CIVIL LAW

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In the past year, the Supreme Court made further interpretations of the law in matters regarding the correction of data appearing in the civil registry, preterition of compulsory heirs in the will, and the effect of naturalization on the alien wife of the Philippine citizen. In all other matters in civil law, the decisions are mere reiterations of old rulings or applications of clear provisions of law. In cases involving interpretations of the law by the Supreme Court, the background and the provisions of law applicable are herein presented for a better understanding of the discussion.

CITIZENSHIP AND NATURALIZATION

The ruling of the Supreme Court regarding the nationality of the alien woman married to citizens of the Philippines need another reexamination. The old Naturalization Law[1] which took effect on November 30, 1928 extended collective naturalization to all alien women who at that time were married to Filipino citizens by this provision:

> "Sec. 13 (a) Any woman who is now or many hereafter be married to a citizen of the Philippine Islands, and who might herself be lawfully naturalized, shall be *deemed* a citizen of the Philippine Islands."

With the revision of the Naturalization Law on June 17, 1939,[2] the above provision was reproduced as follows:

> "Sec. 15. *Effect of the naturalization on wife and children.* — Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be *deemed a citizen of the Philippines.*"

This provision extended the effects of naturalization to the wife of the Philippine citizen, not only by the use of the word "deemed" which means "considered" or "treated as if", but also because it is found in the section entitled "Effect of naturalization on the wife and children", which section also provides that the minor children born before the naturalization of his father, if dwelling in the Philippines at the time the parent is naturalized, shall automatically become a Philippine citizen.

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1 Act 3448 (1928).

2 Commonwealth Act 473 (1939).

However, in the past few years, this provision has been interpreted by the Supreme Court to mean that the alien woman to be deemed a Philippine citizen must establish satisfactorily in an *appropriate* proceeding that she has all the qualifications under section 2 and none of the disqualifications under section 4 of the Naturalization Law. In the case of *Cua v. Board of Immigration Commissioners*,[3] the appropriate proceeding was the deportation proceeding instituted against her by the Board of Immigration Commissioners. In the case of *Ly Giok Ha v. Galang, et al.*,[4] the appropriate proceeding could have been an administrative proceeding or a judicial proceeding instituted by the woman against the Commissioner of Immigration for confiscating the cash bond given by her in entering as a temporary visitor. It was not until January 30, 1967,[5] that the Supreme Court ruled that a petition for naturalization should also be filed by the wife of a Philippine citizen in the Court of First Instance of the province where she has been residing for at least one year, the contents of the petition to conform to the provisions of the Naturalization Law, supported by affidavits of two witnesses.

It is submitted that the interpretation given by the Supreme Court in the recent case is not in accordance with the provisions of the Naturalization Law for the following reasons. Section 15, paragraph one of the Naturalization Law would be meaningless, if the alien wife of a naturalized citizen had to file a separate petition for naturalization. The law should have merely provided that the alien wife does not acquire the citizenship of her husband. Then it would be clearly understood that for her to be considered a citizen, she must herself be naturalized. The interpretation given by the Supreme Court would, in effect, be adding the following words to section 15, first paragraph of the Naturalization Law: "...shall be deemed a citizen of the Philippines *provided she is herself naturalized under this law*", which is undoubtedly an absurd provision.

The other rulings of the Supreme Court under the Naturalization Law, following the principle of strict construction and that doubts should be resolved against the applicant, are mere reiterations of former decisions, the most important are:

1. Under section 7 of the Revised Naturalization Law, the petitioner is obliged to state in his petition all his present and former places of residence, including actual places of residence, though temporary. Failure to do so is fatal to the application. The reason given

[3] 53 O.G. 8567 (Dec., 1957).
[4] 54 O.G. 356 (Jan., 1958).
[5] Burca v. Republic, G.R. No. 24252

is to enable the State to check on the conduct and activities of the petitioner.[6] The place of birth and place of residence are different notions, so that the data for one can not supply the omission of the other.[7]

2. The term "dwelling at the time of naturalization of the parent" referring to foreign-born minor children of naturalized Philippine citizen is construed as *lawful* residence, and if said minors were merely temporary visitors whose lawful period of stay expired before their father was supposed to take his oath of allegiance, said minors were no longer lawfully residing here.[8]

3. The term "residence for six months" prior to the petition for the reacquisition of citizenship under Commonwealth Act No. 63 was construed to mean actual and constructive permanent home, otherwise known as legal residence or domicile. Hence, a Filipino who was naturalized as an American citizen and who returned to the Philippines as a temporary visitor, and applied for reacquisition of Philippine citizen, intending to renounce American citizenship, was advised to apply and secure a quota for permanent residence before filing his petition for reacquisition of Philippine citizenship.[9]

4. The time to determine whether the petitioner possesses the necessary qualifications to become a Philippine citizen is at the time of the filing of the petition, so that a subsequent increase in his income can not cure the defect when his income was meager at the time he filed his petition.[10]

5. Where one of the character witness died prior to the hearing, the substitution of witness requires publication of the petition with the new witness' affidavit. The purpose is to give the fiscal sufficient time to check on the substitute witness and his relation to the petitioner.[11]

6. Vouching witnesses must be shown to enjoy such a high reputation for probity in the community in which they live so that their word can be taken on its face value.[12] The nature of association of the vouching witness with the petitioner must be such as

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[6] Go v. Republic, G.R. No. 21895, April 29, 1966; In re petition of Alfred Bun Tho Khu, G.R. No. 21828, Jan. 22, 1966; Uy Tian Hua v. Republic, G.R. No. 20813, Nov. 29, 1966; Tan v. Republic, G.R. No. 20710, April 29, 1966.

