CIVIL LAW — PART THREE

Araceli Baviera*

CONFLICT-OF-LAW RULE

Before proceeding to discuss the decision of the Supreme Court in the case of *Testate Estate of Amos G. Bellis,*[1] let us recall its decision in the case of *In re Estate of Edward E. Christensen.*[2] This case involved the claim to a legitime by an acknowledged natural child of the decedent who was a citizen of the United States and of the State of California, and who was domiciled in the Philippines at the time of his death in 1953. His will was executed in Manila on March 5, 1951, wherein he bequeathed only a certain sum to his natural child. The latter claimed a larger share in the estate as his legitime. The Supreme Court, applying Article 16 of our New Civil Code which refers the matter to the *national law* of the decedent, adopted the theory that the term "national law" refers to the corresponding rule on conflict-of-laws of that foreign country, and not to its purely internal rules of law. Inasmuch as the conflicts rule in the California Civil Code authorized the return of the matter to the law of the testator's domicile, our Supreme Court applied the Philippine Civil Code,[3] making the acknowledged natural children compulsory heirs of the recognizing parent.

The case of *Testate Estate of Amos G. Bellis,* involved the distribution of the estate of a citizen of the State of Texas, who was domiciled in said State at the time of his death. His will was executed in the Philippines in 1952, and probated in Manila on September, 1958. In his will ₱240,000 was given to his first wife, ₱120,000 to his three illegitimate children, and the remainder to his seven legitimate children. The illegitimate children filed an opposition to the project of partition, on the ground that they were deprived of their legitime. The question was whether the law of the Philippines or Texas will govern. The Court held that, in the absence of proof of a conflict-of-law rule in Texas, it shall be presumed to be the same rule as ours.

---

* Associate Professor of Law, University of the Philippines.
1 G.R. No. 23678, June 6, 1967.
2 G.R. No. 16749, January 31, 1963; 61 O.G. 7302 (Nov., 1965).
3 Civil Code, Arts. 887 & 894.

Articles 16, paragraph 2 and 1039 of our New Civil Code apply the *national law* of the decedent with respect to the order of succession, amount of successional rights, and capacity to succeed. The Court further stated that Congress did not extend the system of legitime to the succession of foreign nationals, regardless of the public policy or good customs which may underlie said system. This intention of Congress could be inferred from the deletion of the following phrase in the conflicts rule taken from the old Civil Code,[4] to wit: "Notwithstanding the provision of this and the preceding article," which phrase appeared in the opening sentence of the following paragraph:[5]

> "Prohibitive laws concerning persons, their acts or property and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated or by determinations or conventions agreed upon in a foreign country."

The Court concluded that the Philippine law on legitime can not apply, and that under the laws of Texas, there are no forced heirs or legitimes.

With due respect to the reasoning given by the Court, the same conclusion could be reached not by the use of statutory construction. The deletion of said phrase in the New Civil Code does not mean that the door is open wide for the application of foreign laws, because the exceptions found in the third paragraph of Article 17 of our New Civil Code are well-known exceptions to comity; and Articles 10 and 11 of the old Civil Code embody the entire conflict-of-laws rule on persons, acts, and property. Said phrase was deleted from the New Civil Code, because it was unnecessary, in view of the settled rules of private international law.

The same conclusion could be reached, on the ground that the system of legitime taken from the old Spanish Civil Code was not based on public policy or good customs. The Spanish system of legitime was the effect of historical and religious influences, and was justified on the basis of natural law and the interests of family solidarity.[6] Our Code Commission in drafting the New Civil Code, decided to retain the system of legitime, considering "the customs and traditions of the Filipino people,

---

[4] Civil Code (1889), Arts. 10 & 11.
[5] New Civil Code, Arts. 16 & 17.
[6] 6 MANRESA, COMENTARIOS AL CODIGO CIVIL ESPANOL 235 (7th Ed., 1951).

and for the sake of family solidarity.[7] In its report, the Code Commission made the following comments:

