CIVIL LAW

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INTRODUCTION

This survey, like the other previous surveys, is an effort to systematically present the various 1964 decisions in Civil Law. No pretense is made that this work is complete nor exhaustive that it will not be open to criticism. This is an honest attempt to aid the students and practitioners as well, in keeping with the latest jurisprudence in Civil Law as decreed by the Supreme Court.

Most of the 1964 rulings in Civil Law are mere reiterations of previous rulings. Instances where the Supreme Court is faced with novel issues are rare. So much so that it is surprising that a lot of cases which appear to have been previously adjudicated upon, in point of law, by a string of previous decisions, should find their way again to the Supreme Court.

The year 1964 is no different from the previous years. Cases come and cases go. This survey is primarily undertaken for the benefit of those tutored in law. To keep with the times is as appropriate in law as it is in life!

HUMAN RELATIONS

Applicability of Article 21

Mere breach of promise to marry is not an actionable wrong. But to formally set a wedding and go through all the preparation thereof only to walk out of it when the marriage is about to be solemnized is quite different. It is palpably and unjustifiably contrary to good customs and defendant must be held answerable for damages in accordance with Article 21 of the new Civil Code which provides that "any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." [1] The extent, therefore, to which acts not contrary to law may be perpetrated with impunity is not limitless.

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*** Member, Student Editorial Board, *Philippine Law Journal*, 1964-65.
[1] Wassmer v. Velez, G.R. No. L-20089, December 26, 1964.

Return of land in case of void ab-initio sale requires corresponding return of purchase price to vendee

The sale of the land having been declared void *ab-initio*, the return of the purchase price by the successors-in-interest of the vendor to the vendee was necessary so that the former would be entitled to recover the possession of the property.[2] This is in keeping with the maxim *nemo cum alterious detrimento protest* (no person should unjustly enrich himself at the expense of another) as embodied in Article 22 of the new Civil Code.[3]

Scope of Article 33

Under Article 33 of the new Civil Code, "in cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence." On the strength of this provision, can the employee's primary civil liability for serious physical injuries and his employer's subsidiary liability be proved in a separate civil action while the criminal case against the employee is still pending?

The Supreme Court answered the query in the negative in the case of *Joaquin, et al. v. Aniceto, et al.*[4] where it held:

> "while a separate and independent civil action for damages may be brought against the employee under Article 33 of the new Civil Code, no such action may be filed against the employer on the latter's subsidiary liability because such liability is governed not by the Civil Code but by the Revised Penal Code, under which conviction of the employee is a condition *sine qua non* for the employer's subsidiary liability. If the court trying the criminal action acquits the employee, the subsequent insolvency of the employee cannot make the employer subsidiary liable to the offended party or to the latter's heirs."

What Article 33 authorizes is an action against the employee on his primary civil liability. It cannot apply to an action against the employer to enforce his subsidiary civil liability because such liability arises only after conviction of the employee in the criminal case. Any action brought against the employer before the conviction of his employee is premature.[5]

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[2] Baje & Sacdalan v. CA, et al., G.R. No. L-18783, May 25, 1964.
[3] Article 22 of the Civil Code provides:
"Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."
[4] G. R. No. L-18719, October 31, 1964.
[5] *Id.*

DIGEST OF RULINGS ON NATURALIZATION CASES

Naturalization, which is the act of adopting the foreigner and clothing him with the privileges of a native citizen, is governed in the Philippines by Commonwealth Act No. 473 (as amended). Because the Courts have no choice but to require that there be full compliance with the statutory requirements, strict construction of the Naturalization Law becomes inevitable.

Irreproachable character

1. Previous conviction of petitioner for violation of the Internal Revenue Code by using unsealed meter stick involves moral turpitude, not necessarily because the Government is cheated of the revenue involved in the scaling of the meter stick, but because it manifests an evil intent on the part of the petitioner to defraud customers purchasing from him in respect to the measurement of the goods purchased.[6]

2. But "if for a reasonable period of years after the denial of one's application, because of the absence of finding of irreproachable conduct or moral character based on specific acts, the petitioner proves in the requisite proceeding that he has observed irreproachable conduct and has shown himself to be of good moral character, the bar may be lifted."[7]

3. The explanation of petitioner that he pleaded guilty to a violation of the Price Tag Law simply to avoid troublesome court proceedings, deserves little credence; and if true at all, it betrays a lack of faith in the administration of justice in this country that is unseemly in one desiring to become a citizen.[8]

4. The use by petitioner of an alias, "Hioga", without proof that the same is an authorized exception under the Anti-Alias Law, does not speak well of applicant's character.[9]

5. Membership in "Hiat Kan Luan", the most active Chinese Guerrilla Unit affiliated with the Chinese Communist Party thus making the applicant a communist suspect, is a ground for the denial of the petition for naturalization.[10]

Lucrative trade, profession, or lawful occupation

1. An annual income of ₱4,200.00 is not lucrative for a married applicant with three children. x x x There must be reasonable as-

[6] Lin v. Republic, G.R. No. L-18506, January 30, 1964.
[7] Sy Chut v. Republic, G.R. No. L-17960, September 30, 1964.
[8] Chai v. Republic, G.R. No. L-19112, October 30, 1964.
[9] Hiok v. Republic, G.R. No. L-17118, November 17, 1964.
[10] Qua v. Republic, G. R. No. L-16975, May 30, 1964.

surance that the applicant will not be a social burden or liability but that he is a potential asset to the country he seeks to adopt as his home for himself and, quite literally, for his children and children's children.[11]

As to the income of petitioner's wife from the coconut lands, it will be suffice to mark that the same is not from petitioner's "trade, profession or lawful occupation." Petitioner, not his wife, is the applicant.[12]

2. An income of ₱5,000.00 in 1959 (the year preceding the filing of the application) derived from the bakery owned by the petitioner is insufficient for purposes of naturalization, considering that petitioner has a wife and five children to support.[13] For that matter, even an annual income of ₱6,000.00 is obviously inadequate for purposes of naturalization of applicant who has a wife and children to feed.[14]

3. The testimony of the applicant that he has a net annual income of ₱2,400.00, excluding board and lodging allowances, even if true, does not satisfy the requirement of a lucrative trade, income or profession, considering the high cost of living nowadays.[15]

4. A salary of ₱120.00 a month cannot be considered lucrative,[16] neither does a monthly salary of ₱140.00 satisfy the legal requirement that an applicant for naturalization must have a lucrative occupation.[17] Even a ₱200.00-peso monthly salary is not considered lucrative.[18]

