower court, separate petitions against landholder Yusay, seeking reliquidation of their respective palay produce for the years 1952-1953; 1956-57, inclusive. In his answer Yusay put up the affirmative defense, among others, that the tenants' causes of action had prescribed. *Held:* Since the Agricultural Tenancy Act makes no mention of the period within which an action for reliquidation may be brought, the provisions of the New Civil Code on prescription applies, (Article 1145), which is 6 years, since there was no written contract between the parties.

Fictitious pact de retro sale; Start of prescriptive period

In *Tormon v. Cutanda*,[35] a complaint for reformation of instrument was filed against defendants in November, 1960. Tormon averred that she borrowed money from said defendants and offered her land as security; that while the true agreement was that the property would be deemed mortgaged, the parties executed a document purporting to be a sale with right of repurchase; that when she offered to redeem the land, defendants instead consolidated their title in September, 1960 and obtained a new certificate of title in their names. The lower court dismissed the complaint on the ground that the 10-year limitation period prescribed by Article 1144 should be counted from October 7, 1949 when the *pacto de retro* deed of

[32] Asturias v. Court of Appeals, G.R. No. L-17895, September 30, 1963.
[33] G.R. No. L-17475, February 28, 1963.
[34] G.R. No. L-16347, February 27, 1963.
[35] G.R. No. L-18785, December 26, 1963.

sale was executed, that date being the time when plaintiff's cause of action accrued. *Held:* Tormon's cause of action arose only when defendants made known their intention by overt acts, not to abide by the true agreement. And this happened when defendants executed the affidavit of consolidation of the title allegedly acquired by defendants under the fictitious *pacto de retro* sale. It was only then that the period of extinctive prescription began to run against her. Therefore, since the consolidation affidavit was made in September, 1960 and the complaint was filed in November, 1960, just 2 months afterwards, the action of Tormon has not prescribed.

Interruption of prescription of actions

Ciriaco and Gregoria had 5 children—Isabelo, Lourdes, Clemente, Josefina and Cresencia. Gregoria died before the second world war together with Clemente. During their lifetime, the spouses Ciriaco and Gregoria acquired properties. On July 2, 1947, Ciriaco, the surviving husband and 3 children (Isabelo, Lourdes and Cresencia) sold a parcel of land to defendant Tiano. At the time of the sale, Cresencia was a minor and Josefina did not know about it. On June 20, 1957, Josefina and Cresencia filed an action for partition and recovery of real estate with damages, against Tiano. The judicial summons was issued on June 21, 1957 and received by defendant on July 2, 1957. Defendant claimed that he was the absolute owner of the land by acquisitive prescription of 10 years from the date of the purchase. *Held:* Article 1155 of the New Civil Code provides that "the prescription of actions is interrupted when they are filed before the Court, when there is any written extrajudicial demand by the creditors and when there is any written acknowledgment of the debt by the debtor." Since the sale of the property in question took place on July 2, 1947, the 10-year period within which to file the action had not yet elapsed on June 20, 1957 when the complaint was presented. While the sale took place before the effectivity of the New Civil Code and the law then on the matter (Act No. 109) contained no specific provision on the interruption of the prescriptive period, the established rule then, as it is the rule now, is that the commencement of the suit prior to the expiration of the applicable limitation period, interrupts the running of the statutes as to all parties to the action. The fact that summons was only served on defendant on July 8, 1957 which coincidentally was the end of the 10 year period, is of no moment, since civil actions are deemed commenced from the date of the filing and docketing of the complaint, without taking into account the issuance and service of summons.[36]

[36] *Cabrera v. Tinio*, G.R. No. L-17211, July 31, 1963.

Effect of extra-judicial demand under Act No. 190

In the case of *Philippine National Bank v. Dionisio*,[37] judgment was rendered in favor of plaintiff against defendants for the payment of various sums of money on December 21, 1949. On October 8, 1960, plaintiff filed a complaint for the revival of the aforesaid judgment. Defendants moved to dismiss claiming that the action was barred by the Statute of Limitations. Plaintiff opposed the motion, arguing that although more than 10 years had elapsed the aforesaid judgment was rendered, its action had not prescribed because the prescriptive period had been legally interrupted when plaintiff sent 2 extra-judicial written demands to defendants for the satisfaction of the judgment. *Held:* Article 1155 provides, among others, that the prescription of actions is interrupted when there is a written extra-judicial demand by creditors. *But this article is not applicable to the instant case.* The judgment in question become final on December 21, 1949, from which date prescription began to run. The New Civil Code took effect Agust 30, 1950 and Article 116 thereof states that "prescription already running before the effectivity of the Code shall be governed by laws previously in force; But if since the time the Code took effect the entire period required for prescription should elapse, the present Code shall be applicable even though by the former laws a longer period might be required." The law applicable, therefore, in determining whether prescription had been interrupted in the case at bar, is Act No. 190. Section 50 of said Act does not include, as a ground for suspending the running of the period, a written extra-judicial demand made by the creditor. Hence the present case has already prescribed.

OBLIGATIONS

Presumption of payment of prior obligation not applicable

In *Ledesma v. Realubin*,[38] Ledesma purchased, on credit, gasoline and motor oil from a service station owned by Realubin. Due to repeated demands, Ledesma sent to Realubin a letter pleading for time to settle her obligation. However, in her answer to the complaint filed by Realubin, Ledesma denied the purchases and then tried to prove that the amounts being collected from her had been fully paid. Ledesma invoked Article 1176 of the new Civil Code[39]

[37] G.R. No. L-18342, September 19, 1963.
[38] G.R. No. L-18335, July 31, 1963.
[39] Art. 1176: The receipt of the principal by the creditor, without reservation with respect to the interest, shall give rise to the presumption that said interest has been paid.
The receipt of a later installment of a debt without reservation as to prior installments, shall likewise raise the presumption that such installments have been paid.

and claimed that inasmuch as she had paid her October 1956 purchases, it is to be presumed that her prior purchases were likewise paid because her account was a running account. *Held:* Granting that Article 1176 can be invoked, there is, nevertheless, no merit in the contention of Ledesma. Realubin proved as a fact that the prior purchase were not paid and that the October purchases were for cash. Between a proven fact and a presumption *pro tanto* the former stands and the latter falls.