[7] Alejandro Tan Tiu v. Republic, G.R. No. 21018, Nov. 29, 1966.

[8] Vivo, etc. v. Cloribel, etc., G.R. No. 23239, Nov, 23, 1966.

[9] Ujano v. Republic, G.R. No. 22041, May 19, 1966.

[10] Jacinto Uy Tian Hua v. Republic, G.R. No. 20813, Nov. 29, 1966.

[11] In re Petition of Wallhy Pribhides Thahani, G.R. No. 19451, July 30, 1966.

[12] Jacinto Uy Tuan Hua v. Republic, *supra*; Ong Kim Kong v. Republic, G.R. No. 20505, Feb. 28, 1966.

would have enabled them to acquire definite knowledge about his qualification and/or disqualification.[13]

7. The petitioner should include all his names by which he was known in his application so that the publication should include all his names. The purpose is to apprise the public of the pendency of the petition so that those who may know of any legal objection to it might come forward with the information in order to determine the fitness of petitioner for Philippine citizenship.[14] Petitioner must have secured previous judicial authority for the use of said alias. Violating the Anti-Alias Law constitute sufficient ground for denying naturalization.[15]

8. Until the alien has taken his oath of allegiance, he does not become a citizen of the Philippines. An applicant was refused his oath-taking because of a disqualification subsequently proven at the hearing for that purpose.[16] The judgment directing the issuance of a certificate of citizenship in naturalization proceeding is a grant of a political privilege conferred by the government upon the petitioning alien. It is subject to the right of the government to ask for cancellation of such certificate, if found to have been illegally or fraudulently procured. A decision denying the State's right to withdraw such privilege is likewise appealable.[17]

CIVIL REGISTRY

A complete system of civil registry was established in the Philippines on February 26, 1931, with the enactment of the Civil Registry Law.[18] For the registration of birth, the declaration of the physician or midwife in attendance at the birth, or in default thereof, the declaration of either parent of the new-born child shall be sufficient. In such declaration. the above-mentioned persons shall certify to the (a) date and hour of birth; (b) sex and nationality of infant; (c) names, citizenship and relation of parents or in case the father is not known, of the mother alone; (d) civil status of parents; (e) place of birth.[19] Any voluntary acknowledgement by the natural

[13] Tse Viw v. Republic, G.R. No. 18281, Nov. 22, 1966.

[14] In re petition for Naturalization, Dy v. Republic, G.R. No. 20709, April 29, 1966.

[15] Cosme Go Tian v. Republic, G.R. No. 19833, Aug. 31, 1966; Joseph Soglou v. Rep. G.R. No. 20318, May 19, 1966; Kock Tee Yap v. Rep. G.R. No. 20992, May 14, 1966; Lee Tit v. Rep. G.R. No. 21446, April 29, 1966; Wayne Chang v. Rep. G.R. No. 20713, April 29, 1966; Leoncio Dy v. Rep G.R. No. 20152, Feb. 28, 1966.

[16] Ngo Chiao Lim, etc. v. Com. of Immigration, G.R. No. 21523, Feb. 28, 1966.

[17] Rep. v. Reyes, etc. et. al., G.R. No. 22550 May 19, 1966.

[18] Act 3753 (1930).

[19] Section 5, Act 3753 (1930).

parents or by only one of them by public instrument shall be recorded and shall set forth the following data: (a) full name of natural child acknowledged; (b) age; (c) date and place of birth; (d) status as to marriage and residence of the child acknowledged; (e) full name of the natural father or mother who made the acknowledgement.[20]

Thus, in the case of *Mendoza, et al. v. Melia*,[21] the court ruled that where the birth certificate contain only the names of both parents, the same does not constitute acknowledgement of paternity. The parent must sign and swear to the contents of the birth certificate, as required by section 5 of Act 3753 to constitute acknowledgement.

The books making up the civil register and all documents relating thereto shall be *prima facie* evidence of the truth of the facts therein contained.[22] The Civil Code provides that no entry in the civil register shall be changed or corrected without a judicial order, making the civil registrar civilly responsible for any unauthorized alteration in any civil register to any person suffering damage thereby.[23]

In view of the fact that the persons required to report and register the fact of birth are also required to furnish the other data appearing on the birth certificate, it is not uncommon to see mistakes in the reported names of children and other personal circumstances in the birth certificate.

The New Civil Code which became effective on August 30, 1950 allow corrections of entries in the civil register if authorized by a court order. However, this provision was construed to refer only to clerical errors or matters which do not involve any material change regarding the civil status or nationality of the persons affected. Later, the Revised Rules of Court which took effect on January 1, 1964 provided for a special proceeding for the cancellation or correction of entries in the civil register, requiring the inclusion of all persons having any interest which would be affected by such change, including the civil registrar, and the publication of the order of the hearing for three consecutive weeks in a newspaper of general circulation.[24]

In a petition to correct the entries in the birth certificate regarding the citizenship and domicile of the father, the Court re-

[20] Section 9, Act 3753 (1930).
[21] G.R. No. 18752, July 30, 1966.
[22] Civil Code Act 3753; Art. 410.
[23] Civil Code, Section 13, Art. 411-2
[24] Rule 108.

iterated its previous ruling to the effect that the summary proceeding under Article 412 of the New Civil Code justify only corrections of innocuous or clerical errors such as mispellings and errors which are obvious to the understanding. Where substantial alterations such as those affecting the status or citizenship are to be made, the proceeding under Rule 108 of the Revised Rules of Court must be followed, and the father notified of the petition and hearing.[25] The same ruling is reiterated in the case of *Uy Sioco, etc. v. Republic*[26] where the nationality and surname of the mother were sought to be corrected.