5. Where the applicant has a wife and twelve children to support, an annual income of ₱4,000.00 is not lucrative.[19]

Educational requirement for children

1. The denial of the first petition for naturalization by reason of petitioner's failure to bring to the Philippines his child of school age is a bar to granting a subsequent petition; the defect of the first petition is not cured by the child's no longer being of school age.[20]

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[11] Uy v. Republic, G.R. No. L-19578, October 27, 1964.
[12] *Id.*
[13] See note 8, *supra*.
[14] Pin v. Republic, G.R. No. L-19577, October 30, 1964.
[15] Chua v. Republic, G. R. No. L-19695, October 31, 1964.
[16] Go v. Republic, G.R. No. 1777, May 30, 1964.
Tse v. Republic, G.R. No. L-19542, November 9, 1964.
[17] See note 9, *supra*.
[18] Chuan v. Republic, G.R. No. L- 18550, February 28, 1964.
[19] Koc v. Republic, G.R. No. L-18344, February 28, 1964.
[20] Yap Chun v. Republic, G.R. No. L-18516, January 30, 1964.

2. To be exempt from making a Declaration of Intention, it is indispensable that petitioner had given primary and secondary education to all his children in schools recognized by the Government. This is one of the tests of the applicant's *bona fide* intention to become a citizen. The reason that petitioner's child stopped schooling due to the said child's marriage is not only unsatisfactory but betrays the sincerity of the petitioner in embracing our citizenship.[21]

Requirement of having mingled socially with the Filipinos

1. The law requires that an applicant should "mingle socially" with Filipinos as a fact, and is not content with personal beliefs to that effect. The burden laid on an applicant to affirmatively show that he maintains social relations with the Filipinos must be shown by concrete instances (with dates, places, and names) that will satisfy a Court that the disqualification established by Section 4(f) of the Naturalization Law does not exist. x x x The law demands that the "social mingling" take place during the entire period of the applicant's residence in the Philippines in order to preclude any temporary sporadic social intercourse set up only for naturalization purposes.[22]

2. Receipts for contributions to charitable organizations do not establish that petitioner has mingled socially with the Filipinos since charitable contributions can be made without any significant social intercourse. To mingle socially, an applicant must deal with and receive Filipinos in his home, and visit Filipino homes in a spirit of friendliness and equality, without discrimination.[23]

Proof of foreign law

Does the fact that prior decisions of the Supreme Court have recognized that the Chinese Law grants Filipinos the reciprocal right to become citizens by naturalization excuse an applicant from his failure to prove the laws of his own nation?

The Supreme Court answered this query in the negative in one case[24] where it held:

> "x x x Laws are not irrepealable, and it behooved this applicant to fully establish that his nation granted reciprocal rights to our citizens at the time his application is heard. The burden of proof in this regard lay on this applicant, not on the Government, since the lack of mutuality

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[21] See note 19, *supra*.
[22] Chua v. Republic, G.R. No. L-19775, September 29, 1964.
[23] *Id.*
[24] *Id.*

is a disqualification for him and under Philippine naturalization law the applicant must show not only that he possesses the requisite qualifications but also that he has none of the disqualifications specified by the statute."

Always, an applicant in a naturalization case has the burden of proving by competent and satisfactory evidence that he has all the qualifications and none of the disqualifications stated in the law.

Declaration of intention

1. The filing of the Declaration of Intention must precede the filing of the petition for admission to Filipino citizenship by one (1) year (or more).[25] A filing fee of ₱10.00 is required to be paid simultaneous with the filing of the Declaration of Intention, as provided by a regulation issued by the Secretary of Justice.

But the filing of the Declaration of Intention shall take effect only on the date of the actual payment of the filing fee. Thus, in the case of *Lee v. Republic*,[26] the petition for naturalization was denied on the ground, among others, that the one year period required from the time of the filing of the Declaration of Intention to the time of the filing of the petition was not followed, it appearing that though the Declaration of Intention was filed on October 25, 1953, the filing fee was actually paid only on May 23, 1956 or 5½ months prior to the filing of the petition on November 17, 1956.

2. When a petitioner has resided continuously for a period of 30 years or more before the filing of the application for citizenship *and* he has given primary and secondary education to all his children in public or private schools recognized by our Government which are not limited to any race, or nationality, he is exempt from filing a Declaration of Intention before applying for citizenship. While the law does not require that a petitioner should spend every minute of the required 30-year residence in the Philippines, common sense dictates that an absence of uninterrupted 11 years constitute more than enough reason to break the continuity required by law. The law contemplates, not only legal, but *actual* and *substantial* residence upon the theory that only by such residence may an applicant acquire the necessary fitness to become a citizen.[27]

Character witnesses

1. The law requires that an applicant for naturalization must be vouched for by two credible persons. These persons are, in a

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[25] Commonwealth Act No. 473, section 5.
[26] G.R. No. L-15027, January 31, 1964.
[27] Co Chia v. Republic, G.R. No. L-17917, April 30, 1964.

sense, insurers of the applicant's qualifications and lack of disqualifications, and hence in themselves must be individuals of probity and good standing in the community. Thus, an employment as a bookkeeper in a Chinese firm for over thirty years is not necessarily satisfactory proof of probity and good standing in the community; nor is membership in the police force considering that said policeman character-witness had previously been accused, although acquitted, of the violation of the opium laws.[28]

2. Where the character witnesses' knowledge of the applicant was derived principally from occasional business dealings, such character witnesses could not be considered in a position to vouch for applicant's good moral character as required by law. Such occasional business dealings afford little room for personal matters and do not provide a reliable basis for gauging a person's moral character. Character witnesses must have an intimate knowledge of the applicant. Personal observation of his conduct during the period required is indispensable.[29]

3. A mere customer of applicant's store is not qualified to vouch for petitioner's good moral character and behavior. Neither the fact that one is a neighbor and meets the petitioner everyday make said witness competent to testify on applicant's morality.[30] Witnesses in naturalization proceedings are required to vouch on the petitioner's good moral character during the entire period that they had known him and this certainly needs more than a nodding acquaintanceship with the latter.

4. A witness who resides in a place different from where the applicant lives, is not considered qualified to testify in behalf of the latter's conduct.[31]

5. The indorsement and warranty by two credible witnesses in an affidavit, said witnesses stating that they are Filipino citizens and personally know the petitioner to be a resident of the Philippines for the period required by law, and a person of good repute and morally irreproachable, and that in their opinion the petitioner has all the qualifications and none of the disqualifications provided by law, is a *condition precedent* to the consideration of the petition.[32] (underscoring supplied).