> "The American States have gone farther, and in many of the States of the Union, illegitimate children succeed to their mother 'the same as if they were legitimate' or 'as if lawfully begotten.' In several States, like Maryland, Washington, Iowa, Kansas, New Mexico, Wisconsin, and Georgia, this right extends to the succession of the father, if the father has acknowledged his illegitimate child. In American law, this right of succession is enjoyed by all classes of illegitimate children, so much so, that a recognized adulterous child may succeed as though he were legitimate. No distinction is made between natural and spurious children. All children born outside of wedlock are considered illegitimate or bastards, irrespective of whether their parents could have married or not at the time of their conception."[8]

Neither would a foreign law which does not recognize the system of legitime offend "good customs".

SUCCESSION

Implied Revocation of Legacy —

Article 957 of the New Civil Code provides:

> "The legacy or devise shall be without effect:
>
> . . .
>
> (2) If the testator by any title or for any cause alienates the thing bequeathed or any part thereof, it being understood that in the latter case, the legacy or devise shall be without effect only with respect to the part thus alienated. If after the alienation, the thing shall again belong to the testator, even if it be by reason of the nullity of the contract, the legacy or devise shall not thereafter be valid, unless the reacquisition shall have been effected by virtue of the exercise of the right of repurchase."

The preceding provision was construed by the Supreme Court in the case of *Fernandez v. Dimagiba*[9] as not applicable where the subsequent alienation was in favor of the legatee, even if such alienation was annulled on the ground of undue influence on the part of the legatee. The Court reasoned out that in such case, the transferor was not expressing free will in making the conveyance. It further stated that the phrase "nullity of contract" appearing in the above-mentioned provision which will not revive the legacy should not be interpreted strictly, because the nullity may be due to a defect in consent, or the supervening insanity of the transferor. For "how can an involuntary act to

---

[7] REPORT OF THE CODE COMMISSION ON THE PROPOSED CIVIL CODE, 112 (1948).

[8] *Ibid.*, p. 113-4.

[9] G.R. Nos. 23638 & 23662, October 12, 1967.

transfer ownership have the force of revoking a legacy", when Article 957 (2) is based on a presumed change of intention of the testator?[10]

OBLIGATIONS AND CONTRACTS

Obligation with a period —

Article 1197 of the New Civil Code provides:

> "If the obligation does not fix a period, but from its nature and the circumstances, it can be inferred that a period was intended, the courts may fix the duration thereof.
>
> "The courts shall also fix the duration of the period when it depends on the will of the debtor.
>
> "In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period can not be changed by them."

In a contract executed in 1950,[11] between the vendor and the vendee involving a parcel of land, it was stipulated that the vendee will build on said parcel the Sto. Domingo church and convent while the vendor will construct streets on the NE, NW and SW sides of said parcel. The vendor failed to finish the construction of the streets on the NE side because the squatters refused to vacate. The church was finished, and in 1958, the vendee brought the present action against the vendor to compel him to comply with his obligation, and to pay damages. The defense was that the obligation was with a period; hence the complaint was premature, as the plaintiff must first ask the court to fix the period.

The Court applied Article 1197 of the New Civil Code, and held that since the parties knew of the presence of squatters at the time they entered into the contract, they must have intended to defer performance until the squatters have been duly evicted. Inasmuch as the case against the squatters was still pending, the period fixed by the Court was "until all the squatters are finally evicted."

Contracts — Illegal Purpose

A deed of sale was executed by the plaintiff[12] on Jan. 24, 1934 conveying two fishponds consisting of 557,711 square meters to

[10] The court cited the opinions of Manresa and Scaevola, and the cases of Torres v. Lopez, 48 Phil. 772 (1926); Coso v. Deza, 42 Phil. 596 (1921).

[11] Gregorio Araneta Inc. v. Phil. Sugar Estates Dev. Co., G.R. No. 22558, May 31, 1967.