Obligation with a period

The Court, in *Enriquez v. Ramos,*[40] held that the stipulation in the mortgage contract that the obligation was to be "without interest, payable within 90 days from his date, provided that in case of default it shall bear interest at the rate of 12% per annum" clearly fixes a date of maturity, the stipulated interest being nothing more than a penalty designed to induce the debtor to pay on or before the expiration of the 90 days. Hence, according to the Court, there was no need for it to set another due date.

Failure to retrieve promissory note evidence indebtedness

In *Raquiza v. Ofilada,*[41] defendant insisted that the amount she promised to pay had already been paid. *Held:* But the promissory note evidencing the indebtedness had not been retrieved from the plaintiff and there was nothing on its face to show that it was ever paid.

Consignation—Temporary receipt issued by Clerk of Court for the deposit, valid

The case of *Yap v. Tingin,*[42] involved on action for the partition of a parcel of land owned in common by plaintiff and defendants. In view of the impracticability of a physical division, the Court gave defendants 5 days within which to purchase plaintiff's share and if they fail, plaintiff may purchase defendant's share within the same period. Defendants deposited with the clerk of court the purchase price. Plaintiff, however, claimed that the deposit was made outside the period fixed by the court because although the receipt for said deposit was issued by the clerk of court on time, the receipt by the cash officer was given only after the due date. *Held:* The decision of the lower Court required defendants to deposit with the clerk of court the purchase price of plaintiff's share in the property and

[40] G.R. No. L-16797, February 27, 1963.
[41] G.R. No. L-17182, September 30, 1963.
[42] G.R. No. L-18943, May 31, 1963.

this was precisely what defendants did. That the receipt for said deposit was isued by the clerk of court and not by the cash officer does not after the fact that defendants substantially complied with the court's order and carried out all the steps required on their part.

Compensation—certificate of indebtedness against real estate taxes

In *De Borja v. Gella*,[43] plaintiff offered to pay his real estate taxes for 1958 for properties located in Manila and Pasay with 2 negotiable backpay certificates. The City Treasurers of both cities rejected the offer. *Issue:* Whether compensation could be invoked to extinguish the obligation. *Held:* Compensation cannot be invoked because with regard to the certificates, the creditor is plaintiff, while the debtor is the Republic. And with regard to taxes, the creditors are the cities of Manila and Pasay while the debtor is the plaintiff. Each one of the obligors concerning the 2 obligations is not at the same time the principal creditor of the other. Hence, according to Article 1879 of the New Civil Code,[44] compensation cannot take place.

When personal qualifications of debtor had been considered in the creation of the contract

In *Javier Security Special Watchman Agency v. Shell Craft and Button Corporation*,[45] Swiryn engaged the services of plaintiff agency to guard the premises of defendant corporation. The contract was supposed to have expired December 1, 1957. Javier died on May 9, 1957. Swiryn engaged the services of another agency on the same day. The heirs of Javier sued defendant for breach of contract with damages. The Court found that the primordial consideration which prompted Swiryn to enter into the contract was the personality and qualifications of the deceased who supervised personally the watchmen employed and controlled by him. To the corporation, it was immaterial who were the guards assigned by Javier to watch the establishment. Hence the Court held that where the personal qualifications of the debtor had been taken into consideration in the creation of the obligation, the creditors cannot be compelled to accept the performance of the obligation by a third person. The spirit of this rule is latent in Articles 1311, 1236 and 1726 of the New Civil Code.[46]

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[43] G.R. No. L-18330, July 31, 1963.

[44] Art. 1279: In order that compensation may be proper, it is necessary: (1) that each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other.

[45] G.R. No. L-18639, January 31, 1963.

[46] Art 1311: Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the

Only actual creditors can ask for rescission of contracts made to defraud them

In *Marsman Investments v. Philippine Abaca Development Co.*,[47] Marsman Investments and Marsman Co., Inc., waived and released the credits they held against PADCO 2 years before the present action was filed. There was no allegation or evidence of invalidity of these corporate releases. *Held:* Plaintiff corporations ceased to be creditors of PADCO and were thereafter deprived of any interest in assailing the validity of the transfer of its properties to Mary Marsman. Under Article 1381 (3) of the New Civil Code, only actual creditors can ask for the rescission of the conveyance made by their debtors in favor of strangers.

Annulment on the ground of fraud or mistake

Plaintiff's uncorroborated testimony in *Gutierrez v. Villegas*[48] was to the effect that she asked defendants for a loan, but instead, defendants prepared a document of sale which she signed without reading on account of her poor eyesight and her failure to bring her eyeglasses with her. She further claimed that in signing the deed of sale, her consent was vitiated by gross mistake because defendants deceived her as to the actual value of the property. Plaintiff depicted herself as an unschooled simpleton while picturing the defendants as intelligent and clever persons. *Held:* No fraud or mistake vitiated the consent of the plaintiff. As the trial court found, her lack of formal education was no handicap to her ability to read and write the Tagalog dialect in which the deed of sale was couched and she is a woman of average intelligence capable of understanding the consequences of a signature to a document. As to her alleged poor eyesight, it was shown at the trial that she readily identified a letter from the BIR even without eyeglasses. A comparison of said letter and the deed of sale showed no appreciable difference at all.