Despite the previous rulings of the Supreme Court to the effect that where the child was baptized under a name different from that appearing in his birth certificate, the remedy is not for the correction of entries under Article 412 of the New Civil Code, but a petition for a change of name, there were two instances where the Court held that the latter remedy is not the appropriate remedy.

In the case of *Nacionales v. Republic*,[27] the petitioner was registered as the son of his aunt and her husband, allegedly done to break the unlucky chain of deaths in infancy. The registered parents and alleged father were all dead. The petition was filed after 20 years. The Court held that the action should be one claiming legitimacy under Article 268 of the New Civil Code. The same ruling is reiterated in the case of *Theodore Grant v. Republic*,[28] where a petition for change of name was filed to make the surname of the child conform to the surname of the putative father. The Court applied Article 366 and 282 of the New Civil Code which allow a natural child to use his father's surname if he was acknowledged, and ruled that the remedy is an action to compel acknowledgement, citing the case of *Garcia v. Republic*.[29]

PERSONS

Action to compel recognition of a spurious child —

The Supreme Court, in the case of *Testate Estate of Don Vicente Noble*[30] reiterated its prior ruling in the cases of *Paulino v. Paulino*[31] and *Barles v. Ponce Enrile*[32] to the effect that the spurious child must bring the action to compel recognition during the lifetime of

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[25] In re petition to correct entry in birth certificate, Bartolome Baybayan, Jr., G.R. No. 20717, March 18, 1966.
[26] G.R. No. 19847, April 29, 1966.
[27] G.R. No. 18067, April 29, 1966.
[28] G.R. No. 23609, March 31, 1961.
[29] G.R. No. 16085, Nov. 29, 1961.
[30] G.R. No. 17742, Dec. 17, 1966.
[31] G.R. No. 15091, Dec. 28, 1961.
[32] 60 O.G. 4258 (July, 1964).

his putative father, and must be able to prove recognition by his putative father under Articles 283-4 of the New Civil Code, not merely the fact of paternity.

Conjugal Property: Power of husband to alienate under the old Civil Code —

In the case of *Villocino, et al. v. Doyon, et al.*[33] it was alleged that the real property belonging to the conjugal partnership was acquired before the effectivity of the New Civil Code, and that, therefore, the husband had absolute power to alienate the same without the consent of the wife. The Court held that under Article 1413 of the old Civil Code, no alienation made by the husband in fraud of the wife shall prejudice her or her heirs; that alienations made without the knowledge of the wife are presumed in fraud of her; that as the conjugal property belongs equally to the spouses, any alienation made by the husband without the consent of his wife prejudices her insofar as it includes the share of his wife; that since any prejudice to the wife can be determined only after liquidation of the partnership, the sale should be subject to such contingency, which should be noted on the corresponding certificate of title covering the property.

PROPERTY

Donation Mortis Causa distinguished from Donation Inter Vivos —

In the case of *Puig, et al. v. Peñaflorida,*[34] the donation was expressly declared by the deceased to be one of *mortis causa,* the donor forbidding the registration of the dead of donation until after his death and reserving his right to alienate, sell, transfer or mortgage the properties donated in favor of any person. The Court construed the donation as one *mortis causa,* citing Manresa's opinion to the effect that if the donor reserves the power to revoke the disposition arbitrarily, it is not a contract, and must conform to the solemnities of a will.

Improvements made in good faith —

Where the same property was sold twice by the same vendor to two different persons, the vendee to whom the property was ultimately adjudged must reimburse the other vendee for the improvements made by him on the property in accordance with Article 466 of the New Civil Code as there was no proof that the same was done in bad faith.[35]

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[33] G.R. No. 19797, Dec. 17, 1966.
[34] G.R. No. 15939, Jan. 31, 1966.
[35] Aguirre v. Pheng, G.R. No. 20851, Sept. 3, 1966.

In the case of *Cosio, et al. v. Palileo*,[36] where the deed of conditional sale of a house was construed by the Court as a mortgage, the necessary expenses made by the "vendee" before said decision became final were considered as made by a possessor in good faith because mistake on difficult questions of law may amount to good faith. Bad faith began from the moment said decision became final. The amount reimbursable for necessary expenses were deductible from rents payable by the possessor.

Usufruct: Death of some of the usufructuaries —

In the will, the naked ownership of a fishpond was given to a sister of the testatrix and the usufruct to 14 children of her cousins. The usufructuaries leased the fishpond to a third person. Three of the usufructuaries died. The owner and the remaining usufructuaries claim the rent. The former claimed that there was merger of the shares of the deceased usufructuaries under Article 603 of the New Civil Code. The usufructuaries claimed the benefit of accretion under Article 611 of the New Civil Code. The Court held that there is a right of accretion among the usufructuaries under Articles 1023 and 611 of the New Civil Code, whether in simultaneous or successive usufruct, unless the contrary appears in the will creating the usufruct. In this case, the will provided that the usufructuaries are the only ones to enjoy the property as long as they live.[37]

SUCCESSION

Preterition

Distinguished from Incomplete Legitime under Article 906 —

In the case of *In re Estate of Christensen*,[38] the testator, a citizen of California domiciled in the Philippines, declared in his will that he has but one child (Lucy Christensen, a natural child), and bequeathed to one Helen Garcia ₱3,600. Helen Garcia was later judicially declared a natural child of the testator after the latter's death. The question was whether Helen should be given only her legitime (1/4 of the estate) or share equally with the other natural child the entire estate. The Court held that it was not a case of preterition because she was not totally omitted under the will; hence, she is entitled to demand only a completion of her legitime, and the institution of heir canot be annulled.

