CIVIL LAW — PART FOUR
TORTS AND DAMAGES

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A survey of 1967 Philippine Supreme Court decisions in Torts and Damages bears out the fact that there is no precedent-setting decisional rule promulgated this year. The judgments rendered are merely reiterations of prior decisions which adhere to existing Philippine decisional and statutory law and consistent general principles on torts and damages in common law. Hence the approach will be purely expository and cases in *pari materia* will be discussed together.

While the law on torts is of basically civil law origin, yet the development of the law of torts is at a much faster pace and has reached its state of perfection in common law, hence many entertain the mistaken concept that the law of torts is of common law origin. In the Philippine and Spanish Civil Codes, there is no exact equivalent of the term "tort" of American law, however, "quasi-delict" has been adopted as the legal category which is the nearest approach to tort as tort of American law is of a much broader connotation. "Quasi-delict" is the choice of the Code Commission for "culpa-aquiliana" and "culpa extra contractual" and under Article 2176 of the Civil Code, it is required that there must be no preexisting contractual relation and that there must be a causal connection between the harm or injury of the plaintiff and the fault or negligence of the defendant.[1]

TORTS

In order that article 2176 of the Civil Code on quasi-delicts may be applicable, there must be conjunction of damage and wrong. Where either one or the other is wanting, there can be no actionable wrong and the principle of *damnum absque injuria* is applicable.

These are the principles enunciated by the case of *Board of Liquidators v. Kalaw*.[2]

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1 Taylor v. Manila Electric Railway & Light Co., 16 Phil. 8 (1910), explaining the requisites of quasi-delict under article 1902 of the old Civil Code, now article 2176.

2 G.R. No. 18805, August 14, 1967.

The General Manager and Board Chairman of the National Coconut Corporation entered into contracts for the delivery of copra without the prior approval and authority of the Board, which contracts were later approved or ratified by the Board of Directors. Due to several typhoons the National Coconut Corporation was able to deliver only a little less than 50% of the tonnage of copra called for in the contracts, so that the buyers threatened to file damage suits. One was actually filed, some claims were settled and all settlements add up to the sum of ₱1,343,274.52. The sum is sought to be recovered by the Coconut Corporation (later the Board of Liquidators entrusted with the function of settling and closing its affairs) from the general manager and board chairman, Kalaw, and the directors, charging them with negligence under article 1902 of the old Civil Code (now 2176, new Civil Code) and defendant board members with bad faith or breach of trust for having approved the contracts. Complaint and counter claims were dismissed but the plaintiff was ordered to pay the heirs of Kalaw the sum of ₱2,601.94 for unpaid salaries and cash deposit due the deceased Kalaw from the Coconut Corporation.

Since the contracts in dispute were ratified by the board, and the practice of the corporation was to allow the general manager to negotiate and execute contracts in copra trading activities without prior approval of the board, then the Kalaw contracts are valid corporate acts. There was no bad faith, as breach of known duty must partake of the nature of fraud, a conscious doing of wrong. The acts of Kalaw were not the result of haphazard decisions and neither was he negligent. Good faith characterized the acts of Kalaw and other directors.

Were it not for the typhoons, the contractual obligations of the National Coconut Corporation could have been fulfilled. This is a case of *damnum absque injuria.* Conjunction of damage and wrong is here absent so there cannot be an actionable wrong.[3]

Liability ceases on the part of the employer who is not guilty of culpa in eligiendo nor of culpa in vigilando. Motor vehicle owner is not an absolute insurer against all damages caused by driver. Respondeat superior doctrine is not applicable in this jurisdiction.

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[3] Citing Churchill v. Rafferty, 32 Phil. 580, 605 (1915); Ladrera v. Secretary of Agriculture and Natural Resources, G.R. No. 13385, April 28, 1960, 58 O.G. 5522 (Aug., 1962).

The above principles are the rulings in the case of *Ramos v. Pepsi-Cola Bottling Co. of the Philippines.*[4] As a consequence of a collision involving the car of Placido Ramos driven by his son and co-plaintiff Augusto Ramos, and a tractor-truck and trailer of the Pepsi Cola Bottling Co. of the Philippines driven by driver and co-defendant Andres Bonifacio, an action was filed. After trial the Court of First Instance found Bonifacio negligent and declared that the Pepsi Cola had not sufficiently proved its having exercised the due diligence of a good father of a family to prevent the damage. The two defendants Pepsi Cola and Bonifacio were ordered to pay solidarily to the plaintiffs ₱2,638.00 exemplary damages and ₱1,000 attorney's fees with costs.