Statute of Frauds; Sale of real property

The Statute of Frauds applies only in an executory sale of real property, not in one which has been consummated by the delivery of the property in the vendee.[49]

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contract are not transmissible by their nature, or by stipulation or by provision of law. . . .

Art. 1236: The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary. . . .

Art. 1726: When a piece of work has been entrusted to a person by reason of his personal qualifications, the contract is rescinded upon his death. . . .

[47] G.R. No. L-19160, December 26, 1963.

[48] G.R. No. L-17117, July 31, 1963.

[49] Soriano *et al.* v. Heirs of Magali, G.R. No. L-15133, July 31, 1963.

Action to declare null and void illegal contracts, imprescriptible

A contract designed to hide a usurious agreement not only violates the law but contravenes public policy. Such a contract cannot be countenanced and is therefore illegal and void from its inception. Such being the case, the prayer for the declaration of its nullity is imprescripticle under Article 1410 of the New Civil Code. Mere lapse of time cannot give efficacy to contracts that are null and void.[50]

TRUST

Trustees cannot invoke prescription or laches

In *Custodio v. Casiano*,[51] petitioners claimed that the title to the land was issued in the name of respondents' predecessor-in-interest merely as petitioners' trustee. Respondents failed to prove the contrary. There being a relation of trust, petitioner's right to bring an action to prevent the sale of said land by respondents cannot be deemed barred by prescription or laches.

Reasonableness of future fees of trustee, how determined

The time to determine the reasonableness of the future fees of the trustee is when he files a claim for the same. Reasonableness of the fees cannot be decided in advance, since it depends on variable circumstances, such as the character and powers of trusteeship, the risk and responsibility, time and skill required in the administration of the trust, as well as the care and management of the estate.[52]

SALES

When buyer is deemed to have accepted the goods

In *Smith Bell & Co. v. Gimenez*,[53] the Municipal Treasurer of Paniqui, Tarlac, through the Bureau of Supply, ordered one typewriter from petitioner. The typewriter was received by the guard of the municipal building in the afternoon of August 30, 1958. Ten days later the municipal building was totally razed by fire. Shortly after, petitioner sent a bill covering the cost of the typewriter. The municipal council adopted a resolution requesting petitioner to condone payment of the machine, it having been burned after its delivery. Petitioner declined the request. Thereafter, the municipal treasurer submitted to the provincial treasurer a voucher covering the payment of the typewriter to the petitioner. The Auditor Gen-

[50] Asturias v. Court of Appeals, *supra* note 32.
[51] G.R. No. L-18977, December 27, 1963.
[52] Araneta v. Perez, G.R. No. L-16187, February 27, 1963.
[53] G.R. No. L-17167, June 29, 1963.

eral disapproved the same on the ground that there was no delivery and that the typewriter was never presented for inspection and verification as agreed upon. *Issue:* Whether there was delivery of the typewriter. *Held:* Yes. The testimony of the guard who personally received the same establishes it and the testimony of the then municipal mayor who saw the delivery and ordered the taking of the machine to his office, undisputably corroborates it. If these are not sufficient, the official act of the municipal council in requesting petitioner to condone payment shows beyond doubt that the typewriter was actually delivered to the municipality.

Conditional Sale; Stipulation that property would remain at buyer's risk, valid

Defendant, in *Sun Brother's Appliances v. Perez* [54] bought from plaintiff one air conditioner under a conditional sale agreement.[55] The air conditioner was delivered and installed in the office of the defendant but it was totally destroyed by fire before it was fully paid. Hence this action to recover the balance of the purchase price. The conditional sales agreement contained the stipulation that title to the air conditioner shall vest in the buyer only upon full payment of the entire account, but if said property be lost, damaged or destroyed, he shall suffer such loss. *Held:* This stipulation is neither contrary to law nor to morals or public policy. Such stipulation is legal and based on a sound policy in conditional sales.

Voluntary desistance in foreclosing a chattel mortgage and suing instead

Article 1484 of the New Civil Code provides: "In a contract of sale of personal property, the price of which is payable in installments, the vendor may exercise any of the following remedies: (1) exact fulfillment of the obligation should the vendee fail to pay; (2) cancel the sale should the vendee's failure to pay cover 2 or more installments or (3) foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover 2 or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void." Plaintiff in *Radiowealth v. Lavin,*[56] filed a complaint to recover from defendants the balance of the purchase price of a certain machinery. The machinery was bought on installment and to secure the balance of the purchase

[54] G.R. No. L-17527, April 30, 1963.
[55] Art. 1478: The parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price.
[56] G.R. No. L-18563, April 27, 1963.

price, a chattel mortgage was constituted on the machinery. Defendants never paid any of the installments. But prior to the filing of the present action by plaintiff, the latter notified defendants of its desire to foreclose the chattel mortgage to which defendants offered no objection. However, the foreclosure was not pushed through to its finality. *Issue:* Whether plaintiff can still sue on the balance of the purchase price. *Held:* Yes. Where the mortgagee, after informing the mortgagor of his intention to foreclose the mortgage, voluntarily desisted from consummating the sale, without gaining any advantage and causing the remedy of foreclosure because of its incomplete implementation. Therefore, he is not barred from suing on the unpaid account.