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[36] G.R. No. 18452, Nov. 28, 1966.
[37] Policarpio, et. al. v. Salamat, et. al., G.R. No. 21809, Jan. 31, 1966.
[38] G.R. No. 24365, June 30, 1966.

Effect of Preterition —

In the case of *Nuguid v. Nuguid,*[39] the testatrix died single in 1962, without any decendant. Surviving her were her legitimate parents and six brothers and sisters. A holographic will executed in 1951 made a sister her universal heir. The Court held that the institution of heir should be annulled, and the entire will should be considered void and inexistent, citing decisions of the Supreme Court of Spain, and the Philippine case of *Neri v. Akutin.* The reason given by the Supreme Court of Spain was that it would constitute an arbitrary interpretation in the face of positive law, to consider as a legatee an heir, even if it would result in treating a legatee better than an heir, as it would be tantamount to modifying the law.

This decision of our Supreme Court needs a re-examination. Article 854 of the New Civil Code is based on Article 814 of the old Civil Code of Spain with slight changes. It provides that the preterition of a compulsory heir in the direct line shall annul the institution of heirs but the devises and legacies shall be valid insofar as they are not inofficious. The reason for this provision is based on the presumed intention of the testator. Preterition may be due to ignorance or mistake on the part of the testator, and the law presumes that had there been no mistake or ignorance on the part of the testator, he would have placed the compulsory heirs on the same footing, except with respect to express betterments (*mejora*) under the old Civil Code which he could give to any of his legitimate descendants. On the other hand, where a compulsory heir was disinherited without just cause, the law[40] restores the disinherited heir only to his legitime, on the ground that the testator has already manifested his intention not to give the disinherited heir anything under the will. It is only the law which reserves said portion of the estate for him.

As can be seen from the cases previously decided by our Supreme Court, a different interpretation of the provision on preterition was made. In the case of *Escuin v. Escuin,*[41] the testator left a natural child. In his will, he instituted his wife and natural father as universal heir. The Court held that the designation of heirs was void insofar as it deprived the natural child of his legitime. The will was considered valid with respect to 2/3 of the estate which the testator could freely dispose of. The Court reasoned out in conclusion in the following manner:

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[39] G.R. No. 23445, June 23, 1966.
[40] Civil Code, Art. 918.
[41] 11 Phil. 332 (1908).

"Notwithstanding the fact that designation of heirs is annulled and that the law recognizes the title of the minor, Escuin y Batac, to one-third of the property of his natural father, as his lawful and general heir, it is not proper to assert that the late Emilio Escuin de los Santos died intestate in order to establish the conclusion that his said natural recognized child is entitled to succeed to the entire estate under the provision of Article 939 of the (old) Civil Code, inasmuch as in accordance with the law, a citizen may die partly testate and partly intestate (Article 764, Civil Code). It is clear and unquestionable that it was the wish of the testator to favor his natural father and his wife with certain portions of his property, which, under the law, he had a right to dispose of by will, as he has done, provided the legal portion of his general heir was not thereby impaired, the two former persons being considered as legatees under the will."[42]

In the case of *Eleazar v. Eleazar*,[43] the deceased omitted his legitimate father in his will, expressly disinherited his wife and instituted Miguela Eleazar as his universal heir. The Court ruled that the will is null insofar as it deprives the father of his legal portion but is valid with respect to the other half which the testator could freely dispose of, and which should be considered as a legacy, citing the Escuin case.

In the case of *Neri v. Akutin*,[44] the testator left all his property by universal title to the children of his second marriage, and left nothing to the children of his first marriage. There were no legacies or betterments. Hence, there was total intestacy, and the children of both marriages succeeded to the estate as if the decedent died intestate, the Court citing the opinion of Manresa as to the distinction between Articles 814 and 851 of the old Civil Code. When the other cases of Escuin and Eleazar were cited by the instituted heir in support of his contention that the preterited heirs should get only their legitime, the Court stated:

"There is certainly a difference between a case of preterition in which the whole property is left to a mere friend and a case of preterition in which the whole property is left to one or some forced heirs. If the testamentary disposition be annulled totally in the first case, the effect would be a total deprivation of the friend of his share in the inheritance. This is contrary to the manifest intention of the testator. It may fairly be presumed under such circumstances, the testator would at least give his friend the portion of the free disposal. In the second case, the total nullity of the testamentary disposition would have the effect not of depriving totally the instituted heir of his share in the inheritance, but of placing him and the other forced heirs upon

[42] Idem, p. 339.
[43] 67 Phil. 497 (1939).
[44] 74 Phil. 185 (1943).

> the basis of equality. This is also in consonance wtih the presumptive intention of the testator. Preterition, generally speaking, is due merely to mistake, or inadvertence without which the testator may be presumed to treat alike all his chlidren."[45]

It is submitted that the interpretation made by our Supreme Court in the cases previous to the Nuguid case is more in accordance with the law and the reason behind it, which is: to give effect to the intention of the testator, and at the same time, preserve the right of the compulsory heirs to the legitime. The literal and strict interpretation of the law made by the Supreme Court in the Nuguid case did not only defeat the intention of the testator to give her sister a share in the inheritance but would also result in absurdity. Suppose the sister in the Nuguid case was given a specific property in the will. She will undoubtedly be entitled to it, even if their parents were omitted in the will. Again, suppose the parents were given a legacy or a devise, and the sister instituted as an heir. The latter will still receive the free portion not disposed of by the testator, and the parents would only be entitled to demand a completion of their legitime if the legacy or devise are insufficient. Why then should the sister be deprived entirely of a share in the inheritance if she was given the entire estate under the will, simply because the parents were not mentioned in the will?