6. A credible person is "x x x an individual who has not been previously convicted of a crime; who is not a police character and has not perjured in the past; or whose affidavit or testimony is not

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[28] Teh v. Republic, G.R. No. L-19831, September 30, 1964.
[29] See note 11, *supra*.
[30] See note 16, *supra* (Tse v. Republic).
[31] Lara v. Republic, G.R. No. L-18203, May 29, 1964.
[32] How v. Republic, G.R. No. L-18521, January 30, 1964.

incredible. What must be 'credible' is not the declaration made, but the person making it. This implies that such *person* must have a *good standing in the community;* that he is *reputed to be trustworthy and reliable;* and that his word may be taken on its face value, as a good warranty of the worthiness of the petitioner." [33]

Where the character witnesses lack the qualifications necessary to establish some of the important averments of the petition,[34] there is no alternative but to deny the petition for naturalization.

7. Stated otherwise, "a credible person qualified to be the petitioner's witness must be one who has a good standing in the community; that he is reported to be trustworthy and reliable; and that his word may be taken in its face value, as a good warranty of the worthiness of the petitioner." [35]

8. The credibility of the witnesses must be established by sufficient evidence. That fact that witness No. 1 is the employee of the *compadre* of petitioner's father who had helped said witness in securing the latter's business license, while witness No. 2 has been holding office at the petitioner's residence lends grave doubts as to the veracity of their testimonies and makes one to conclude that their declarations are biased, unreliable, and untrustworthy.[36] They are not therefore qualified to act as insurers of the petitioner's character.

Petition for citizenship

1. The failure of the petitioner to state some of his former places of residence, as required to be included in the petition by the Naturalization Law is in itself a sufficient disqualification.[37] As could be expected therefore, "non-compliance with the statutory requirement relative to the contents of the annexes of the petition for naturalization" [38] renders the petition void.

2. It is required by the Naturalization Law that the petition for naturalization must be published in a newspaper of general circulation. Such publication is intended to inform (all concerned) of the filing of a petition for naturalization in order that the public officials and private citizens may furnish the Solicitor General of the Provincial Fiscal with such necessary information or evidence as there may be against the petitioner.[39]

It is indispensable that *positive* and *direct* proof must support the allegation that the newspaper is one of general circulation. A

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[33] Ching v. Republic, G.R. No. L-19410, September 30, 1964.
[34] See note 31, *supra.*
[35] See note 18, *supra.*
[36] *Id.*
[37] Yeng v. Republic, G.R. No. L-18885, January 31, 1964.
[38] See note 32, *supra.*
[39] See note 19, *supra.*

mere affidavit of the Editor of the newspaper to the effect that said newspaper is one of general circulation is not sufficient compliance with the law.[40]

Residence requirement

1. Sec. 7 of Commonwealth Act 473 (Naturalization Law) requires that a petition for naturalization shall set forth, among other things, the applicant's present and former places of residence. The reason behind such requirement, as explained in the case of *Long v. Republic* [41] is "to facilitate the checking up on the different activities of the petitioner bearing on his petition for naturalization, especially as to his qualifications and moral character, either by private individuals or government agencies, by indicating to them the localities or places in which to make appropriate inquiries or investigation thereon."

Citing the case of *Gick v. Republic,*[42] the Supreme Court concluded that:

> "x x x by such omission, applicant, in effect, falsified the truth, indicating lack of good moral character on his part, which disqualifies him to be admitted to Philippine citizenship."

2. Stated otherwise, the failure to mention the different places of residence of the petitioner in Manila where he studied for sometime is a flaw in the petition [43] which is a ground for the denial of the petition for naturalization.

3. The purpose of the law in requiring one-year residence in the province where one seeks naturalization is to facilitate the determination by official authorities of the different activities of the petitioner, especially with regard to his qualifications.[44]

4. The fact that the omitted residence is not far from the one reported does not excuse the non-compliance with the express requirement of the Naturalization Law. It must be assumed that such non-compliance has impaired the effectivity of the required official investigation [45] unless proved otherwise by the petitioner. Also, the fact that the petitioner was able to present evidence proving the locations of his former places of residence, which were omitted in the petition, did not necessarily cure the non-compliance. Such proof does not excuse the applicant's original non-compliance with a statutory requirement.[46]

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[40] *Id.*
[41] G.R. No. L-18758, May 30, 1964.
[42] G.R. No. L-13347, August 31, 1964.
[43] See note 31, *supra.*
[44] See note 37, *supra.*
[45] Ong Tai v. Republic, G.R. No. L-19418, December 23, 1964
[46] Qua v. Republic, G.R. No. L-19834, October 27, 1964.

Effect of difference in name

If in a case of a mere change of name, a difference in the spelling of the name was considered sufficient basis for the denial of the petition, greater reasons exist to deny the acquisition of Philippine citizenship, when the name appearing in the petition is different from the true name of the person applying for naturalization. Having been born in this country and educated in the schools recognized by the government, petitioner should know or ought to have known, that the variety of name styles or the use of aliases is un-Filipino and facilitates the perpetration of all kinds of frauds.[47]

Scope of petition for naturalization

Invoking the doctrine laid down in the case of *Channie Tan v. Republic*,[48] the Supreme Court ruled *"that a judicial declaration that a person is a Filipino citizen cannot be made in a petition for naturalization* wherein it is prayed that petitioner be admitted a citizen of the Philippines" because *"under our laws, there can be no action or proceeding for the judicial declaration of the citizenship of an individual.* x x x But there is no similar legislation authorizing the institution of a judicial proceeding to declare that a given person is part of our citizenry." [49]

Alien woman married to a citizen of the Philippines

It is now settled that an alien woman who is married to a citizen of the Philippines acquires the citizenship of her husband only if she has all the qualifications prescribed in the law. Anent appellees claim that a difference in the citizenship of husband and wife is subversive of family solidarity (this Court), has already said that the duty of consorts to live together is irrelevant to the issue which concerns only the right of a sovereign state to determine what aliens can remain within its territory and under what conditions they can stay therein.[50]

PROPERTY RELATIONS BETWEEN THE SPOUSES

Property purchased partly with paraphernal funds and partly with conjugal funds

Where property is purchased partly with paraphernal funds and partly with money of the conjugal partnership, justice requires that

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[47] Khan v. Republic, G.R. No. L-19709, September 30, 1964.
[48] G.R. No. L-14159, April 18, 1960.
[49] Diok et al. v. Republic, G.R. Nos. L-19107; 19108; 19109, September 30, 1964.
[50] Chay v. Galang, G.R. No. L-19977, October 30, 1964.

the property be held to belong to both patrimonies in common, in proportion to the contributions of each to the total purchase price.[51]

A loan obtained by the spouses is an obligation of the partnership. The fact that the loan is guaranteed by a mortgage of the paraphernal property of the wife does not make the payment of the loan the sole obligation of the wife.[52] After all, a mortgage is merely an accessory obligation.