Sale of realty to different vendees

A parcel of land was registered in the name of A. In 1939, he sold the land to B, which sale was never registered. In 1941, B sold the land to C, which sale was also not registered. In 1944, C resold the land to but instead of executing a formal deed of sale, he merely delivered to A the muniments of title over the land. In accordance with said verbal sale, A took possession of the land, continuing to do so to the present and paying real estate tax thereon. In the meantime, C died. In 1946, C's spouse sold the land to D, plaintiff herein. The sale was registered under the provisions of Act No. 3344. This is now an action by D against the heirs of A for the recovery of the said parcel of land. *Held:* The heirs of A are entitled to the land. According to Article 1544 of the New Civil Code, if immovable property is sold to different vendees, "the ownership shall belong 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 possession." A obtained possession of the land in good faith in 1944. D never did. Furthermore, the registration by D of the sale in his favor was made under Act 3344, which refers to properties not registered under Land Registration Act, and hence, was not effective for purposes of Article 1544 of the New Civil Code.[57]

Double sale of real estate—validity of deeds of sale questioned

In *Espiritu v. Valerio*,[58] respondent claimed ownership of the lot in question by purchase from the former owner, Pelagia Vegilia, as evidenced by a deed of sale dated January 31, 1955. On the other hand, petitioners claimed that they inherited the lot from Santiago Apostol who bought it from Mariano Vegilia on June 3, 1934, who

[57] Soriano v. Heirs of Magali, *supra* note 49.
[58] G.R. No. L-18018, December 26, 1963.

in turn had acquired it from Pelagia Vegilia on May 26, 1932. The deed of sale in favor of the respondent was registered on June 16, 1955 while those in favor of the predecessors-in-interest of petitioners were registered 11 days before. The present appeal depends entirely upon the validity of the deed of sale allegedly executed by Pelagia Vegilia in favor of Mariano Veligia and of the sale allegedly executed by the latter in favor of Santiago Apostol. *Held:* Regarding the genuiness of the questioned documents, the Court of Appeals found that they had been falsified; hence, null and void. The property belongs to respondent.

Legal Redemption—Sale made after the properties had been partitioned

Article 1620 provides that "a co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or any of them, are sold to a third person." In the case of *Umengan v. Manzano,*[59] the Court held that this right of redemption cannot be invoked where the sale was made after the properties owned in common had already been partitioned.

Legal Redemption—when adjoining owner not entitled to right of pre-emption

Article 1622 of the New Civil Code provides that "whenever a piece of urban land which is so small and so situated that a major portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation, is about to be resold, the owner of any adjoining land has a right of pre-emption at a reasonable price x x x x." In *Soriente v. Court of Appeals,*[60] the lot purchased by Soriente was sufficiently big in area and so situated that the major portion or the whole area thereof could serve comfortably as a workshop which he was putting up in the exercise of his profession as engineer. The facts also show that Soriente had no intention then or in the future to sell the property to any person. The owner of the adjoining lot, therefore, may not invoke the right of pre-emption granted under Article 1622 of the New Civil Code.

LEASE

The contract of lease may be of things, or of work and services.[61] In the lease of work or service, one of the parties binds

[59] G.R. No. L-6036, February 28, 1963.
[60] *Supra* note 22.
[61] Article 1642, NEW CIVIL CODE.

himself to execute a piece of work or to render to the other some service for a price certain [62] and "when a piece of work has been entrusted to a person by reason of his personal qualifications, the contract is rescinded upon his death." [63]

The above quoted provisions of the New Civil Code were illustrated in the case of *Javier Security Special Watchman Agency v. Shell-Craft & Button Corp.*[64] Here, the agreement stipulated that the agency operated alone by deceased was "to guard the establishment of defendant by furnishing special guards or watchmen." Before the expiration of the contract, the operator of the agency died. *Held:* The contract was terminated by the death of the operator.

Does the lease of a building necessarily include the lease of the lot on which it is built?

Yes, said the Court, in *Duellome v. Gotico.*[65] In this case, it was held that the lease of a building would naturally include the lease of the lot on which it was built and that the rentals of the building include the rentals of the lot.[66] Furthermore, according to the Court, under the New Civil Code, the occupancy of a building or house not only suggests but implies the tenancy or possession in fact of the land on which it is constructed. An extensive elaboration of this rule was discussed by the Supreme Court in the case of Baquiran v. Baquiran,[67] citing Martinez v. Bagonus [68] and De Guz-

Liability of sublessee under Article 1652

man v. De la Fuente.[69]

Liability of sublessee under Article 1652

The sublessee is subsidiarily liable to the lessor for any rent due from the lessee. However, the sublessee shall not be responsible beyond the amount of rent due from him, in accordance with the terms of the sublease, at the time of the extrajudicial demand by the lesser. Payments of rent in advance by the sublessee shall be deemed not to have been made, so far as the lessor's claim is concerned, unless said payments were effected in virtue of the custom of the place.[70]

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[62] Article 1644, NEW CIVIL CODE.
[63] Article 1726, NEW CIVIL CODE.
[64] *Supra* note 45.
[65] G.R. No. L-17846, April 29, 1963.
[66] City of Manila v. Chan Kian, G.R. No. L-10276, July 24, 1957; Phil. Consolidated Freight Lines, Inc. v. Emiliano Ajon, G.R. Nos. L-10206-08, April 16, 1958.
[67] 53 O.G. p. 1130.
[68] 28 Phil. 550.
[69] 55 Phil. 501.
[70] Article 1652, NEW CIVIL CODE.

In the *Duellome* case [71] the interpretation of this provision, made in the earlier case of Sipin v. CFI of Manila [72] was reiterated. Said the Court: "By virtue of the above article, *the sublessee, therefore, can invoke no right superior to that of his sublessor* and the moment the latter is duly ousted from the premises the former has no leg to stand on. The sublessee's right, if any, is to demand reparation for damages from his sublessor, should the latter be at fault." (Emphasis supplied).