Defendants appealed to the Court of Appeals which affirmed the trial court's judgment finding Bonifacio negligent but modified it by absolving Pepsi Cola which sufficiently proved due diligence in the selection of its driver. Plaintiffs appealed to the Supreme Court which affirmed *en toto* the judgment of the Court of Appeals. A motion for reconsideration was also resolved against the petitioners and the judgment of the Court of Appeals was affirmed in full.

The uncontradicted testimony of the personnel manager of the defendant company that he examined carefully the driver-applicant who was later involved, in the mishap, and the finding of the Court of Appeals that this witness truthfully testified cannot be disturbed by the Supreme Court on this question of fact and credibility. Where it was proven that the employer had carefully examined the erring driver as to his qualifications, experience, and record of service, such evidence is sufficient to show that the employer exercised the diligence of a good father of a family in the selection of the driver and rebuts the *juris tantum* presumption that employer was negligent in selecting his driver. It should be noted that in the instant case no question was raised as to due diligence in the supervision by Pepsi Cola of its driver. Article 2180 of the Civil Code among other things provides that the responsibility treated in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damages. Such proof of diligence in the selection and supervision of his

[4] G.R. No. 22533, February 9, 1967.

employees will overcome the presumption *juris tantum* of negligence and the employer is relieved from liability.

In the Resolution on the Motion for Reconsideration of May 16, 1967, the Supreme Court also affirmed the decision of the Court of Appeals which made no factual finding as to violations of the Revised Motor Vehicle law and rules and regulations related thereto. The Court ruled that a motor vehicle owner is not an absolute insurer against all damages caused by its driver, as the owner's responsibility ceases once its proves that it has observed the diligence of a good father of a family to prevent the damage.

The liability of an employer for the negligence of his employee is not based on the *respondeat superior* doctrine of American law when the liability of the employer is absolute but it is based on his own negligence in the selection and supervision of the employee. Thus the liability of the employer is merely presumptive and is based on the Roman law concept of *bonus paterfamilias;* while the employer under the doctrine of *respondeat superior* is absolute.

Tortious liability for interference with contractual relations is recognized under articles 1313 *and* 1314 *of the New Civil Code. Articles* 20 *and* 21 *of the New Civil Code are retroactively applied to award damages to creditors as against debtors and third persons executing contracts to defraud creditors.*

These are the holdings of the case of *Peoples Bank and Trust Co. v. Dahican Lumber Co.*[5]

The facts of the case clearly show that DALCO and DAMCO, after failing to pay the fifth promissory note upon its maturity, conspired jointly with CONNELL to violate the provisions of the fourth paragraph of the mortgages under foreclosure by attempting to defeat plaintiff's mortgage lien in the "after acquired properties." Plaintiffs therefore have to go to court to protect their rights thus jeopardized and defendants' liability for damages is therefore clear.

Under articles 1313 and 1314 of the New Civil Code, creditors are protected against contracts intended to defraud them. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party. This

[5] G.R. No. 17500, May 16, 1967.

is equivalent to the tort of interference with contractual relations, and is therefore a quasi-delict in this jurisdiction.

Similar liability arises under articles 20 and 21 of the New Civil Code, and these articles may be given retroactive effect.[6] Since defendants conspired to defraud the mortgages, defendants' liability for damages is solidary. However since the appellate court had no means to ascertaining the damages, the record of the case was remanded to the lower court for the determination of the amount thereof.

In article 32 of the Civil Code on violation of civil liberties, responsibility for moral damages is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other special penal statutes.

This is the ruling in *Serrano v. Muñoz Motors, Inc.*[7]

Whether article 32 of the Civil Code may be utilized as legal basis of an action for damages against a Public Service Commission, the Supreme Court does not now decide. But assuming said provision of law authorizes such recovery of damages against a member of the Public Service Commission, the dismissal must yet be sustained. Nowhere in the complaint is it stated that in issuing the subject order, the Public Service Commissioner did so in violation of the Revised Penal Code or any other penal statute. It does not charge him of knowingly rendering an unjust judgment[8] or rendering an unjust judgment by reason of inexcusable negligence or ignorance[9] or knowingly rendering an unjust interlocutory order or decree[10] or transgressing any other penal law.