[12] Rodriguez v. Rodriguez, G.R. No. 23002, July 31, 1967.

her daughter for the sum of ₱2,500. Three days later, the fishponds were conveyed by the latter to her mother and stepfather for ₱3,000. Both deeds were registered and a Torrens Certificate of Title was issued in the name of the plaintiff and her second husband. The latter died in 1953, and in the extrajudicial settlement of the estate, the fishponds herein involved were considered conjugal property, and one-half was given to the children of the deceased by a former marriage. Later another agreement was entered into between the plaintiff and the children of her deceased second husband (herein defendants) giving the plaintiff a usufruct over one-third of the decedent's share in said fisponds. Still another agreement was entered between the same parties, leasing said fishponds to the plaintiff for five years.

In 1962, this action was brought by the plaintiff to declare the nullity of the first two contracts of conveyance mentioned above executed in 1934, on the ground that her consent was obtained by duress, and that the purpose of the 1934 conveyances was to convert said fishponds from paraphernal to conjugal property, and vest one-half interest in her second husband, thus evading the prohibition against donations between spouses.[13]

The Court ruled that the conveyances were not void *ab initio* on the ground of lack of consideration, for the mere fact that the consideration was not paid did not render the contract as inexistent, because the promise of one was the consideration for the promise made by the other. The Court proceeded to make a distinction between a simulated contract and an illegal contract, as follows: in simulation, the contract is not really desired to produce a legal effect or in any way alter the juridical situation of the parties; whereas an illegal contract is intended to be real and effective and entered in such form as to circumvent a prohibited act.[14] Articles 1304 and 1306 of the old Civil Code, embodying the principle of *pari delicto,* deny all recovery of guilty parties *inter se.* Moreover, the plaintiff is estopped by laches, and waited for 28 years before bringing this action.

If, as the Court held in this case, the above-mentioned conveyances were not simulated and there was real consideration

[13] Civil Code (1889), Art. 1334.

[14] The court cited FERRARA, LA SIMULACION DE LOS NEGOCIOS JURIDICOS, 95, 105.

for said transfers, then the Court need not invoke the doctrine of *pari delicto,* because it would then be a matter of distinguishing between cause and motive. If, on the other hand, the conveyances were simulated; i.e. no consideration was actually intended to be given for said transfers, then the doctrine of *pari delicto* should not also be made to apply, because the purpose of the law in prohibiting donations between spouses, except moderate ones, is the undue influence of one spouse over the other. Therefore, donations between spouses are void, and the property can be reclaimed at any time by the donor or his heirs or by any person prejudiced thereby.[15] To apply the doctrine of *pari delicto* in such case would be to sanction a circumvention of such prohibition.

TRUST

Express Trust — Formality

An affidavit[16] was executed on September 8, 1950 by the deceased father of the defendants, attesting to the following facts: that a four-hectare rice-land belonging to the mother of the plaintiffs was given as security for the affiant's obligation to pay an indebtedness to another before the war; that because the affiant was unable to pay such debt, the mortgage was foreclosed; that the affiant felt bound to answer for such foreclosure, and promised to replace said land to the plaintiff by another farm about four hectares, on the condition that the children of the affiant shall not be forced to give them the harvest nor shall substitution be required immediately. The plaintiff accepted the promise.

The present action was brought in 1961 to declare plaintiffs the owner of the land, and to fix the period for the delivery of the land to them. A motion to dismiss was filed, on the ground of prescription (lapse of more than 10 years).

The Court held that the naked ownership of the land passed to the plaintiff while the usufruct remained with the children of the deceased affiant for an undetermined length of time, who are deemed to hold the land as *trustees* of the plaintiff; that under Article 1444 of the New Civil Code, no particular words are required for the creation of an express trust; that the land

---

[15] 9 MANRESA, *Op. cit.*, 257.
[16] Julio v. Dalandan, G.R. No. 19012, October 20, 1967.

referred to in the affidavit is the only land owned by the affiant at the time of the execution of the affidavit; and that there was no disavowal of the trust by the defendants, but a mere refusal to deliver possession. Hence, according to the Court, the action does not prescribe; and even if it is not a trust, recovery of possession prescribes after 30 years.