Articles 854 and 918 of the New Civil Code envision a will containing the regular features, to wit: an heir, a legatee or devisee. Suppose the testator disposed of his entire estate in form of legacies and devises but left nothing to his compulsory heirs. How then can Articles 854 and 918 be applied when there is no institution of heirs which can be annulled?

If the sole purpose in following a literal and strict interpretation of Article 854 is to maintain the academic distinction between Articles 854, 918 and 906, it would be sacrificing substance to form. The only purpose of said Articles is to safeguard the legitime of the compulsory heirs, not to delimit the freedom of the testator to dispose of the free portion in favor of any person who is not incapacitated to inherit, or to punish those favored by the testator in his will.

Reserva Troncal: Extinguishment by Prescription —

A father's estate was inherited by his four children. Three of the children died and the shares of the two children were inherited by their mother. The mother died, and the estate was inherited

[45] Idem, p. 194.

by the surviving child. The latter died, and the estate was inherited by the maternal grandmother and a grandchild. The grandmother died on April, 1950, and property inherited by her was adjudged subject to *reserva troncal* on November, 1950.

On April 22, 1963, the aunt on the maternal side of the above-mentioned children filed an action claiming to be reservee. The Court held that the right of the reservee was extinguished by prescription which is ten years.[46]

Legacy of specific and determinate thing: Right to accrued fruits —

In the case of *Testacy of Maxima Santos Vda. de Blas*,[47] the Court applied Articles 948 and 951, and held that the fruits and rents of the fishpond from the death of the testatrix up to the time the property is delivered to the devisee belong to the latter, but interests on the fruits did not run until there was delay — which occurs in settlement proceedings from the moment the administrator is ordered to deliver the devise to the devisee.

Support of the Widow Pending Settlement of the Estate —

In the absence of proof regarding the status, nature and character of the property in the custody of the Special Administrator, the properties are presumed to belong to the conjugal partnership and as the estate is worth ₱205,397.00, a monthly alimony to the widow of ₱1,000.00 is justified, pending settlement of the estate under Article 188 of the New Civil Code.[48]

OBLIGATIONS & CONTRACTS

Prescription against the State —

In the case of *Republic v. Rodriguez*,[49] defendant borrowed on June 30, 1943 from the Bank of Taiwan ₱172.00 payable on June 30, 1944 and another ₱150.00 on November 1, 1943, without any maturity date. On January 2, 1946, the loans vested in the United States and assigned by the latter to the Philippine Government on July 20, 1954.

On October 1956 and November 1958, the Philippine Government demanded payment and filed an action to collect on June, 1960. A motion to dismiss was filed, alleging prescription. The Court held

[46] Carrillo, et. al. v. Paz, et. al., G.R. No. 22601, Oct. 28, 1966.
[47] G.R. No. 22797, Nov. 29, 1966.
[48] Testate Estate of Carlos Gurrea, L-21917, Nov. 29, 1966.
[49] G.R. No. 18967, Jan. 31, 1966.

that the notes of the Bank of Taiwan were being enforced in its sovereign role, the statute of limitations does not ran against the government. The next question was whether the action to collect prescribed before the Philippine Government became owner of said note on July 20, 1954, as more than ten years elapsed from the date of maturity of the notes. The Court held that the Moratorium Law suspended the running of the prescriptive period from July, 1946 to May 19, 1953; hence the action to collect was not barred by prescription.

Surety: Benefit of excussion —

Where the surety brought an action against the counter-guarantors because it paid the principal obligation, at the same time, asking for the foreclosure of the mortgage, the Court ruled that Article 2058 of the New Civil Code does not apply where a pledge or mortgage was given as special security.[50]

Contracts: Validity —

Restraint of trade

The stipulation prohibiting members of the Philippine Rating Bureau not to represent nor to effect or accept reinsurance with any company not a member in good standing of the Bureau was held to be valid as the purpose was to maintain a high degree or standard of ethical practice, and the prohibition is not unreasonable, immoral or unlawful inasmuch as reinsurance does not affect the public.[51]

Cause distinguished from motive

A surety, knowing of the estafa charge against the debtor, who was an agent of the complainant, conveyed the proposal of the debtor to the complainant to settle the case amicably and pay the amount allegedly misappropriated in 12 monthly installments. It was later agreed that to avoid criminal liability, the agent bound himself to pay the amount in 15 consecutive months, and upon submission of a surety bond, the creditor shall petition for the dismissal of the criminal case. The Court ruled that the agreement is valid, as the cause of the agreement was an existing account of the agent with the principal, and the cause for the surety was mere liberality. Furthermore, there was no proof that the criminal case was dropped.[52]

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[50] Phil.-Am. Gen. Ins. Co. v. Ramos, et al, G. R. No. 20978, Feb. 28, 1966.
[51] Filipinas Cia. de Seguros v. Mandanas, etc.G..R. No. 19638, June 20, 1966.
[52] Basic Books Inc. v. Lopez et al, G.R. No. 20753. Feb. 28, 1966.