Houses of squatters on public property are nuisances per se.

In the case of *City of Manila v. Garcia*[11] the Supreme Court held that the houses and constructions of squatters on the land belonging to the City of Manila constitute a public nuisance *per se* because they hinder and impair the use of the land for a badly needed school building. As such they could have been summarily abated without need of judicial action. Squatting is unlawful so that no amount of acquiescence on the part of the city officials will elevate it to a lawful act. Any permit issued by the mayor to legalize forcible entry into public property is void.

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[6] Civil Code, Arts. 2252-2253.

A law authorizing the Secretary of Public Works and Communications to demolish public nuisance is not a criminal statute and can have no ex post facto character.

This is the pronouncement of the Court in *Santos v. Secretary of Public Works and Communications.*[12]

The power of the Secretary of Public Works and Communications under Republic Act 2056 to demolish as public nuisances the past illegal construction on channels of navigable rivers, after complying with due process, is not an exercise of the coercive power of its criminal law by the State and therefore not *ex post facto* legislation. It is merely the invocation of an authority already vested in the public works official by Act 3208.

Before proceeding to the discussion on Damages and before leaving the subject of Torts or Quasi-Delicts, there are certain procedural aspects of tortious liability gathered from the 1967 decisions which deserve consideration. In *Clavecilla Radio System v. Antillon,*[13] the venue of a tort action filed against a corporation in an inferior court, is the placed where the corporation has its principal office and not in the place where it has its branch office. The reason is that to allow an action against a corporation to be instituted in any place where a corporate entity has its branch offices would create confusion and work untold inconvenience to the corporation.

In *Ang v. American Steamship Agencies, Inc.,*[14] the Supreme Court held that the one year period of prescription as regards the liability of a carrier and the ship for loss or damage contemplates a situation where there is no delivery at all because the goods had perished, gone out of commerce, or disappeared in such a way that their existence is unknown or cannot be recovered in the light of article 1189 of the Civil Code. It does not include a situation where there was a delivery — but a delivery to a wrong person or a misdelivery or conversion of imported goods. In such case the applicable rule on prescription is found in the New Civil Code — either 10 years for breach of written contract or 4 years for a *quasi-delict,* citing articles 1144 and

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7 G.R. No. 25547, November 27, 1967.
8 Rev. Pen. Code, Art. 204.
9 Rev. Pen. Code, Art. 205
10 Rev. Pen. Code, Art. 206.
11 G.R. No. 26053, Feb. 21, 1967.
12 G.R. No. 16949, March 18, 1967.
13 G.R. No. 22238, February 18, 1967.
14 G.R. Nos. 25047 & 25050. March 18. 1967.

1146 of the Civil Code, and not the one year rule on prescription in the Carriage of Goods by Sea Act.

In *Clorox Company v. Director of Patents,*[15] the Supreme Court discussed the alternative proceedings of opposition to registration of trademarks, and petition for cancellation; as well as the procedure for setting aside of an order of Director of Patents. The case is a petition to review the order of the Director of Patents dismissing the opposition of the Clorox Company to the registration of the trademark "Oldrox" in the name of a Chinese national, and the resolution by said Director denying the Clorox Company's motion and petition for relief from said order. The verified opposition which was filed on time was submitted under an erroneous covering letter. The pleading may be misfiled but it cannot be said that it was not filed. There was a substantial compliance with the requirements of the law.

Where the allegations of the pleading clearly show circumstances constituting mistake and excusable negligence which are grounds for a motion for reconsideration, a dismissal of the motion and a denial of the relief sought upon the flimsy excuse that the same was filed as a petition for relief amounts to an abuse of discretion.

Neither did the Court uphold the contention of the respondent, that the petitioner is not totally deprived of its right to question the registration of the trademark in question because it may still pursue a cancellation proceeding under sections 17 to 19 of the Trademarks Law, Rep. Act No. 166. The opposition to a trademark registration and petition for cancellation are alternative proceedings which a party may avail of according to his purposes, needs, and predicaments[16] and herein petitioner has the right to choose which remedy it deems best for the protection of its rights.

In *People's Surety and Insurance Co., Inc. v. Court of Appeals,*[17] the Supreme Court held that surety's liability for damages in an injunction bond should be determined before entry of final judgment against the principal and should be included in the final judgment.