Consequently, the payment made by the wife of the mortgage debt, after her husband's death, does not result in increasing her share in the conjugal property but merely creates "a lien in her favor over the undivided share of the conjugal partnership for the payment of the amount she has advanced." [53]

Presumption that property acquired during the marriage is conjugal is not conclusive but rebuttable

In the case of *Laperal et al. v. Katigbak, et al.*,[54] the land involved is in the name of the wife; at the time of the purchase of said land, it was already of such substantial value that the husband, by his own admission, could not have afforded it; the purchase money was furnished by the wife's mother. On the question as to whether the disputed land is conjugal property or the exclusive property of the wife, the court held:

> "x x x property acquired during the marriage are, by law, presumed conjugal. The presumption, however, is not conclusive but merely rebuttable for Article 160 of the Civil Code is unequivocal that it exists only *unless it be proved that it belongs exclusively to the husband or wife.*" (underscoring supplied)

The Court further stated that where the evidence shows that the property was purchased with money furnished by the wife's mother, the presumption is rebutted. The fact that the land is in the name of the husband in the tax declaration is not enough to counter the evidence that the land is the paraphernal property of the wife.[55]

FAMILY HOME

When judgment for indemnity rendered after the constitution of the family home enforceable

In *People v. Chaves*,[56] the accused was found guilty of the violation of R.A. No. 145, i.e., misappropriating the amount of veteran's

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[51] Castillo et al. v. Pasco, G.R. No. L-16857, May 29, 1964.
[52] *Id.*
[53] *Id.*
[54] G.R. No. L-16991, March 31, 1964.
[55] *Id.*
[56] G.R. No. L-19521, October 30, 1964.

benefits illegally retained by him. He was sentenced to undergo one-year imprisonment and to indemnify the offended party. The indemnity not having been paid, the offended party obtained a writ of execution and the sheriff accordingly levied on a residential building of the accused, but the sheriff desisted when the accused exhibited proof that the property had been extrajudicially constituted and recorded as a family home in accordance with the provisions of the Civil Code, *after* the filing of the information but *before* conviction.

The main issue in this case is: Whether a family home extrajudicially constituted is entitled to exemption under Article 243 [57] of the Civil Code considering the peculiar facts of the present case. The accused argued that the indemnity due to the offended party became a debt within the purview of Article 243 only from the date of the judgment ordering indemnification or years after the family home in question was established.

Held: The word "Debt," as used in Article 243, "is not qualified, and must therefore, be taken in its generic sense." (Montoya v. Ignacio, 54 O.G. 978-979) i.e., of "obligations" in general. The duty of the accused to reimburse the amount of the veteran's benefits improperly retained by him certainly arose and came into existence from the date of his misappropriation (years before the extrajudicial constitution of the family home), and the judgment (of conviction) merely established the fact of misappropriation beyond controversy and reasonable doubt. The judgment sentencing the accused to indemnify the offended party was not the source of his duty to return, any more than a judgment on a promissory note would be the origin of the promissor's duty to pay.[58] That judgment is not necessary to cloth a pre-existing debt with the privileged character of being enforceable against the family home extrajudicially established at a later date is apparent by comparison with Article 247 of the Civil Code which provides that only claims not mentioned in Article 243 must be reduced to judgment before being enforced against a family home.

The Supreme Court explained the wisdom of its ruling in these words:

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[57] Article 243 of the Civil Code provides:

"The family home extrajudicially formed shall be exempt from execution, forced sale or attachment except:

x x x

(2) For debts incurred before the declaration was recorded in the Registry of Property;

x x x"

[58] See note 56, *supra*.

> Certainly, the "humane considerations" for which the law surrounded the family home with immunities from levy, did not include the intent to enable a debtor to thwart the just claims of his creditors. If in the case of a judicially established family home the law requires that the petitioning debtor should first give sufficient security for his unsecured debts before the family home is authorized (Art. 231), there is no reason why in the case of the extrajudicial constitution, x x x the constituting debtor should be enabled to escape payment of his just debts, and leave the creditors holding an empty bag.[59]

ADOPTION

Acquisition by the adopted of the citizenship of adopting alien parent not required by law

Article 335 of the Civil Code only disqualifies from being adopters those aliens who are either (a) non-resident or (b) who are residents but the Republic of the Philippines has broken diplomatic relations with their government. Outside of these two cases, alienage by itself alone does not disqualify a foreigner from adopting a person under our law. Consequently, a Danish subject who has been granted permanent residence in the Philippines is not disqualified to adopt his Filipina wife's natural child.[60]

CIVIL REGISTER

Only clerical mistakes may be ordered corrected; Article 412 construed

Article 412 of the Civil Code provides: "No entry in a civil register shall be changed or corrected, without a judicial order." Therefore, "one's filiation or parentage appearing in a public record where the law requires it to be entered, may not be changed except on a proper proceeding wherein the persons concerned are given an opportunity to be heard." [61]

In the case of *Reyes, et al. v. Republic,*[62] it appears that the petitioner is a Filipina who had three children outside of wedlock with a Chinese father; that in such circumstances, said minor children *are citizens of the Philippines* but they were erroneously entered as Chinese citizens in the civil register of Manila. Wherefore, petitioners pray that said entries be ordered corrected.