Interpretation of the lease contract

In *Litao v. National Association of Retired Civil Employees,*[73] the lease contract provided that the duration of the same shall be for a period of 5 years from a certain data, subject however to "further extension with respect to the terms and conditions regarding payment by the lessor of total expenses incurred by the lessee, which shall be fully satisfied." *Held:* The words "further extension" mentioned in the contract does not refer to the term of repayment by the lessor of the amounts spent by the lessee for improvements, for the reason that "no such extension would ever be required by the lessor." The obvious import of the stipulation is that the lease is automatically to be extended beyond its original terms (if need be)—until the lessee is repaid by the lessor, or until the accumulated fruits and income of the property since the expiration of the original period of lease, should equal the unpaid balance due to the lessee. The Court further held that the lessor, under such a stipulation, has the right to terminate the lease by reimbursing the balance of the lessee's expenditures, and demand from the lessee, rentals and income of the property received by him, or alternatively, to require that the lessee should apply the said rentals and income to the payment of the balance due, turning over any excess to the lessor.

Action for unlawful detainer

A cause of action for unlawful detainer against the lessee exists where the lessor increases the rental which does not appear to be exhorbitant and the lessee fails to pay the increased rentals.[74]

Lessor's obligations

Under Article 1654 of the New Civil Code, "the lessor is obliged: (1) To deliver the thing which is the object of the contract in such

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[71] *Supra*, note 65.
[72] 74 Phil. 649; *See* Madrigal v. Ang Sam To, 46 O.G. p. 2173.
[73] G.R. No. L-18998, July 31, 1963.
[74] Pilar G. Vda. de Kraut v. Manuel Lontok, G.R. No. L-18374, February 27, 1963.

a condition as to render it fit for the use intended; (2) To make on the same during the lease all the necessary repairs in order to keep it suitable for the use of which it has been devoted, unless there is a stipulation to the contrary; (3) To maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract."

Under the above-quoted provisions, the Court held in the case of *Rivera v. Halili* [75] that the failure of the lessee to take possession of the leased fishpond on account of the presence of persons unwilling to vacate the premises because of some previous act or transaction of the lesser was a breach of the obligation of the lessor "to deliver the thing which is the object of the contract is such a condition as to render it fit for the use intended" as well as of his obligation "to maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract."

Questions of lease under J.P. jurisdiction

In *Ora-a v. Judge,*[76] it was held that where the issue is the right of a party as *lessee* of the government, the justice of the peace has jurisdiction over the case. Here, Mrs. Bayot, *did not claim to be the owner* of the foreshore land. And Ora-a *did not maintain he was the owner.* (Italics supplied) There was therefore, no question of ownership which was beyond the jurisdiction of the justice of the peace. The right to recover detained land was the only issue.

Termination of lease

Article 1669 of the New Civil Code provides: "If the lease was made for a determinate time, it ceases upon the day fixed, without the need of a demand."

In the case of *Kraut v. Lontoc,*[77] the Court held that "where the lessee was occupying the premises in question on a month to month basis, it cannot be denied that the lesser had the right to terminate the lease at the end of the month."

PARTNERSHIP

The death of a partner shall dissolve the partnership, unless there is an agreement to the contrary. A deceased partner is no longer associated in the active business of the partnership. This

[75] G.R. No. L-15159, September 30, 1963.
[76] G.R. No. L-16711, December 24, 1963.
[77] *Supra* note 74.

dissolution may be partial or total. Partial dissolution is effected when the surviving partners continue the business among themselves. There is total dissolution when the business is not continued by the partners and they proceed to the liquidation of the partnership's assets.[78]

Interpretation of agreement not to dissolve partnership upon death of partner

In *Goquiolay v. Sycip* [79] the articles of co-partnership expressly stipulated that "in the event of the death of any of the partners at any time before the expiration of said term, the co-partnership shall not be dissolved but will have to be continued and the deceased partner shall be represented by his heirs or assigns in said co-partnership." Here, one of the partners died before the expiration of the partnership life. The deceased partner was represented by the widow who sold 3 parcels of land. *Issue:* Whether under the stipulation above mentioned the substitute or succeeding partner because a limited or general partner. *Held:* The articles did not provide that the heirs of the deceased would be merely *limited* partners; on the contrary they expressly stipulated that in case of death of either partner "the co-partnership x x x will have to be continued" with the heirs or assigns. It certainly could not be *continued* if it were to be converted from a general partnership *into a limited* partnership, since the difference between the two kinds of associations is fundamental, and specially because the conversion into a limited association would leave the heirs of the deceased partner without a share in the management. Hence, the contractual stipulation actually contemplated that the heirs would become *general partners* rather than limited ones. (Italics supplied).

To sell is within the powers of general partner

Another question raised in the *Goquiolay* Case [80] was whether the sale of 3 parcels of land executed by the widow were made in excess of her powers as general partner. *Held:* In a 7 to 4 decision, the Court ruled that since the sale by the widow was in conformity with the express objective of the partnership—"to engage . . . in buying *and selling* real estate,"—it cannot be maintained that the sale was made in excess of her powers as a general partner.

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[78] RIVAS-ABEJURO, NOTES ON LAW ON PARTNERSHIP 86 (1958 ed.); Art. 1830, par. 5, NEW CIVIL CODE.

[79] G.R. No. L-11840, December 10, 1963.

[80] *Ibid.*

LOAN

The Moratorium Law

The statute of limitations was suspended on December 8, 1941 upon the outbreak of World War II.[81] Moreover, the Moratorium Law, which was in force from May 1945 to May 1953[82] interrupted the running of the prescriptive period. Thus, in *Reich v. Schwesinger*[83] the Court held that when the present action was commenced on June 21, 1951, the 10-year period of prescription for bringing action on 2 promissory notes executed in 1937 had not yet elapsed.