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[15] G.R. No. 19531, August 10, 1967.
[16] Anchor Trading Company v. Director of Patents, G.R. 8004, May 30, 1956.
[17] G.R. No. 21627, June 29, 1967.

A surety in order to be liable for damages in an injunction bond must be given his day in court and must be given notice of the proceedings for damages against the principal. Such liability of the surety must be determined before entry of judgment and should be included in the final judgment against the principal. Such inclusion in the final judgment of the damages incurred by reason of the improper issuance of a writ of preliminary injunction will avoid multiplicity of suits. Moreover, with a single judgment against principal and sureties, the prevailing party may choose at his discretion, to enforce the award of damages against whomsoever he considers in a better situation to pay it (as explained in the case of del Rosario v. Nava, 95 Phil. 637, (1954).

In *Republic v. Angeles,*[18] the Supreme Court held that an action for certiorari and mandamus is not a proper and suitable proceeding for the determination of damages allegedly suffered by petitioner as a consequence of the delay in the enforcement of a final judgment, especially where the undue delay was due to trial court's action and not due to judgment debtors. Where the judgment is already final and executory it is the ministerial duty of the trial court to issue a writ of execution for the enforcement of such final judgment even if the trial judge entertains doubts as regards the dispositive part of the decision which to him is rather vague and requires clarification.

Ordinarily where a party bases his cause of action upon negligence, it is incumbent upon him to prove such negligent act unless there is a provision of law which established the presumption of negligence. Where the principle of *res ipsa loquitor,* i.e., the thing speaks for itself, is applicable, this is a situation where negligence is presumed, for in the ordinary course of events, the mishap does not happen unless there be negligence. Thus in *Republic v. Luzon Stevedoring Corporation,*[19] the Supreme Court applied the doctrine of *res ipsa loquitor.*

Where a barge owned by the Luzon Stevedoring Corporation, defendant-appellant was being towed down the Pasig River by 2 tugboats belonging to the same corporation, the barge rammed against one of the wooden piles or bridge supports of the Nagtahan bailey bridge, there arises a presumption of negligence on

[18] G.R. No. 26112, June 30, 1967.
[19] G.R. No. 21749, September 29, 1967.

the part of the appellant or its employees manning the barge of the tugs. Here the doctrine of *res ipsa loquitor.* is applicable for in the ordinary course of events, such a thing does not happen if proper care is used.

The Nagtahan bridge is an immovable and stationary object and uncontrovertedly provided with adequate openings for the passage of watercraft. The very measures of safety or prevention or precautions taken by appellant, prove that the possibility of danger was not only foreseeable but actually foreseen, and would therefore bring this out of the defendant's defense of force majeure or *caso fortuito.*

DAMAGES

Whatever be the kind of obligation as to source, be it *ex lege, ex contractu, quasi ex contractu, ex delictu* or *quasi ex delictu,* a breach or delay in the performance thereof will give rise to damages. Speaking of tortious liability in common law, the unlawful violation of a private legal right, damages will be recoverable by the victim. The law recognizes legitimate human desires which are interests for whose invasion the law affords a sanction.

However, the law recognizes situations where the invasion of the interest of another is considered lawful, so much so that there will be no liability whatsoever. Thus, when one acts in defense of self, relatives or strangers, neither civil nor criminal liability is incurred because of the presence of the justifying circumstance of defense. The law recognizes defenses to negligence actions so that no damages are recoverable, as for example when the principle of assumption of risk is applicable, or when the doctrine of contributory negligence bars recovery because the plaintiff's own negligence is the proximate cause of the mishap itself.

In the early cases of *Algarra v. Sandejas*[20] and *Marcelo v. Velasco,*[21] the Supreme Court refused to grant moral damages for physical pains and sufferings. However, the Supreme Court reconsidered its stand, so that patrimonial damages were allowed in *Lilius v. Manila Railroad Co.*[22] while moral damages were

[20] 27 Phil. 284 (1914).
[21] 11 Phil. 287 (1908).
[22] 62 Phil. 56 (1935).

awarded starting in *Castro v. Acro Taxicab Co.*[23] The New Civil Code provides for the award of moral damages for the grounds enumerated and also allows the recovery of nominal, temperate, liquidated, exemplary, moral and compensatory damages.

Liability of carrier to the heir of a passenger killed by its driver. Damages to be paid by carrier for passenger's death.