Petitioners argue that:

> "x x x Article 412 under which they sought relief makes no distinction whatsoever as to the kind of errors which may be corrected in a civil

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59 *Id.*
60 Therkelsen, et al. v. Republic, G.R. No. L-21951, November 27, 1964.
61 Beduya v. Republic, G.R. No. L-17639, May 29, 1964.

register, that the only condition precedent to such correction is that there should be a corresponding judicial order; that where mere clerical errors are sought to be corrected, such correction may be authorized by means of a summary proceeding; that the instant petition is in faithful compliance with the appropriate action contemplated and suggested by the Supreme Court; x x x" [63]

Held: Only mistakes that are *clerical* in nature may be ordered corrected under Article 412 of the Civil Code. The procedure contemplated under this provision is summary in nature. If the plaintiff pursues the correction of entries that are substantial, the erroneous entry may be corrected by the Court by means of a *proper action* according to the nature of the issues in controversy wherein all the parties who may be affected by the entries are notified or represented and evidence submitted to prove the allegations of the complaint, and proof to the contrary admitted." [64]

In denying the petition prayed for, the court added:

"x x x while ostensibly, the action seeks a mere correction of an entry in the Civil Registry, in effect, it requests the judicial declaration of Philippine citizenship x x x Declaratory relief is not available for the purpose of obtaining judicial declaration of citizenship. x x x" [65]

OWNERSHIP

Builder of proposed public road does not have the right of a builder in good faith to retain the road until reimbursement for his expenses

Where the lands were ceded by the owners thereof for road construction as planned or intended to be laid out and constructed by the Provincial Government, the fact that the survey, lay-out and construction of such road were done at the expense of a private party did not convert said road into a private road or private property. The right given to a builder in good faith cannot be invoked and applied in this case as "public interest is involved and the people living in that part of the province are entitled to use the road." It could not be argued, therefore, that the builder of such road "is entitled to keep or have possession of the road until after it shall have been reimbursed of the expense it had incurred in construing and maintaining the road in good condition." [66]

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[62] G.R. No. L-17642, November 27, 1964.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] Calapan Lumber v. Community Sawmill, G.R. No. L-16351, June 30, 1964.

Appointment of receiver removes the parties to the suit from the possession of the property

Property under receivership is property in *custodia legis* which should remain under the administration and control of the receiver for the purpose of preservation and for the benefit of the party who may be entitled to it. And until after the determination of the party who is legally entitled to the possession and control of the property, the property must remain under the control and supervision of the court, through its receiver.[67]

CO-OWNERSHIP

Co-owner cannot acquire property owned in common through prescription—General rule

Co-ownership is a form of trust and every co-owner is a trustee for the others. Thus, as a general rule, not one of them may exercise exclusively ownership of the common property on the ground of prescription, for possession by one trustee alone is not deemed adverse to the rest.[68]

Exception

Although "no prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership," [69] still, an action for partition *does* prescribe if the co-owners hold the property in question under adverse title. The statute of limitations operates from the moment such adverse title is asserted by the possessor of the property.[70]

NUISANCE

Slot machines not nuisance per se

"The mere possession of a slot machine or even its operation for amusement and not for profit does not constitute a crime. A slot machine is not a 'gambling device' per se, because it can be operated legally as well as illegally." [71]

The Supreme Court arrived at this conclusion by noting that:

> "Since R.A. 183 (City Charter of Pasay) expressly authorizes its municipal board to 'regulate and fix the amount of license fees for' *inter alia*, 'slot machines,' and it being conceded that the municipal board

[67] Ventosa v. Fernan, et al, G.R. No. L-14941, January 31, 1964.
[68] Castrillo v. CA, et al., G.R. No. L-18046, March 31, 1964.
[69] Article 494, last paragraph, Civil Code.
[70] Gerona, et al. v. de Guzman, G.R. No. L-19060, May 29, 1964.
[71] Jack Pot Slot Machines v. Director, G.R. No. L-18899, February 29, 1964.

of Pasay has passed Municipal Ordinance No. 106 fixing the amount of license fees for the operation of slot machines in question, and that the owners of the slot machines have paid said fees and secured the corresponding licenses, it follows that the operation of said machine is neither illegal nor constitutes a nuisance."

MODES OF ACQUIRING OWNERSHIP

Intellectual creation

The author of a literary composition has a right to the first publication thereof. He has a right to determine whether it shall be published at all, and if published, when, where, and by whom, and in what form. This exclusive right is confined to the first publication. When *once published, it is dedicated to the public, and the author loses the exclusive right to control subsequent publication by others, unless the work is placed under the protection of the copyright law.*[72] (underscoring supplied)

Thus, defendant company which utilized in its album of Christmas card samples displayed to customers, designs created by plaintiff artist for a client who distributed the same to his friends, said design not having been copyrighted, is not liable for damages.[73]

Trademark

The fact that the defendant used the trade-mark "ADAGIO" when the plaintiff temporarily stopped using it during the period of time that the Government imposed restrictions on importation of plaintiff's brassiere bearing the trade-mark, does not affect the rights of the plaintiff because it was occasioned by government restrictions and was not permanent, intentional, and voluntary.[74]

Said the court:

> "To work an abandonment, the disuse must be permanent and not ephemereal; it must be intentional and voluntary, and not involuntary or even compulsory. (Callman, Unfair Competition and Trademark, 2nd Ed., p. 1341)."

To establish abandonment, it is necessary to show not only acts indicating a practical abandonment, but an *actual intent* to abandon. Non-use because of legal restriction, i.e., government restriction, is not evidence of an intent to abandon. *Abandonment will not be inferred from a disuse over a period of years occasioned by statutory restrictions.*[76] (underscoring supplied)

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[72] Santos v. McCullough Printing, G.R. No. L-19439, October 31, 1964.
[73] *Id.*
[74] Romero v. Maiden Form, G.R. No. L-18289, March 31, 1964.
[75] *Id.*
[76] G.R. No. L-18979, June 30, 1964.

SUCCESSION

Inadvertent failure of witness to affix signature

In the case of *Icasiano v. Icasiano, et al.*,[76] it appears that the original of the will has five pages. While signed at the end of every page, it was not signed or it did not contain the signature of one of the attesting witnesses on the third page. But the duplicate copy was signed by the testatrix and her three attesting witnesses in each and every page.

Under these facts, can the will be probated?

In allowing the probate of the will, the court held that the "inadvertent failure of one witness to fix his signature to one page of the testament, due to the simultaneous lifting of two pages in the course of signing, is not *per se* sufficient to justify denial of probate. The law should not be so strictly and literally interpreted as to penalize the testatrix on account of the inadvertence of a single witness over whose conduct she had no control, where the purpose of the law to guarantee the identity of the testament and the component pages is sufficiently attained, no intentional or deliberate deviation existed, and the evidence on record attests to the full observance of the statutory requisites.[77] Otherwise, witnesses may sabotage the will by muddling or bungling it or the attestation clause." [78]

Effect of probate of prohibited form of will

It is true the law (Article 818, Civil Code) prohibits the making of a will jointly by two or more persons either for the reciprocal benefit or for the benefit of a third person. However, this form of will has long been sanctioned by use, and the same has continued to be used; and when, as in the present case, one such joint last will and testament has been admitted to probate by final order of a Court of competent jurisdiction, there seems to be no alternative except to give effect to the provisions thereof that are not contrary to law.[79]

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[77] Article 805 of the Civil Code provides:

"Every will, other than holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

"The x x x instrumental witnesses of the will shall also sign each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page."