From the terms of the affidavit executed by the decedent in 1950, it is respectfully submitted that there was no intention to create a trust. Although no particular words are required for the creation of an express trust, the latter presupposes the creation of a *fiduciary* relationship with respect to property, subjecting the person by whom the property is held to equitable duties, to deal with the property for the benefit of another person.[17] The question in each case is whether the settlor manifested an intention to impose upon himself or upon a transferee of the property equitable duties to deal out the property for the benefit of another person.[18] Thus,

> "No trust is created, however, where the owner manifests an intention to make an outright gift of the property rather than to declare himself trustee of it. Moreover, no trust is created if the owner of the property merely undertakes that he will at some time in the future dispose of it for the benefit of another."[19]

The transaction is more of a promise to assign his property in payment of a debt, performance to take place in the future. From the wording of the affidavit, it can be inferred that the children of the affiant needed the harvests from said land, which was the only land owned by the affiant at the time the affidavit was executed. Thus, the condition for the substitution (which is really an assignment) of the property was that it shall not be required immediately. Therefore, to determine whether the action has prescribed, the Court should have first fixed the period for the transfer of the property, and then determine whether ten years[20] had elapsed from said date. It can not be said that the naked ownership over the land passed to the plaintiff at the time of the execution of the affidavit and the acceptance of its terms by the latter, because of the condition that the substitution can not be required immediately of the child-

---

[17] RESTATEMENT, TRUSTS, Sec. 2 (1935).
[18] 1 SCOTT, THE LAW OF TRUSTS, Sec. 24 (2d. ed., 1956).
[19] *Ibid.*, pp. 182-83.
[20] Art. 1144 of the New Civil Code should apply.

ren of the affiant. Hence, the assignment of the property had not yet taken place.

If, as concluded by the Court, the naked ownership passed to the plaintiffs, while the defendants had the usufruct, and that there was an express trust created, then the plaintiffs would be the trustees, and the defendants, the *cestuis que trust*.

Express Trust — Immovable

In another case the complaint[21] alleged that the defendant agreed to hold in trust whatever shares in the hacienda which might belong to his brothers and sisters as a result of a then pending transaction between the deceased owner and the brothers of the owner, and sought to recover said shares. The Court ruled that an express trust was created, and must, therefore, be evidenced in writing as it concerns an immovable. The Court stated the distinction between an express trust and an implied trust: an express trust is created by direct and positive acts of the parties by some writing, deed or will or words evidencing an intention to create a trust; while an implied trust comes into being by operation of law, deducible from the nature of the transaction by operation of law, as a matter of equity, independent of the particular intention of the parties.

LEASE

Revocation

A jukebox was leased by the plaintiff to the defendant[22] for three years for an amount equal to 75% of the weekly gross receipts but not less than ₱50 a week. Six months later, the defendant wrote the plaintiff to get the jukebox, because, once in a while, coins stuck up. Defendant decided to return the jukebox, but the agent of the plaintiff refused to accept it. So defendant deposited the jukebox in a place in their establishment, and demanded a monthly rental of ₱50 for the space occupied by the jukebox.

The action was brought by the plaintiff for specific performance and damages, on the ground that the sticking-up of coins is normal in any coin-operated phonograph.

---

[21] Cuaycong v. Cuaycong, G.R. No. 21616, December 11, 1967.
[22] Philippine Amusement Enterprises, Inc. v. Natividad, G.R. No. 21876, September 29, 1967.
[23] Maranan v. Perez, G.R. No. 22272, June 26, 1967.

The Court reiterated the rule that the power to rescind must be invoked judicially, in the absence of a stipulation to the contrary, and only when the breach of contract is substantial. Here, the occasional failure of the phonograph is not frequent enough to render it unsuitable and unserviceable. The Court awarded liquidated damages in favor of the plaintiff for culpable violation of the lease contract in the amount of ₱5,850 plus 6% from the filing of the complaint, and ₱200 as attorney's fees.