In *Maranan v. Perez,*[24] the Supreme Court held that where a passenger in a taxicab was killed by the driver, the cab owner is liable to the heirs of the deceased passenger for damages *ex contractu.* The driver is not liable to the heir because the driver was not a party to the contract of carriage. His civil liability is covered by the judgment of conviction in the criminal case. This case is different from *Gillaco v. Manila Railroad Co.*[25] where the passenger was killed outside the scope and the course of duty of the guilty employee. Besides the *Gillaco* case was decided under the provisions of the old Civil Code which unlike the present Civil Code in article 1759, did not impose upon common carriers absolute liability for the safety of passengers against wilful assaults or negligent acts committed by their employees.

The minimum amount of compensatory damages which a common carrier should pay for the intentional killing of a passenger is ₱6,000. Moral damages may also be awarded. Interest is due on said damages.[26]

Negligence of common carrier is presumed where passenger suffers injuries. Moral damages are not ordinarily recoverable in action for breach of contract of carriage resulting in physical injuries.

In *Roque v. Buan,*[27] the Supreme Court held that in case of death or injuries to passengers, common carriers are presumed to have been negligent or at fault unless they proved that they observed extraordinary diligence prescribed in articles 1733 and 1755.[28]

Unless it be proved that the common carrier in violating his contract to carry a passenger safely to his destination acted

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[23] 82 Phil. 359 (1948).
[24] G.R. No. 22272, June 26, 1967.
[25] 97 Phil. 884 (1955).
[26] New Civil Code, Art. 2206 & 1764.
[27] G.R. No. 22459, October 31, 1967.
[28] Civil Code, Art. 1756.

fraudulently, or in bad faith, no moral damages can be awarded where the breach did not result in death, but in mere physical injuries.

Interest on compensation in eminent domain.

In *Republic v. Tayengco, et al.*[29] the Supreme Court ruled that owners of expropriated lands are entitled to recover interest from the date the condemnor takes possession of the lands and the amounts granted by the court shall cease to earn interest only from the moment they are paid to the owners or deposited in court.

Damages recoverable by plaintiff in ejectment case; attorney's fees when defendant continued litigation unjustifiably.

In *Ramirez v. Sy Chit,*[30] the damages recoverable by plaintiff under Section 1, Rule 70 (formerly Rule 72) are those which correspond to the reasonable use and occupation of the property, which in this case is the agreed monthly rental of ₱230.00. Thus the award of ₱25.00 damages for every day of delay in addition to the monthly rentals is without basis in law.

Article 2208 of the Civil Code sanctions the award of attorneys fees to the plaintiff who has been driven or goaded to unnecessary expense and trouble to protect his interest. Award of ₱200, as attorneys fees to plaintiff is reasonable where the defendant continued the litigation injustifiably, even up to the Supreme Court after he has been granted a reasonable extension of the lease.

Attorney's fee and expense of litigation when recoverable as damages by winning defendant.

In *Rizal Surety and Insurance Co. v. Court of Appeals*[31] the Supreme Court held that if a party defendant who was necessarily impleaded wins, he cannot as a rule, recover attorney's fees and litigation expenses, since it is not the fact of winning alone that entitles him to recover such damages but rather the attendance of any of exceptional circumstances enumerated in article 2208 of the Civil Code. Otherwise every time a defendant wins, the plaintiff automatically must pay attorney's fees, thereby putting a premium on the right to litigate which should not be

[29] G.R. No. 23766, April 27, 1967.
[30] G.R. No. 22022, December 26, 1967.
[31] G.R. No. 23729, May 16, 1967.

the case. For those expense of litigation the law deems the award of costs as a sufficient reimbursement.

If a party is unnecessarily made a defendant, paragraph 4 of article 2208 referring to a clearly unfounded civil action or proceeding against plaintiff will apply. "Unnecessarily" connotes the idea that the cause of action against such party was clearly unfounded, meaning the cause of action must be so untenable as to amount to gross and evident bad faith.

No award to attorney's fee if action is justified.

In *Sveruges Angfartygys Assurans Forening v. Qua Chee Gan,*[32] the Supreme Court held that plaintiff's action against defendant cannot be considered as clearly unfounded as to warrant an award of attorneys fees as damages to defendant under paragraph 4 article 2208 of the Civil Code. The facts do not show that plaintiff's cause of action was so frivolous or untenable as to amount to gross and evident bad faith.

Attorneys fees in labor cases.