[78] See note 76, *supra*.

[79] Cerna, et al. v. Potol, et al., G.R. No. L-20234, December 23, 1964.

Reasoned the Court:

> "The final decree of probate has conclusive effect as to the last will and testament, despite the fact that the Civil Code decrees the invalidity of joint wills, whether in favor of the joint testators, reciprocally, or in favor of a third party. The *error* committed by the probate court *was an error of law,* that should have been corrected by appeal, but *which did not affect the jurisdiction of the probate court, nor the conclusive effect of its final decision however erroneous.* A final judgment rendered on a petition for the probate of a will is binding upon the whole world and public policy and sound practice demand that at the risk of occasional errors, judgment of courts should become final at some definite date fixed by law."

The contention that being void the will cannot be validated, overlooks that the ultimate decision on whether an act is valid or void rests with the courts, and here they have spoken with finality when the will was probated.[80]

OBLIGATIONS

Scope of Article 1170

Under Article 1170 of the Civil Code, not only debtors who are guilty of fraud, negligence or default in the performance of their obligations are decreed liable; in general, every debtor who fails in the performance of his obligation is bound to indemnify for the loss and damage caused thereby. The phrase "in any manner contravene the tenor" of the obligation includes any illicit act which impairs the strict and faithful performance of the obligation, or every kind of defective performance.[81]

When demand is indispensable to render debtor in default

In the case of *de los Santos, et al. v. de Leon,*[82] the plaintiff obtained a loan from the defendant and secured the same with a real mortgage. The agreement stipulated, among other things, that:

> "x x x
> (3) the mortgagor shall pay in time the taxes and assessment of the mortgaged property;
> (4) at any time the mortgagor shall fail or refuse to pay any of his obligations stipulated when due, *then all of the loan and other obligations connected therewith shall become due and payable* and the mortgagee may immediately foreclose the mortgage; x x x" (underscoring supplied)

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[80] *Id.*
[81] Arrieta v. NARIC, G.R. No. L-15645, January 31, 1964.
[82] G.R. No. L-16217, May 25, 1964.

The mortgagor failed to pay the taxes due for three (3) years. Wherefore, the mortgagee foreclosed the mortgaged property and subsequently sold the same. The present case seeks to annul such sale.

HELD: Sale annulled. The plaintiff was never in default in the payment of the loan in the absence of previous demand for it. In arriving at this conclusion, the Supreme Court fell back on the provisions of Article 1169 of the Civil Code which states that demand is dispensed with only (1) when the obligation or the law expressly so declares, i.e., that the debtor shall be considered in default without the need for such demand; (2) when time is of the essence of the obligation; and (3) when demand would be useless.

It appearing that the present case does not fall in any of the instances when previous demand is dispensed with in order to compel performance, the lack of such previous demand does not render the debtor in default with his obligation.

Applicability of the Ballantyne Scale of Values

Under a contract of conditional sale of unregistered land entered into on August 3, 1944, it was stipulated that "the redemption period was ten (10) years from the date of the contract, with the express stipulation that the redemption could be made, not within the first seven (7) years of said period, but only after the lapse of the seventh year," or from the beginning of the eighth year to the tenth year.[83] The debtor received ₱3,500.00 in Japanese War Notes.

In 1952, the debtor sought to redeem the land by tendering payment in Philippine currency of the sum of ₱350.00 which he believed to be the equivalent value under the Ballantyne Scale of Values.

HELD: The Ballantyne Scale of Values applies *only* when the obligation is payable during the occupation, and that otherwise, payment shall be due on the peso-to-peso basis. In the case at bar, the contract between the parties expressly prohibits payment until after the expiration of fully seven (7) years from August 3, 1944 or until August 3, 1951. Hence, the debtor is not entitled to the benefits of the Ballantyne Scale of Values and in order to redeem the property he must pay the sum of ₱3,500.00 fully in Philippine currency.

Happening of fortuitous event

Reaffirming the rule laid down in *Lasam v. Smith*,[84] the Supreme Court held in one case[85] "that even the happening of a

[83] Generosa v. CA & Nardo, G.R. No. L-19563, December 24, 1964.
[84] 45 Phil. 990.
[85] General Enterprises v. Lianga Bay Logging Co., G.R. No. L-18487, August 31, 1964.

fortuitous event in itself does not necessarily extinguish the obligation. x x x The fortuitous event must be of such character as to render it impossible for the obligor to fulfill his obligation in a normal manner."

CONTRACTS

Scope of Article 1191 explained

Does Article 1191 of the Civil Code contemplate rescission of contract by judicial action and not by a unilateral act of the injured party?

The court answered the query in the affirmative by implication, in one case.[86] Yet, to categorically state that court intervention is necessary is not entirely correct because there is also "nothing in the law that prohibits the parties from entering into an agreement that violation of the terms of the contract would cause cancellation thereof; even without court intervention." In other words, it is not always necessary for the injured party to resort to court for rescission of the contract. As already held,[87] judicial action is needed where there is absence of special provision in the contract granting to a party the right to rescission.

When management contract not binding upon consignee

In the case of *Reliance & Insurance Co. v. MRR, et al.*,[88] the Insular Yebana Tobacco Corporation imported into the Philippines six boxes of automotive spare parts which were shipped to Manila and received by the Manila Port Service. However, one box was not delivered and the consignee collected the amount of loss from the insurance company as insurers of the goods. In turn, the insurance company, as subrogee of the consignee, sought to recover the amount from the Manila Port Service. Its defense was that the action was barred because by the terms of the Management Contract, the consignee must file a claim within a 15-day period with the carrying vessel and that said consignee had failed to file said claim within the required period.

HELD: The action is not barred. The consignee does not have to file a claim within the 15-day period as provided in the Management Contract because the consignee is not bound by such contract, for he is *not* a party to it. For the consignee to be bound, he must, through his acts, make himself a party to such contract by signing

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[86] Froilan v. Oriental Shipping, G.R. No. L-1189, October 31, 1964.
[87] de la Rama Steamship v. Tan, G.R. No. L-8784, May 21, 1964.
[88] G.R. No. L-19589, April 30, 1964.

by himself or through a broker the annotation in the Delivery Permit which annotation appears in the back of such Delivery Permit printed as "Important Notice" and substantially reproducing the terms and condition of the Management Contract. In the instant case, however, the consignee did not make use of any Delivery Permit as the goods were never withdrawn from the pier by the consignee.