GUARANTY

Article 2079 of the New Civil Code provides that "an extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty . . ."

Guaranty not extinguished when extension was granted by persons not creditors on bond

In *General Insurance & Surety Corp. v. Republic*[84] the Court interpreted Articles 2054 and 2079 of the New Civil Code. On May 15, 1954, the Central Luzon Educational Foundation, Inc. and the General Insurance Surety Corp. posted in favor of the Department of Education a bond which was required by said Department. The Foundation was operating the Sison and Aruego College of Urdaneta, Pangasinan and "to guarantee the adequate and efficient administration of said school or college and the observance of all regulations . . . and compliance with all obligations, including the payment of the salaries of all its teachers and employees, past, present and future, . . ." the bond was posted in the amount of ₱10,000.00. It appeared that on the date of the execution of the bond, the Foundation was indebted to two of its teachers for salaries, to wit: to Remedios Laoag, the sum of ₱695.64 and to H.B. Arandia, the sum of ₱820.00 or a total of ₱1,505.64.

On February 4, 1955, Remedios Laoag and the Foundation agreed that the latter would pay the former's salaries, which were then already due, on March 1, 1955. Demand for the above amount having been refused, the Solicitor General, in behalf of the Republic of the Philippines, filed a complaint for the forfeiture of the bond.

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[81] Adela de Montilla v. Pacific Commercial Co., G.R. No. L-8223, December 20, 1955.

[82] *See* Rutter v. Esteban, G.R. No. L-3708, May 18, 1953.

[83] *Supra* note 30.

[84] G.R. No. L-13873, January 31, 1963.

The Surety maintained that it was released from the obligations under the bond when Remedios Laoag extended the time to March 1, 1955. In support of this proposition, the Surety cited Article 2079 [85] of the New Civil Code. It also contended that it cannot be made to answer for more than the unpaid salaries of H.B. Arandia, which it claimed amounted to only ₱820.00 because of Article 2054 [86] of the New Civil Code. *Issues:* (1) Was the guaranty extinguished by the extension granted by Remedios Laoag as provided by Article 2079? (2) Was the Surety liable for the whole amount of the bond? *Held:* (1) Article 2079 is not applicable because the supposed extension of time was granted not by the Department of Education or the government but by the teachers. As already stated, the creditors of the bond were not the teachers but the Department of Education or the government. (2) The Surety is liable for the whole amount of the bond. The penal nature of the bond sufficed to dispose of this claim. For whatever may be the amount of salaries due the teachers, the fact remained that the condition of the bond was violated and so the Surety became liable for the penalty provided therein.

SURETYSHIP

"If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called suretyship."

The procedure for the enforcement of the Surety's liability under a bond for delivery of personal property is described in Section 10, Rule 62, in connection with Section 20, Rule 59 of the Rules of Court.[88]

Procedure for the enforcement of surety's liability

In the case of *Luneta Motor Co. v. Menendez,*[89] the Court held that in order to recover on a replivin bond, the following requisites must be complied with:

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[85] Art. 2079 states that an extension granted to the debtor by the creditor without the consent of the guarantor, extinguishes the guaranty.

[86] Art. 2054 provides: "A guarantor may bind himself for less, but not for more than the principal debtor, both as regards the amount and the onerous nature of the conditions.

Should he have bound himself for more, his obligations shall be reduced to the limits of that of the latter."

[87] Article 2047, par. 2.

[88] Luneta Motor Co. v. Antonio Menendez; G.R. No. L-16880, April 30, 1963. The corresponding provisions under the REVISED RULES OF COURT for Sec. 10, Rule 62 and Sec. 20, Rule 59 of the old Rules of Court are Sec. 9, Rule 58 and Sec. 20, Rule 57, respectively.

[89] *Ibid.*

1) Application for damages must be filed before trial or before entry of trial judgment;

2) Due notice must be given the other party and his surety; and,

3) There must be proper hearing, and award of damages, if any, must be included in the final judgment.[90]

MORTGAGE

Validity of chattel mortgage; binding effect against third persons

In *Montano v. Lim Ang*,[91] one of the issues raised was whether or not the chattel mortgage on a car executed by Jose Lim Ang and Teodoro A. Gonzalez in favor of Delfin Montano is binding against third persons even if they failed to give notice to the Motor Vehicles Office as required by Section 5 (e) of the Revised Motor Vehicles Law.[92]

The issue raised is not new. In a similar case [93] decided earlier by the Court, it was held that a chattel mortgage of a car, in order to affect third persons, should not only be registered in the Chattel Mortgage Registry, but the same should also be registered in the Motor Vehicles Office as required by Section 5 (e) of the Revised Motor Vehicles Law. And the failure of the mortgagee to report the mortgage executed in its favor has the effect of making said mortgage ineffective against third persons."

Adopting the above ruling, the Court, in the *Montano* case, concluded that as between Montano whose mortgage over the car was not recorded in the MVO and Angel M. Tinio who notified said office of his purchase and registered the car in his name, the latter is entitled to preference.