In *Fajardo v. Court of Industrial Relations,*[33] the Supreme Court held when a lawyer filed in behalf of 138 non-union employees a motion for leave to intervene, and also prayed that temporary increase granted to permanent employees be extended to them, he is entitled to a reasonable fee for his legal services, considering that he appeared 4 times at the hearings in the C I R, and that the increase was granted by the Court. To the same effect is the ruling in *Martinez v. Union de Maquinistas, Fogoneros, y Motormen*[34] where the Court was of the opinion that the award in favor of the 2 attorneys who represented struggling members of the Union should be reduced to 5% each of the amounts due as wage increases. for where the C.I.R. had jurisdiction over the main case, it likewise has full jurisdiction over all collateral matters thereto such as wage increases.

Amount of attorney's fees left to the court's discretion.

In *Yu Kimteng Construction Corporation v. M.R.R. Co.,*[35] the Supreme Court held that where the parties in their stipulation of facts, in an arrastre case, left the amount of attorney's fees

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[32] G.R. No. 22146, September 5, 1967.
[33] G.R. Nos. 19453-4, May 30, 1967.
[34] G.R. Nos. 19455-56, Jan. 30, 1967.
[35] G.R. No. 17027, March 3, 1967.

to the court's discretion, the sum of ₱1,000, awarded by the trial court to the consignee was found to be just and reasonable. In another case the trial court awarded ₱500 attorney's fees representing 50% of amount in litigation. The Supreme Court reduced the fee to ₱300.[36]

Proximate and not remote or speculative damages are allowed by law.

As held in *Meralco Workers Union v. Yatco,*[37] an injunction issued by the Court to restrain the acts of violence and intimidation which on their face were injustified and unlawful, being perpetrated by a striking union, cannot conceivably be a ground on which to base a claim for damages especially in a case where the union and the employer had arrived at an amicable settlement of their main dispute, so that they had entered into a Return to Work Agreement apparently without any reservation as to any contemplated claim for damages.

Damages to be awarded to illegally dispossessed tenant must be sufficiently proven as held in *Delfin v. Court of Agrarian Relations.*[38] Damages may not be awarded on the basis of speculation, conjecture, or guesswork. Where such tenant is ordered reinstated and he did not prove the amount of net produce, on which his share would be based, that is he did not prove such deductible items as the threshing and reaping fees, no damages can be awarded to him.

A provisional claim filed by the consignee or her agent before she had any definite information for any shortage or damage to the shipment consigned to her, according to *Rizal Surety and Insurance Co., Inc. v. M.R.R. Co.*[39] is a speculative claim.

Award of moral damages; exemplary damages; and nominal damages.

In *San Miguel Brewery, Inc. v. Magno*[40] the appellee Francisco Magno, issued the warrant of distraint and levy against two delivery trucks of the appellant, San Miguel Brewery, Inc., in his capacity as City Treasurer of Butuan and said warrant was authorized by Ordinance 26 of Butuan City. Neither as

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[36] Lua Kiam v. M.R.R. Co., G.R. No. 23033, January 5, 1967.
[37] G.R. No. 19785, June 20, 1967.
[38] G.R. No. 23348, March 14, 1967.
[39] G.R. No. 22409, April 27, 1967.
[40] G.R. No. 21879, September 29, 1967.

private citizen (and in the case at bar he was sued in his individual capacity) nor as City Treasurer, had the defendant-appellee acted in bad faith, so that in issuing the warrant of distraint and levy, he cannot be made liable personally for damages to the plaintiff-appellant.

In order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright, social humiliation, and the like.

Since the amount of indemnity is left to the discretion of the Court, so that no proof of pecuniary loss is necessary in the award of moral damages,[41] yet it is essential that claimant should satisfactorily prove the existence of the factual basis of the damages and its causal connection with the defendant's acts as discerned from article 2217, Civil Code. Such is the case because moral damages though incapable of pecuniary estimation, are in the category of an award, designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrong-doer.

Exemplary damages are not available simply because of findings that certain allegations in the complaint are not true, and that the plaintiff committed a mistake in instituting action against the wrong party; or that complaint is found to be unmeritorious. This will be putting a penalty on the right to litigate, therefore constituting an infringement upon the right of a citizen to access to the courts. Courts should always be open to litigants who seek protection of their rights.

Amount of attorneys fees is discretionary with the court. It may be awarded along with expenses of litigation, other than judicial costs, in cases where the Court deems it just and equitable under the circumstances of the case, as allowed under the Civil Code.