When management contract is binding upon consignee

A Management Contract is binding to a consignee who, *though not a party thereto,* has taken delivery of the goods upon presentation of a *pass* and a *Delivery Permit* making reference to said management contract and reproducing substantially the provisions thereof.[89] (underscoring supplied)

When reply is not deemed an acceptance of the offer

A reply to an offer to sell real property, stating that "I am very much interested to buy and acquire this Hacienda of yours in the same Price, Manner, Conditions and consideration other buyers will offer," is not an acceptance of the offer.[90] The reply merely placed the vendor "in the circuitous position of having first to look for a buyer and get an offer from him before he could in turn sell it to the purchaser. This is against the law which provides that usage and customs of the place should be observed in the interpretation of a contract whose terms appear to be ambiguous." [91]

When "discovery" of fraud deemed to have taken place

An action to annul partition upon the ground of fraud should be filed within four years from the discovery of the fraud.[92] In the case at bar,[93] *the discovery of the fraud is deemed to have taken place when the instrument was filed with the Register of Deeds,* for the registration of the deed of extrajudicial settlement constitutes constructive notice to the whole world. (underscoring supplied)

Scope of Article 1412, paragraph (1)

The rule that "when the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking"

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[89] Insurance Co. of North America v. US Lines Co., et al., G.R. No. L-17032, March 31, 1964.

[90] Mirasol v. Yusay, et al., G.R. No. L-18862, June 30, 1964.

[91] *Id.*

[92] Article 1391 of the Civil Code provides:

"The action for annulment shall be brought within four years. This period shall begin x x x in case of mistake or fraud, from the time of the discovery of the same."

[93] See note 70, *supra.*

has been interpreted as applicable only where the fault is, more or less, equivalent. It does not apply where one party is literate or intelligent and the other is not.[94]

SALES

Co-heir may sell property assigned to him even before approval of partition of the estate by the court

The part of an estate assigned to an heir by the will of the testator can be sold by such heir even before the partition of the estate is approved by the court and such sale cannot be questioned by the co-heirs as long as it does not prejudice the legitime of the compulsory heirs.[95] Actually, there is no provision of law which prohibits a co-heir from selling to a stranger his share of the estate held in common before partition of the property is approved by the Court.

Sale made under two different valid certificates of title over the same real property

FACTS:

GA sold his land twice to two different parties at different times. He sold it first to SC, under original certificate of title No. 100. SC had this title cancelled and a transfer certificate of title was issued in his name.

Later, GA sold the same land under a different certificate of title to LM.

ISSUE:

Who of the two buyers should be considered as the rightful owner?

HELD: This case can also be treated as one of double sale, where a person sells the same land to two different persons who are unaware of the flaw that lies in its title. And under Article 1544 of the Civil Code, "if the same thing should have been sold to different vendees, x x x (should it be immovable property), the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property." Applying this principle, the first buyer who received it in good faith and had it recorded in the Registry of Property, should be deemed the owner.[96]

Sale of land covered by homestead patent

The sale of the four (4) parcels of land in controversy having been effected within 5 years from the issuance of the homestead patent, such sale is void *ab initio*.[97]

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[94] Mangayao, et al. v. Lasud, et al., G.R. No. L-19252, May 29, 1964.
[95] Habasa v. Imbo, G.R. No. L-15598, March 31, 1964.
[96] DBP v. Mangawan, et al., G.R. No. L-18861, June 30, 1964.
[97] See note 2, *supra*.

Effect of absence of period within which to redeem

There being no specification as to when redemption shall be made, the redemptioner cannot be held delinquent in exercising the option to redeem. It would be error to vest title of the property *outright* to the creditor without making the necessary appropriate action or without due process of law.[98]

When vendor a retro is given the right to repurchase beyond the 10-year period; its effect

"The stipulation x x x insofar as it gave the vendor the right to repurchase beyond the 10-year period, is illicit and therefore null and void and cannot be given force and effect."[99] In such a case, the vendor *a retro* must effect the redemption within 10 years from the date of the sale *a retro*. But the fact that the waiver of the 10-year limitation is void, the right of redemption itself is not extinguished but only modified. The contract remains to be a sale with *pacto de retro* and does become an absolute sale.[100]

In the *Dalandan* case, the Court further observed that inasmuch as the vendor *a retro* failed to exercise his right of redemption within the 10-year period, property shall *ipso facto* be consolidated on the vendee *a retro*.

It is submitted that the above-mentioned observation is not in full accord with Article 1607 of the Civil Code. Under the aforementioned Article, "in case of real property, the consolidation of ownership in the vendee by virtue of the failure of the vendor (to repurchase) shall not be recorded in the Registry of Property *without a judicial order after the vendor has been duly heard.*" (underscoring supplied) The effect, being, that if real property is involved, the failure on the part of the vendor *a retro* to repurchase will NOT *ipso facto* result in the consolidation of title in favor of the vendee *a retro*. There is still a need for a judicial action for the consolidation of title where the vendor *a retro* must be given an opportunity to be heard.

Ownership in pacto de retro sale

In a sale with the right to repurchase, all the elements of ownership are transferred to the vendee, subject only to the right of re-

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[98] Pascua v. Perez, et al., G.R. No. L-19554, January 31, 1964.
[99] Dalandan v. Julio, G.R. No. L-19101, February 29, 1964.
[100] *Id.*

purchase. The requirement of a judicial order for the consolidation of ownership does not make the vendee less than an owner prior to the issuance of the order.[101]

LEASE

Failure to pay rent

Mere failure to pay rent does not, *ipso facto*, make the tenant's possession of the premises unlawful. It is the owner's demand for the tenant to vacate the premises when the tenant fails to pay the rent on time, and the tenant's refusal to vacate, which makes unlawful the withholding of possession of the property.[102]

Added the Court:

> "x x x there is no legal obstacle for the owners of the rented property to allow defaulting tenant to stay in the premises. x x x that consent makes lawful tenant's possession. Only when the consent is withdrawn and the owner demands that the tenant leave is the owner's right of possession asserted. The tenant's refusal or failure to move out makes his possession unlawful because it is violative of the owner's right of possession."

In other words, the violation of the terms of the lease, by devoting the thing leased to a use not stipulated, coupled with the demand by the lessor for compliance with the terms of the contract and for the return of the premises, renders unlawful the lessee's detainer of the land, and entitles the lessor to eject the lessee.[103]

Lessor warrants that leased premises are free from defeat

In the case of *U.S. Lines Co. v. SMB*,[104] the plaintiff entered into a contract of lease with defendant whereby the latter bound itself to furnish Compartment A, Room 1-B, of the Insular Ice and Cold Storage. The plaintiff stored its foodstuffs in said compartment which turned out later to be defective as said foodstuffs have been destroyed by rodents. Hence, this action to recover damages from the defendant.