Residential house can be the subject of chattel mortgage

In the case of *Navarro v. Pineda* [94] Pineda executed a chattel mortgage on his 2-story residential house erected on a lot belonging to another, to secure an indebtedness. The debt was not paid on the date due hence plaintiff sought to foreclose the chattel mortgage on the house. Pineda argued however, that since only movables can be the subject of a chattel mortgage,[95] then the mortgage in question which is the basis of the present action, cannot give rise to an action for foreclosure, because it is a nullity.[96] He cited Article 415 of the

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[90] Alliance Surety Co., Inc. v. Piccio, G.R. No. L-9950, July 31, 1959.
[91] G.R. No. L-13057, February 27, 1963.
[92] Act No. 3992, otherwize known as the Revised Motor Vehicles Law.
[93] Borlough v. Fortunt Enterprises, Inc., G.R. No. L-9451, March 29, 1957.
[94] G.R. No. L-18456, *supra* note 20.
[95] Section 1, Act No. 3952.
[96] Defendant-Appellant citing Associated Insurance Co., v. Isabel Iya, G.R. No. L-10837; Iya v. Valino, G.R. No. L-10838, May 30, 1958.

New Civil Code, which classifies a house as immovable property whether the owner of the land is or is not the owner of the building. He further invoked the ruling in the case of *Lopez v. Orosa* [97] which held that "a building is an immovable property, irrespective of whether or not said structure and the land on which it is adhered to, belongs to the same owner." [98] *Held:* The house in question was treated as personal or movable property by the parties to the contract themselves. The mortgagor grouped the house with the truck, which is, inherently a movable property. Furthermore, the Court considered the nature and size of the house in dismissing appellants' claim. "The house," said the Court, "was small and made of light construction materials: G.I. sheets roofing, *sawali* and wooden posts; built on land belonging to another."

Navarro Case distinguished from other cases

The Iya cases [99] observed the Court, refer to a building or house of strong materials, permanently adhered to the land, belonging to the owner of the house himself.

In the case of Lopez v. Orosa [100] the Supreme Court pointed out that "the building was a theatre, built of materials worth more than ₱62,000, attached permanently to the soil." In these two cases and in the Leung Yee case,[101] *third persons assailed the validity of the deed of Chattel Mortgages;* in the present case, *it was one of the parties to the contract of mortgages who assailed its validity.*

SOLUTIO INDEBITI

Protest is not required as a condition sine qua non for the application of solutio indebiti

In *Puyat & Sons v. Sarmiento* [102] plaintiff filed an action for refund of retail dealers taxes paid by it to the City of Manila. One of the issues raised in this case was whether or not amount paid as retail dealers taxes in accordance with the ordinance of the City of Manila, without protest, are refundable. *Held:* The taxes collected from the plaintiff were paid through error or mistake. This was manifest from the reply of the defendant stating that sales of manufactured products at the factory site are not taxable either under the Wholesaler's Ordinance or under the Retailer's Ordinance. This

[97] G.R. Nos. L-10817-8, February 28, 1958.
[98] *See* Leung Yee v. Strong Machinery Co. 37 Phil. 644.
[99] *Supra* note 96.
[100] *Supra* note 97.
[101] *Supra* note 98.
[102] G.R. No. L-17447, April 30, 1963.

places said act of payment within the rule of the New Civil Code provision on Solutio Indebiti. Being therefore a case of Solutio Indebiti, protest is not required as a conditon sine qua non for its application.

QUASI-DELICT

Failure of injured parties to reserve their right to recover civil liability cannot be deemed as waive

In *Bernales v. Bohol Land Transportation,*[103] defendant's passenger truck fell into a deep precipice resulting in the death of Nicasio and serious physical injury to Jovito, both passengers of said truck. In the criminal case filed against the driver of the bus, he was acquitted on the ground that his guilt was not proved beyond reasonable doubt and plaintiffs intervened in the prosecution of said case and did not reserve the right to file a separate action for damages. *Issues:* (1) whether a civil action for damages against the owner of a public vehicle based on the breach of contract of carriage, may be filed after the criminal action instituted against the driver had been disposed of, if the aggrieved party did not reserve his right to enforce civil liability in a separate action and (2) whether the intervention of the aggrieved party, through a private prosecutor, in the prosecution of the criminal case against the driver—who was acquitted on the ground of insufficiency of evidence—will bar him from suing the latter's employer for damages for breach of contract in an independent and separate action. *Held:* The failure of the injured parties to reserve their right to recover civil indemnity against the carrier cannot in any way be deemed as a waiver on their part to institute a separate action against the latter based on its contractual liability or on *culpa aquilana* under Article 1902 and 1910 of the New Civil Code. The intervention of the plaintiffs through a private prosecutor, if it amounted inferentially to submitting in said case their claim for civil liability, could have been only against the driver but not against defendant who was not a party therein. There is no showing in the record before the Court that plaintiffs made of record their claim for damages against the driver or employer, much less does it appear that they had attempted to prove such damage. Lastly, as defendant's driver was acquitted only on reasonable doubt, a civil action for damages against him may be instituted for the same act or omission. (Rule 107, par. A; Article 29 NCC).

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[103] G.R. No. L-18193, February 27, 1963.

Employer subsidiarily liable under Article 103 of the Revised Penal Code

The rulings in *Montoya v. Ignacio*,[104] and *Timbol v. Osias*[105] were reiterated in *Magboo v. Bernardo*.[106] Indeed, to exempt from liability the owner of a public vehicle who operates it under the "boundary system" on the ground that he is a mere lessor would not only be to abet flagrant violation of the Public Service Law but also to place the riding public at the mercy of reckless and irresponsible drivers. "Reckless" because the measure of their earnings depends largely upon the number of trips they make and hence, the speed at which they drive, and "irresponsible" because most if not all of them are in no position to pay damages they might cause.

DAMAGES

Generally, attorney's fees are not a proper element of damages, for it is not sound policy to set a premium on the right to litigate.[107] Thus, no right to such fees can accrue merely because of an adverse decision.[108] This is precisely the rationale for taxing costs in certain cases against the losing party. The payment therefore, from the viewpoint of sanction is deemed sufficient. Nonetheless, various exceptions are provided for by law.[109] Some of these are: "In case of clearly unfounded civil action or proceeding" or where the court deems it just and equitable that attorney's fees be recovered.