Where the defendant public officer was sued in his private or individual capacity for acts done in the performance of official duty required by law, and he was forced to employ the services of private counsel to defend his rights, according to the Court, it is but proper that attorney's fees of ₱2,000 be charged against the plaintiff, and nominal damages of ₱100 also be adjudicated in favor of defendant public officer.

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[41] Civil Code, Art. 2216.

In *Imperial v. Ziga*,[42] the Supreme Court allowed interest on moral damages. Here the defendants made serious libelous imputations assailing the honesty and integrity of the plaintiff, a member of the Commission on Elections. They were ordered to pay moral damages amounting to ₱20,000. However, the claim for exemplary damages whose recovery is not a matter of right, was denied[43] and the records do not show that the lower court abused its discretion in not awarding it. Since the plaintiff's appointment has been confirmed, the Supreme Court believes that the sum of ₱20,000 awarded to him as moral damages meets sufficiently the demands of justice. The legal rate of interest was allowed on the lower court's judgment for moral damages from the time the same was promulgated on December 10, 1959 on authority of *Lopez v. Pan American World Airways*[44] and *Ruiz Highway Transit v. Court of Appeals*.[45]

The Supreme Court held there was no grave abuse of discretion in the trial court's refusal to award moral damages since not only was the amount not proved (sic) as a counter claim, but the complaint was apparently based on an honest mistake in the appreciation or interpretation of the applicable law and jurisprudence. This is the ruling in *Laurel-Manila v. Galvan*.[46]

The award by the lower court of exemplary and temperate damages and attorney's fees was not justified because the NAWASA had acted in good faith when it took over the Misamis and Oroquieta Waterworks Systems pursuant to Republic Act 1383 which it was entitled to assume as constitutional. However, Republic Act 1383 has been repeatedly held in several decisions as unconstitutional as it makes Nawasa the owner of all local waterworks systems on the ground that it constitutes a taking of private property without just compensation and without due process of law. This is the joint decision in the cases of *Nawasa v. Catolico*, and *Province of Misamis Occidental v. Nawasa*.[47]

The institution of unfounded actions justifies the award of moral damages as held in the case of *Hawpia v. Court of Appeals*.[48] The judgment requiring petitioner to pay ₱13,000 as

[42] G.R. No. 19726, April 13, 1967.
[43] Civil Code, Art. 2233.
[44] G.R. No. 22415, March 30, 1966.
[45] G.R. No. 16086, May 29, 1964, 63 O.G. 1519 (Feb., 1967).
[46] G.R. No. 23507, May 24, 1967.
[47] G.R. No. 21705, April 27, 1967; G.R. No. 24327, April 27, 1967.
[48] G.R. No. 20047, June 30, 1967.

actual and moral damages, and the further sum of ₱4,000, as attorneys fees, was upheld as it appears that the petitioner with blind adherence, had filed case after case, complaint after complaint against the respondent and her common law husband, and not a single case prospered.

Thus the petitioner harassed and embarrassed the respondent Altea, and thereby caused her actual damages, moral suffering and anxiety.

Lastly the claim for moral damages must be pleaded as held in *Darang v. Ty Belizar*.[49] The Court ruled that in order that moral damages may be awarded there must be pleading and proof of moral suffering, mental anguish, fright, and the like.[50] However, the general prayer in the complaint for "other remedies which may be just and equitable in the premises" warrants the award of ₱3,000 in favor of the plaintiff in the form of exemplary damages which the Court thinks is fair under the circumstances.

In conclusion it may be stated that the Supreme Court in the case of *Barredo v. Garcia*[51] pointed out that the Philippine law on torts came into its own only of late, when quasi-delict or *culpa aquiliana* was upheld as a separate legal institution under the Civil Code with a substantivity all of its own, an individuality separate and apart from delict or crime. However, the Philippine law on torts and damages has been undergoing gradual development as shown by this annual survey of Philippine Supreme Court decisions. This is also true in the field of legislation for as explained by the Code Commission there are provisions in the Civil Code on the subject where there is a better adjustment of rights of the parties concerned compared with the counterpart provisions in American law. With these statutory and decisional rules being evolved, it can be stated that the emerging Philippine law on torts and damages is distinctly our own.

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[49] G.R. No. 19487, January 31, 1967.
[50] Civil Code, Art 2217.
[51] 73 Phil. 607 (1942).