Novation: What constitutes —

Acceptance without reservation of a subsequent agreement contained in a surety bond despite its failure to guarantee payment of accruing interest does not constitute novation as to interest, as the surety bond is not a new and separate contract but an accessory of the promissory note which provided for payment of interest.[53]

Prescription

Action for declaration of inexistent contract —

Where the deed executed in 1936 purport to be an absolute deed of sale but represented to the owners of the property as a mere donation of the eastern half of the property, the "vendors" remaining in possession of the western half, an action brought in 1957 to declare the sale null and void as to the western half did not prescribe.[54]

What constitutes a written agreement —

Where the terms of the modification of the agreement appear in the minutes of the defendant company, the Court ruled that the same is sufficient as a written contract for the purpose of prescription even if not signed, citing Corbin on *Contracts* to the effect that an unsigned agreement, the terms of which are embodied in a document unconditionally accepted by both parties, is a written contract.[55]

Distinguished from laches —

The action was brought on February 6, 1958 for damages for refusing to comply with the agreement entered in the latter part of 1941. The agreement provided for arbitration. As the action for the recovery of money accrued on December 31, 1941, and the defendant was a war-sufferer, he is covered by the Moratorium Law which suspended the prescriptive period for 8 years, 2 months and 8 days. Furthermore, the agreement to arbitrate suspended the statute of limitations until arbitration failed on June 25, 1957.

Neither could plaintiff be barred by laches because there was no delay on his part to assert his right after knowledge or notice of defendant's conduct. Plaintiff asserted his claim as early as 1946 and by reason of negotiations, it was only on June 25, 1957 that defendant denied his claim.[56]

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[53] Magdalena Estates, Inc. v. Rodriguez, et al, G.R. No. 18411, Dec. 17, 1966.

[54] Mapalo, et al. v. Mapalo, G.R. No. 21489 and 21628, May 19, 1966.

[55] Nielson & Co. v. Lepanto Consol. Mining Co., G.R. No. 21601, Dec. 17, 1966.

[56] See note 55.

TRUST

Express Trust

An executor in the will was given full power to sell the property of the beneficiaries, and with the fruits thereof acquire other properties. The trustee donated 853 square meters pertaining to the trusteeship to the City of Manila with the approval of the court, to be used as a street in the subdivision in order to relieve the estate from payment of tax and expenses in the maintenance of the street. The guardian of the beneficiaries claim that Article 736 of the New Civil Code prohibit donation of properties under trusteeship. The Court held that the prohibition contemplates gifts of pure beneficence, not those which are beneficial to the *cestui que trust*.[57]

Prescription

Implied or constructive trust prescribes in 10 years. The rule does not apply when a fiduciary relation exists and the trustee recognizes the trust. Continuous recognition of a resulting trust precludes any defense of laches to declare and enforce the trust. When it does not appear when the trustee repudiated the existence of the fiduciary relation, the same shall be taken to have been made only upon the filing of her answer to the complaint.[58]

SALES

Place of Delivery

In the case of *Butuan Sawmill Inc. v. Court of Tax Appeals, et al.*[59] plaintiff sold logs to a Japanese buyer. Payment was to be effected by means of an irrevocable letter of credit in favor of the plaintiff and payable through the Philippine National Bank. Plaintiff claimed that the sale was consummated in Japan, and hence not subject to sales tax. It was shown that the bill of lading was indorsed in blank to the bank in Manila with whom the Japanese buyer opened a letter of credit. The Court held that the sale was consummated in the Philippines.

Legal Redemption

In the case of *Conejero, et al. v. Court of Appeals, et al.*[60] the co-owner gave and showed a copy of the deed of sale showing the price to be ₱28,000.00 to the redemptioner. The latter offered a

[57] Araneta v. Perez, G.R. No. 18872, July 15, 1966.
[58] Buencamino v. Matias, G.R. No. 19397, April 30, 1966.
[59] G.R. No. 20601, Feb. 28, 1966.
[60] G.R. No. 21812, April 29, 1966.

check for ₱10,000.00. The Court held that a *bona fide* redemption imports a seasonable and valid tender of the entire repurchase price. The right to pay a reasonable price does not excuse him to tender a price that can be honestly deemed reasonable under the circumstances, without prejudice to final arbitration by the court. The price should either be fully offered in legal tender or else validly consigned in court; only by such means can the buyer become certain that the offer to redeem is made seriously and in good faith. Valid tender is indispensable.

LEASE

Period

Where the stipulation in the contract states that the duration shall be for one year renewable at the option of the lessee, the latter must signify his express intention to renew it for another year. Otherwise, their occupancy was only upon the acquiescence of the lessor and this produced under Article 1670 of the New Civil Code an implied new lease, not for the period of the original contract, but from month to month, the rent being paid monthly under Article 1697 of the New Civil Code.[61]

COMMON CARRIERS

Duration of the Contract

In the case of *La Mallorca v. Court of Appeals*,[62] a child, a gratuitous passenger accompanied by her father and mother alighted from the bus. The father went back to the bus to get another *bayong*, when the bus began to move. The father jumped off the bus. His daughter who followed him to get the second *bayong* was ran over by the same bus. The Court ruled that the contract of carriage does not cease at the moment the passenger alights from the carrier but continues until the passenger had reasonable opportunity to leave the carrier's premises. And even assuming that the carriage was at an end, plaintiff could recover damages based on *quasi-delict*. Plaintiff was awarded ₱3,000.00 damages for the death of the child.