Common Carriers — Liability for Employee's Act

A passenger in a taxicab was killed by the driver in 1960.[23] The driver was prosecuted for homicide and was convicted, but he appealed the case. An action for damages was brought against the operator and the driver under Article 1759 of the New Civil Code.

The Supreme Court ruled that Article 1759 of the New Civil Code, taken from the Anglo-American Law, represents the majority view in the United States that the employee of the carrier need not have acted within the scope of his authority. It is enough that the assault happened within the course of the employee's duty. The liability of the carrier is absolute and affords a full measure of protection, based on its duty to exercise a high degree of care. The carrier delegates to its servant the duty to protect the passenger with utmost care and bears the risk of wrongful or negligent acts of its employees since they have the power to select and remove.

COMPROMISE

Validity and Nature —

The lessees for an indefinite period, occupying the land for many years were served notice to vacate.[24] An action was brought by the lessees for the court to fix the period and be indemnified for the improvements. A compromise agreement was entered into between the parties, leaving the period of lease to the discretion of the Court, the lessees agreeing to remove the improvements after the termination of the lease or else forfeit

[24] Merced v. Roman Catholic Archbishop of Manila, G.R. No. 24614, August 17, 1967.

the same, and to pay the rents in arrears from the filing of the complaint. The Court approved the agreement, and fixed the period of lease to 18 months from the date of the judgment. After six months, the defendants moved for the execution of the judgment, on the ground of failure to pay the rent. The lessees assailed the validity of the compromise on the ground that their lawyer who signed the agreement on their behalf was not specially authorized.

The Court held that the agreement was not a real compromise, as it is a mere recognition of the rights and obligations of the parties under Articles 1687 and 1678 of the New Civil Code, and did not involve any reciprocal concession. Hence, even if the lawyer who signed the agreement on their behalf was not specially authorized by them, the agreement is binding on the parties.

ARBITRATION

Refusal to Arbitrate — Republic Act No. 876

A contract between the parties provided for the arbitration with respect to the rights and obligations of either party, except the interpretation of the plans and specifications, sufficiency of the materials, time, sequence and method of performing the work which are to be finally determined by the engineer.[25]

The dispute involved the proper computation of the total contract price including the cost of additional work and liability for the delay in completing the project and alleged losses due to change in plans and specifications.

The Court held that since there is a written provision for arbitration as well as failure on the respondent's part to comply therewith, the Court can order the parties to proceed to arbitration in accordance with the terms of their agreement.[26] The respondent's argument on the merits of the dispute should be addressed to the arbitrators. The Court, in a summary remedy to enforce the agreement to arbitrate, could only determine if they should proceed to arbitration or not.

---

[25] Mindanao Portland Cement Corp. v. McDonough, G.R. No. 23390, April 24, 1967.

[26] Rep. Act No. 876 (1953), Sec. 6.

PLEDGE

Foreclosure

A surety company filed a bond for the dissolution of the writ of attachment for herein defendant.[27] The latter, by way of pledge, delivered four pieces of jewelry to the surety company with power to sell the same and apply the proceeds to the amounts it paid, and turn over the balance to the persons entitled thereto, after deducting legal expenses. The surety company was forced to pay ₱2,800 on the bond, and upon failure of herein defendant to reimburse the amount, sold the jewelry for ₱235. Later, the present action was brought by the surety against herein defendant to recover the deficiency. The defendant invoked Article 2115 of the New Civil Code on the effect of foreclosure of pledge.

The Court applied Article 2115 of the New Civil Code, on the ground that by electing to sell the articles pledged, instead of suing on the principal obligation, the creditor has waived any other remedy, and must abide by the results of the sale.