HELD: Defendant, as lessor, should be understood as having warranted that the leased premises would be free from rodents or from anything that might destroy the property of the lessee stored in the leased premises.

The defendant is liable for damages for violating that warranty.

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[101] Defensor v. Blanco, et al., G.R. No. L-17812, May 20, 1964.
[102] Casilan v. Tomass, G.R. No. L-16574, February 28, 1964.
[103] Hautea v. Magallon, G.R. No. L-20355, November 28, 1964.
[104] G.R. No. L-19383, April 30, 1964.

Acceptance of monthly rental

In one case,[105] the plaintiff and the defendant entered into a contract of lease, the disputed provision of which is as follows:

> "That after the expiration of this contract, the lessee LIM SHI, his heirs or legal representatives may have *preference to continue renting* the said building, the *amount of rent to be determined anew by the parties* who shall take into consideration the current rental of commercial buildings in the locality at the time the new agreement is made." (underscoring supplied)

As to be noted, while the lessee is given the preference to continue renting the building under lease without mentioning the period during which the lease may be continued, the clause leaves to the parties the determination of the amount of rent that should be paid in case of renewal taking into consideration the current rental of similar commercial buildings in the locality. And because of such silence in the term under which the lease may be renewed, lessee now contends that, should the parties tacitly renew the lease, it should be for a similar period as originally agreed upon, i.e., 10 years. Otherwise, the lessee argues, the parties would have clearly provided therein that the renewal would be for a different period. Further, the lessee maintains that, inasmuch as the contract directs that, in case of renewal, it is only the amount of rent that should be determined by the parties, the period of lease does not have to be determined anew because by implication the same is for another period of ten years.

HELD: The only rational conclusion that can be drawn is that there being no clear period of renewal agreed upon between the parties, the same should be subject to a new agreement and cannot be left to the will of either of the parties as the lessee would now desire. And it appearing that there is no sufficient evidence to show that the parties had agreed to renew the contract of lease either for a period of ten years, as desired by the lessee, or for a period of one year, as claimed by the lessor, we are constrained to hold that the implied renewed contract between the parties is on a month to month basis considering that the plaintiff has accepted the monthly rental tendered to him by the defendant.

AGENCY

Agent and judicial administrator distinguished

The duties of a judicial administrator and an agent are in some respects identical, i.e., both act in a representative capacity, but the

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[105] Miranda, et al. v. Lim Shi, G.R. No. L-18494, December 24, 1964.

provision on agency should not apply to a judicial administrator. A judicial administrator is appointed by the court. He is not only the representative of such court, but also of the heirs and creditors of the estate. (Tan v. Del Rosario, 57 Phil. 411) A judicial administrator, before entering into his duties, is required to file a bond. These circumstances are not true in the case of agency. The agent is only answerable to the principal. The protection which the law gives to a principal, in limiting the powers and right of an agent, stems from the fact that control by the principal can only be through agreement, whereas the acts of a judicial administrator are subject to specific provisions of the appointing court.[106]

Agency coupled with an interest is revocable with just cause

An agent whose agency is coupled with an interest cannot stand on a better ground than a partner appointed as manager in the article of partnership insofar as revocability of authority or power is concerned. Inasmuch as a partner appointed as manager in the articles of partnership can be divested of his power if there is a just or lawful cause, then an agent whose agency is coupled with an interest can also be stripped of his power of attorney if there is a just cause.[107]

DAMAGES

The substantive right to claim damages should not necessarily be foreclosed by the fact—at least equivocal as to its purpose—that private prosecutors entered their appearance at the inception of the criminal action, which was cut short by defendant's plea of "guilty." It cannot be reasonably said with certainty that plaintiffs had thereby committed themselves to the submission of their action for damages in the criminal action.[108]

"Lucrum cessans" is a basis for indemnification

Under Article 2200 of the Civil Code, indemnification for damages comprehends not only the value of the loss suffered but also that of the profits which the creditor fails to obtain. In other words, "lucrum cessan" is also a basis for indemnification. Hence, where there exists a basis for a reasonable expectation that profits would have continued had there been no breach of contract, indemnification for damages based on such expected profits is proper.[109]

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[106] San Diego v. Nombre & Escanlar, G.R. No. L-19265, May 29, 1964.
[107] Colcongo v. Clarapols, G.R. No. L-18616, March 31, 1964.
[108] Menese, et al. v. Luat & Tinio, G.R. No. L-18116, November 28, 1964.
[109] See note 85, *supra*.

Defendant's financial standing may increase but NOT decrease the minimum indemnity of ₱3,000.00

Article 2206 of the Civil Code which fixes the minimum amount of ₱3,000.00 as damages for death caused by a crime or quasi-delict, also applies in case of death caused by the breach of contract by the common carrier. (See Article 1764)

Therefore, independently of its financial capacity, the common carrier, if liable, must be made to pay the minimum amount. But if its financial ability is such that it can pay a greater amount of indemnity as demanded by the circumstances of the case, then certainly it should be made to pay more than ₱3,000.00. Its financial capacity or standing in such a case is material.[110]

Likewise, wanton and deliberately injurious conduct on the part of the carrier justifies an award of moral damages.[111]

ATTORNEY'S FEES

Allowance of counsel's fees discretionary on the Court

The allowance of counsel's fees in probate proceedings rests largely on the sound discretion of the Court which shall not be interfered with except for manifest abuse.[112] The award of attorney's fees against the adverse party is essentially discretionary with the trial court and in the absence of abuse of discretion, the same should not be disturbed.[113]

REPEALING CLAUSE

The Civil Code has not "superseded the Administrative Code of Mindanao and Sulu, or the Public Land Law, since these statutes are, in this regard, special acts, and implied repeals are not favored." Hence, a deed of sale of real property executed by a *non-Christian inhabitant* of Mindanao or Sulu, without the approval of the provincial governor or his representative, duly authorized in writing for the purpose as required by Section 145(b) of the Administrative Code of Mindanao and Sulu, is null and void *ab initio*.[114]

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[110] Pantranco v. Legaspi, et al., G.R. Nos. L-20916-17, March 31, 1964.
[111] LTB v. Cornista, G.R. No. L-22193, May 29, 1964.
[112] In re Estate of Raquel, G.R. No. L-16349, January 31, 1964.
[113] Lopez, et al. v. Gonzaga, G.R. No. L-18788, January 31, 1964.
[114] See note 94, *supra*.