Liability for negligence of strangers —

In the case of *Manila Railroad Co. v. Ballesteros*,[63] an auditor assigned to the railroad company took the wheel from the driver and

[61] Mercy's Inc. v. Verde, et al, G.R. No. 21571, Sept. 29, 1966.
[62] G.R. No. 20761, July 27, 1966.
[63] G.R. No. 19161, April 29, 1966.

drove the bus. In maneuvering the bus to avoid potholes in the road, the bus sideswiped a freight truck, injuring its passengers. The Court held that the defendant company is liable under Article 1763 of the New Civil Code and Section 48 (b) of the Motor Vehicles Law which prohibits professional chauffeur to permit any person to interfere in the operation of the motor vehicle.

Discourtesy —

The plaintiffs contracted to travel first-class by air, but were ousted after they were already seated and transferred to tourist-class. The Court awarded moral damages under Article 21 of the New Civil Code in the amount of ₱25,000.00 and exemplary damages in the amount of ₱10,000.00 and attorney's fees in the amount of ₱3,000.00, on the ground that passengers are entitled to be protected against personal misconduct, injurious language, indignities and abuses from employees of the carrier.[64]

Stipulation limiting liability —

In the case of *Shewaram v. Phil. Air Lines Inc.*[65] the contents of a passenger's luggage were lost in the amount of ₱373.00. The stipulation printed in small letters at the back of the ticket stub limits liability for loss to ₱100.00, unless there is a higher valuation and additional charges were paid. The Court, applying Articles 1734 and 1735, ruled that the stipulations were not fairly and freely agreed upon; that the carrier can not limit its liability due to its negligence, as it would induce want of care on their part, and place the shipper at their mercy.

MORTGAGE

Extrajudicial Foreclosure: Death of Mortgagor —

Following the dissenting opinion in the case of *Pasno v. Ravina*, the Court, in the case of *Perez v. Philippine National Bank*,[66] held that the power of sale in the deed of mortgage was not revoked by the death of the principal as it was not an ordinary agency, but the authority to sell was conferred on the mortgagee for the latter's protection. It is an essential and inseparable part of a bilateral agreement, and hence was not extinguished by the death of the principal. The mortgage was executed in 1939, the mortgagor died in 1942, and his intestate proceeding was closed in 1946. On January 2, 1963, the mortgagee foreclosed the mortgage extrajudicially. Plaintiffs

[64] Air France v. Carrascoso, et al, G.R. No. 21438, Sept. 28, 1966.
[65] G.R. No. 20091, July 7, 1966.
[66] G.R. No. 21813, July 30, 1966.

brought the action on August 15, 1963 to annul the foreclosure sale, on the ground that there was no notice of foreclosure. The Court allowed redemption within 60 days, on the ground that there was no notice of foreclosure.

QUASI-DELICT

Res Ipsa Loquitur

Plaintiff's house was burned due to fire which began in the neighboring Caltex gasoline station when a passerby threw a match while gasoline was being transferred from the tank truck of Caltex to the underground tank of the gasoline station. Plaintiff brought an action for damages against the Caltex (Phil.) Inc., on the ground that the station operator was not an independent contractor. The Court ruled that the defendant company could be held liable for damages, on the ground that gasoline is a highly combustible material, and extreme care must be taken in the storage and sale thereof; that the concrete wall of the gasoline station was only 2 1/2 meters high, and the rest was made of galvanized iron sheets; and that the station operator was not an independent contractor, as the maintenance of the station and equipment were subject to the approval of the Caltex.[67]

Solidary Liability: Concurrence of contractual negligence and Quasi-Delict —

Where concurrent or successive negligent acts or omission of two or more persons, although acting independently of each other, are, in combination, the direct and proximate cause of injury to a third person, and it is impossible to determine in what proportion each contributed to the injury, either is responsible for the whole injury, even though his act alone might not have caused the same injury or the same damage.[68]

DELICT

Subsidiary Liability of Employer under Article 103, *Revised Penal Code —*

In the case of *Bantoto, et al. v. Bobis*,[69] the Court held that the employer's liability is not predicated on the insolvency of the employee. Such insolvency is required only when the liability of the

[67] Africa, et al, v. Caltex (Phil.) Inc., et al, G.R. No. 12986, March 31, 1966.
[68] Sabido, et al, v. Custodio, et al, G.R. No. 21512, Aug. 31. 1966.
[69] G.R. No. 18966, Nov. 22, 1966.

master is being made effective by an execution levy, but not for the rendition of judgment against the latter. The subsidiary character imports that the employer's property is not to be seized without first exhausting that of the servant. By analogy to a regular guarantor, the master may not demand prior exhaustion of servant's properties if he can not point out to the creditor available property of the debtor within the Philippine territory sufficient to cover the amount of the debt.

DAMAGES

For Breach of Promise to Marry

Article 21 of the New Civil Code which allow recovery of damages from one who wilfully causes loss or injury in a manner contrary to morals, good customs or public policy, was intended to cover cases of seduction when the same is beyond the pale of criminal law. Where the petitioner alleges that for one year, there were repeated acts of intercourse, such conduct show voluntariness and mutual passion. The essential feature of seduction consists of deceit, enticement, superior power or abuse of confidence on the part of the seducer.[70]

Culpa Contractual: Loss of Earning Capacity —

A passenger suffered injuries when the bus in which she was riding hit a stone embankment. Plaintiff husband elected to base his civil action for damages on *culpa contractual.* The passenger suffered a stiff-neck, her arms lost full freedom of movement and she had a bad jaw alignment, and limitation of mouth opening. She was an egg-peddler, 37 years old, whose lifespan is 20 years more, and had an annual income of ₱2,500.00. The Court awarded her ₱15,000.00 for partial disability, but not moral damages nor attorney's fees, because the plaintiff refused the offer to compromise for ₱5,000.00.[71]