MORTGAGE

Pacto de Retro construed as Equitable Mortgage

In a contract of *pacto de retro*[28] of a new two-story house over a rented land for ₱3,000, it was stipulated that if the sum of ₱3,000 is not paid, the right to redeem shall be forfeited, and the ownership thereof shall automatically pass to the vendee. The period for redemption was extended for another two months. The vendors mortgaged the house to another who recorded the same under Act 3344. This mortgage was foreclosed extrajudicially and the mortgagee was the only bidder.

The present action for consolidation was instituted, and the mortgagee intervened. He alleged that the contract of *pacto de retro* is an equitable mortgage, and hence, if unrecorded, cannot prevail over the subsequent mortgage which was recorded.

The Court held that the first contract is an equitable mortgage because of the gross inadequacy of the price, the *pactum*

[27] Manila Surety & Fidelity Co. Inc. v. Velayo, G.R. No. 21069, October 26, 1967.

[28] Reyes v. De Leon, G.R. No. 22331, June 6, 1967.

commissorium, and delay in the filing of the petition for consolidation. Hence, the second recorded mortgage is preferred.

PREFERENCE OF CREDITS

Specific Immovable Property —

The New Civil Code, while abolishing the preference among the preferred credits on specific movables and immovables, and making them payable *pro rata,* after payment of taxes due the Government, preserved the wording of the description of the preferred credits in the Old Civil Code. Thus, Article 2242 (7) of the New Civil Code recites:

> (7) Credits annotated in the Registry of Property by virtue of a judicial order, by attachments or executions, upon the property affected, and only as to *later* credits.

In the case of *Manabat v. Laguna Federation of Facomas, Inc.,*[29] several attachments and executions were annotated over a real property which was sold by the sheriff for ₱37,000. The first attachment was for the sum of ₱17,448; the second for ₱3,735; the third for ₱12,650; the fourth for ₱26,787.50.

The Court held that there was still preference among these attachments in the order of the time they were levied upon the property. Otherwise, the result would be absurd: the preference of an attachment or execution lien could be defeated by simply obtaining a writ of attachment or execution, no matter how much later. Therefore, the amount should be applied to the first, second and third attachments, and the excess applied to the fourth.

Specific Movables — Under the Old Civil Code

The Old Civil Code gives preference among the different classes of perferred credits on specific movables and immovables, but credits falling under one group are payable *pro rata.*

In the case of *Chief of Staff, AFP v. Collector of Internal Revenue,*[30] cargo consisting of surplus war materials en route to Hongkong were seized in Manila. The proceeds realized from the confiscated cargo was in the amount of ₱24,292. Several claims were filed over the proceeds, which matured before the effectivity of the New Civil Code, to wit:

---

[29] G.R. No. 23888, March 18, 1967.
[30] G.R. No. 21835, August 19, 1967.

1. Sales tax on the goods — ₱10,000
2. Stevedoring wages in the loading of the cargo — ₱5,073.00
3. Arrastre and storage service after the unloading from the vessel for transfer to Nichols Air Base — ₱9,050.00
4. Salary and expenses for safekeeping and preservation
5. Charter fees — ₱37,250

The Court applied Article 1922 of the Old Civil Code and considered that the above-mentioned expenses fall under paragraph 4 thereof, to wit:

> (4) Credits for transportation of goods with regard to the amount of such transportation, expenses and rates for carriage and preservation, until their delivery and for 30 days afterwards.

Therefore as the tax constitute a lien on the goods under the National Internal Revenue Code, the same should be paid first out of the proceeds, and the rest of the credits should be paid *pro rata.*

The same conclusion could be reached even if the case were decided under the New Civil Code, because although Article 2241 of the New Civil Code separated said claim into two groups, and placing credits for safe-keeping and preservation as No. 5, and credits for transportation and incidental expenses as No. 9 of said Article, preferred credits under Articles 2241 and 2242 are payable *pro rata,* after payment of duties, taxes and fees due thereon to the Government.[31]

[31] Civil Code, Arts. 2247 & 2249.