The case of the *Heirs of Justiva v. Court of Appeals*[110] involved a petition for review of that part of the decision of the Court of Appeals awarding to the spouses Jesus Gustilo and Purificacion Gustilo, attorney's fees plus moral and actual damages. Petitioners' actuations in this case were expressly found to be insincere and baseless, by both the Court of First Instance and of the Court of Appeals in that the various complaints were intended to harass, annoy and defame the defendants. *Held:* There was no error in the award of attorney's fees.[111]

When attorney's fees may not be recovered

The defeat of a party in litigation does not, however, necessarily mean that he should pay attorney's fees to the adverse party by way

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[104] G.R. No. L-5868, December 29, 1953.
[105] G.R. No. L-7547, April 30, 1955.
[106] G.R. No. L-16790, April 30, 1963.
[107] *See* Tan Ti v. Alvear, 26 Phil. 566.
[108] *Ibid.*
[109] *See* Article 2208, NEW CIVIL CODE; JARENCIO, TORTS AND DAMAGES 281-285 (1958 ed.).
[110] G.R. No. L-16396, January 31, 1963.
[111] *See* Jimenez v. Bucay, G.R. No. L-10221, February 28, 1958.

of damages. Attorney's fees may be recovered only in those cases specified in Article 2208 of the New Civil Code. Thus, attorney's fees, in the absence of gross and evident bad faith in defendant's refusal to satisfy plaintiff's claim, and there being none of the other grounds,[112] such absence precludes a recovery. The award of attorney's fees is essentially discretionary in the trial court.[113]

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. For the same reason, the Court sustained the imposition of moral damages in the *Justiva* case.[114] "Patent indeed is the insincerity of the petitioners' various amended complaints" said the Court. And the allegation of forgery of the document is all but a defamation which, in the light of Article 2217 of the New Civil Code, could by analogy be a ground for payment of moral damages, considering the wounded feelings and besmirched reputation of the defendants.

Plea for "such further relief . . . as this Honorable Court may deem just and equitable," effect of

In the *Justiva case*[115] one of the questions asked on appeal was the propriety of the award of actual damages considering that the same was not prayed for in the pleadings. *Held:* Award of actual damages sustained. "While the prayer by the respondents in their 'answer' mentions only exemplary damages, moral damages, and attorney's fees, therein also is a plea for 'such further relief x x x as this Honorable Court may deem just and equitable.' This prayer may include 'actual damages' if and when they are proved."

No moral damages are recoverable when breach of contract is not malicious or fraudulent

The above principle was declared by the Court in *Francisco v. Government Service and Insurance System.*[116] In this case, plaintiff Francisco appealed because the trial court did not award the ₱535,000 damages and attorney's fees she claimed. *Held:* Moral damages are not recoverable for 2 reasons: (1) Plaintiff failed to take the witness stand and testify as to her social humiliation, wounded feelings, anxiety, etc.; (2) "a breach of contract, like that committed by de-

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[112] Enumerated in Article 2208, NEW CIVIL CODE.
[113] *Francisco v. GSIS*, G.R. No. L-18155, March 30, 1963.
[114] Arts. 2217 & 2219, NEW CIVIL CODE.
[115] *Supra* note 110.
[116] *Supra* note 113.

fendant, not being malicious or fraudulent, does not warrant the award of moral damages under Article 2220 of the New Civil Code.[117]

Where no moral, temperate, liquidated or compensatory damages, no exemplary damages could be recovered

If the plaintiff is not entitled to moral damages, she is also not entitled to exemplary damages,[118] because this kind of damages is *only allowed in addition* to moral, temperate, liquidated or compensatory damages.[119]

Illustration and application of Article 2206

In *Villa-Rey Transit v. Bello* [120] the Court had occasion to illustrate the application of the above article of the New Civil Code. In this case, defendant Villa-Rey Transit Inc. committed a breach of contract when it failed to comply with its obligation of bringing safely, the passenger, Felipe Tejada, to his place of destination. *Held:* Had not Tejada met this fatal accident on July 17, 1961, he would have continued to serve in the government for some 27 years until his retirement with a compensation of ₱6,000.00.[121] As consequential damages, the heirs having been deprived of the earning capacity of their husband and father, respectively, they are entitled to ₱3,300.00 a year for at least 17 years, the average life of a Filipino being between 50 to 60 years.[122] For failure of the defendant to exercise due diligence in employing a careful and prudent driver, the amount of ₱2,000.00 as exemplary damages is hereby awarded. And for the agony, mental anguish and sorrow suffered by the plaintiffs because of the sudden death of Tejada, and the mutilated and gory condition of the body, the amount of ₱5,000.00 is awarded as moral damages.

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[117] *Supra* note 113.

[118] Ventanilla v. Centeno, G.R. No. L-14333, January 28, 1961; Fores v. Miranda, G.R. No. L-12163, March 4, 1959.

[119] *Francisco v. GSIS, supra* note 113.

[120] Art. 2234, NEW CIVIL CODE; Velayo v. Shell Co. of P.I., G.R. No. L-7817, July 30, 1957; Singson v. Aragon & Lerza, G.R. No. L-5164, January 27, 1953; Estopa v. Piansay, G.R. No. L-14733, September 30, 1962; Yutuk v. Manila Electric Co., G.R. No. L-13106, May 31, 1961.

[121] G.R. No. L-18957, April 23, 1963.

[122] Art. 2206, NEW CIVIL CODE.