Breach of Contract: Moral Damages —

Defendant was adjudged guilty of bad faith when it cancelled the plaintiffs' first-class reservations in the Pan-Am. Airways, and withheld such fact from them, compelling the latter to travel tourist-class. Bad faith means breach of a known duty through some motive of interest or ill-will. The amount of moral damages is determined by considering official, political, social and financial standing of the offended parties, and the business and financial position of the of-

[70] Tanjanco v. Court of Appeals, et al, G.R. No. 18630, Dec. 17, 1966.
[71] Soberano, et al. v. Manila Railroad Co., et al, G.R. No. 19407, Nov. 23, 1966.

fender as well as the present rate of foreign exchange. The amount of moral damages for the plaintiff who was the Senate President Protempore was ₱100,000; for his wife who suffered sick discomfort, ₱50,000.00; for the immediate members of his party who suffered social humiliation, ₱25,000.00 each. Exemplary damages were also awarded in the amount of ₱75,000.00 at 6% interest from the date of the decision of the lower court, and ₱50,000 which was the agreed attorney's fees.[72]

Attorney's Fees as Damages —

In the case of *Soriano v. Cia. Gen. de Tabacos de Filipinas*.[73] payment of attorney's fees in the sum of ₱15,000.00 was allowed as damages inasmuch as the defendant acted in evident bad faith in refusing to satisfy plaintiff's valid, just and demandable claim.

However, in the case of *Estate of Buan v. Camaganacan*,[74] the Supreme Court deleted the lower court's award of attorney's fees, on the ground that the text of the decision should state why attorney's fees are being awarded, the conclusion being borne out by findings of facts and law, and that the fees must be reasonable. The reason for such rule being that it is not sound public policy to place a penalty on the right to litigate nor should counsel fees be awarded to every party who wins a lawsuit.

RECENT LEGISLATION

With the passage of Republic Act No. 4726, which was patterned after American statutes, Congress provided for the creation of *condominium*, which is a system of separate ownership of individual units in a multiple-unit building where each purchaser receives a fee simple in an apartment and an undivided interest in the common areas of the building.[75] It is not an entirely new concept of ownership in our law, as the New Civil Code has a provision[76] in the Title on Coownership, providing for rules for the maintenance of portions of a building owned in common where different stories of a house belong to different owners.

But the concept of condominium adopted from American statutes allow *separate* interest or ownership in a unit in a building, which may consist of one or more rooms, or a portion of the real property and an *undivided* interest or coownership in common areas of the

[72] Lopez, et al, v. Pan-Am. World Airways G.R. No. 22415, March 30, 1966.
[73] G.R. No. 17392, Dec. 17, 1966.
[74] G.R. No. 21569, Feb. 28, 1966.
[75] 15A CJS 343 (1967).
[76] Article 49.

building and the land on which it is located. It allows the formation of a condominium corporation in which the holders of separate interests shall be members or shareholders in the proportion of their interest of their respective units to the common areas.[77] It also applied the requirements of the Constitution regarding citizenship where the common areas in the project are owned in common by the owners of the separate units.[78]

If the property is to be divided into condominiums, the law requires the registration of an Enabling or Master Deed containing, among others, a description of the land and building or buildings, stating the number of stories, basements, units and their accessories and the common areas and facilities, and any reasonable restriction not contrary to law, morals and public policy regarding the right of any condominium owner to alienate or dispose of his condominium. To the Master Deed shall also be attached a survey plan of the land and a diagrammatic floor plan of the project in sufficient detail to identify each unit.[79]

Each unit could be transferred, mortgaged, pledged or encumbered, and any transfer or conveyance shall include the transfer or conveyance of his undivided interest in the common areas.[80]

A petition for partition by sale of the entire project could only be made upon showing that damage or destruction to a material part of the project rendering it unfit for use has not been repaired or rebuilt for 3 years; or that the condominium owners holding more than 30% interest in the common areas are opposed to the repair or restoration of the project where damage to one-half or more of the units therein render them untenantable; or that the condominium owners holding more than 50% interest in the common areas are opposed to the repair, restoration, remodelling or modernizing of the project which has been in existence for more than 50 years and which has become obsolete and uneconomic; or that the project or a material part thereof has been condemned or expropriated and the project is no longer viable, or the condominium owners holding more than 70% interest in the common areas are opposed to the continuation of the condominium regime after the expropriation or condemnation of a material portion thereof; or under the conditions which may be set forth in the Declaration of Restriction registered in accordance with this law.[81]

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[77] Section 2, R.A. 4726 (1966).
[78] Section 5.
[79] Section 4.
[80] Section 5.
[81] Section 8.

The owner of the project before the establishment of condominiums shall register a Declaration of Restrictions relating to the project which shall bind all condominium owners, and may be enforced by any condominium owner or management body of the project.[82]

It further provides that no labor performed or services or materials furnished with the consent of or at the request of a condominium owner or his agent or his contractor or sub-contractor shall constitute a lien against the other condominiums unless the owners of the latter consented or requested such services or materials, or in case of emergency repairs of his unit, or that the same was authorized by the management body as provided in the Declaration of Restrictions governing the project.[83]

Where real property is divided into condominiums, each condominium separately owned shall be separately assessed for purpose of real property taxation or other tax purposes, and shall constitute a lien solely on each condominium.[84]

Finally, it allows registration of the instrument conveying a condominium, entitling the transferee to a condominium owner's copy of the pertinent portion of each certificate of title.[85]

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[82] Section 9.
[83] Section 21.
[84] Section 25.
[85] Section 18.