DONATIONS — THE FIRST PROBLEM

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I. Introduction.

Problems of classification are common to all branches of the law but they seem to be more abundant in civil law which, because of its conceptualist tradition, insists on categorizing subjects, objects and transactions into neat patterns presumably to expedite the solution of problems. In the law of property, one of the most fascinating aspects of its study is the classification of donations.

The Civil Code of the Philippines predictably classifies donations into several kinds and prescribes rules generally applicable to all and then some which are limited to each kind. A person intending to make a donation must decide clearly what kind of conveyance he wants to make; otherwise his intention might be frustrated for failure to observe applicable provisions. Similarly, a person confronted with a problem concerning a donation must necessarily classify it first; otherwise his solution could be wrong.

A wit has defined rape tersely in two words: "Wrong man." Oh, to be clever and be able to give a simple definition of donation. But alas, we were not blessed with wit and a lawyer's obsession for the complete and accurate with all the ifs and buts and whereases deters us from the task. Moreover (there is that legalese again), we find such an endeavor futile since there are so many kinds of donations. One is tempted to say nonetheless that a donation is a gift, an act of liberality, but then again it may not be that at all, (as one can see as he reads on).

A donation which takes effect during the lifetime of the donor and the donee is called, naturally, a gift *inter vivos;* that which takes effect only upon the death of the donor is called, naturally also, a gift *mortis causa.*[1] Donations *inter vivos* are in turn classified,

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[1] Justice J. B. L. Reyes, at this writing regarded as the foremost authority on civil law in the Philippines, states, "[t]hat the donation *mortis causa* of the Roman Law and the Spanish pre-codal legislation has been eliminated as a juridical entity from and after the enactment of the Spanish Civil Code

on the basis of their cause, into simple, remuneratory, conditional (sometimes confusingly also called remuneratory or compensatory) and onerous.

II. Inter Vivos and Mortis Causa Donations — The Problem of Recognition.

A donation *inter vivos* is one that is intended by the donor to take effect during his lifetime. Present this intention, the donation is still *inter vivos* even though the donor directs that the property shall not be delivered to the donee till after the donor's death.[2] The fixing of an event or the imposition of a suspensive condition, which may take place beyond the natural expectation of life of the donor, does not destroy the nature of the act as a donation *inter vivos,* unless a contrary intention appears.[3] A donation made subject to the resolutory condition of the donor's survival is a donation *inter vivos.*[4]

A donation *mortis causa* is one that is made in expectation of the death of the donor. In other words, it is intended to take effect on the donor's death.

Donations which are to take effect *inter vivos* are governed by the general provisions on contracts and obligations in matters that are not determined by the title of the Civil Code on donations.[5] However, donations with an onerous cause are governed by the rules on contracts, and conditional donations, as regards that por-

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of 1889 (Art. 620) as well as the Civil Code of the Philippines (Art. 728), which admit only gratuitous transfers of title or real rights to property by way of last will and testament, executed with the requisite legal formalities." Puig v. Peñaflorida, G.R. No. 15939, November 29, 1965; Bonsato v. Court of Appeals, 95 Phil. 481 (1954). Nonetheless, "donation *mortis causa*" will be used in this article to denote dispositions of property intended to take effect upon the death of the transferor but which are void because of failure to observe the proper form.

[2] Civil Code, art. 729.

[3] *Ibid,* art. 730.

[4] *Ibid,* art. 731. Simple explanation: The donation must have taken effect during the donor's lifetime or else there would be nothing to revoke or resolve. But in Justinian's Institutes the following donation was regarded as *mortis causa*: "Piraeus, for we know not how these things shall be, whether the proud suitors shall secretly slay me in the palace, and shall divide the goods of my father, I would that thou thyself shouldst have and enjoy these things rather than that any of those men should; but if I shall plant slaughter and death amongst those men, then indeed bear these things to my home, and joying give them to me in joy." Sandar's Institutes, p. 218 (American edition, 1875).

[5] Civil Code, art. 732.

tion which exceeds the value of the burden imposed, by the rules on donations.[6] Because donations *mortis causa* partake of the nature of testamentary dispositions, they are governed by the law on succession.[7]

In the light of the law distinctly applicable to each kind of donation, the following are among the most important consequences: A donation *mortis causa* is void if it is not made with formalities required in respect of wills.[8] A donation *inter vivos* is either void or unenforceable, depending on its class and the nature of the property donated, if its form does not comply with the applicable law.[9] And because a donation *mortis causa* does not take effect until the donor's death, he can revoke it at will, *ad nutum,* whereas a donation *inter vivos* can be revoked only on the grounds provided by law.[10] Further, in a donation *inter vivos,* if the thing is lost through the fault of the donor, or if it is damaged, the donee may recover indemnity from him, which would not be the case if the donation be *mortis causa.*[11]

Whether a donation is *inter vivos* or *mortis causa* will depend on the legal intention of the donor and not necessarily on his expressed intention. Thus a donation may be labelled by the donor as a "conditional donation" and executed in the form required for that kind of donation *inter vivos,* but if its operative provisions legally manifest a donation *mortis causa,* it will be treated as such.[12] Similarly, a donation may be labelled "*mortis causa*" but if its operative provisions effectuate a disposition during the lifetime of the donor, it will be treated as donation *inter vivos.*[13]

It often happens that the operative provisions of a conveyance are ambiguous or contradictory. In case of doubt, it should be

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[6] *Ibid,* art. 733.

[7] *Ibid,* art. 728.

[8] Cariño v. Abaya, 70 Phil. 182 (1940), Baustista v. Sabiniano, 92 Phil. 244 (1952), Puig v. Peñaflorida, note 1, *supra.*

[9] Abragan v. Centenera, 46 Phil. 213 (1924), Legasto v. Verzosa, 54 Phil. 766 (1930), Uson v. Del Rosario, 92 Phil. 530 (1953).

[10] Bautista v. Sabiniano, note 8, *supra,* Bonsato v. Court of Appeals, note 1, *supra,* Zapanta v. Posadas, 52 Phil. 557 (1928), De Guzman v. Ibea, 67 Phil. 633 (1939).

[11] Laureta v. Mata, 44 Phil. 668 (1923).

[12] Bautista v. Sabiniano, note 8, *supra.*

[13] De Guzman v. Ibea, note 10, *supra,* Laureta v. Mata, note 11, *supra.* Concepcion v. Concepcion, 91 Phil. 823 (1952), Cuevas v. Cuevas, 98 Phil. 69 (1955), Puig v. Peñaflorida, note 1, *supra.*

deemed a donation *inter vivos* rather than *mortis causa* so that uncertainty as to the ownership of the property is avoided.[14]

It is easy enough to say that donation *inter vivos* is one that takes effect during the lifetime of the donor whereas a donation *mortis causa* takes effect upon his death. But it is a different matter to determine whether a given donation is one or the other when its provisions are not precise. The following are useful guidelines in concluding that a disposition is *mortis causa* and not *inter vivos*:[15]

1. There is no conveyance of title or ownership to the transferee before the death of the transferer; or in other words, the transferer retained either the full or naked ownership and control of the property while alive.

2. The conveyance expressly or by necessary implication empowers the transferer to revoke it *ad nutum* or at his discretion. Accordingly, where a deed specifies the causes of revocation by the donor, it negates his discretion and the disposition is not *mortis causa* but *inter vivos*.

3. The transfer shall be void if the transferor should survive the transferee.

In the light of the law and the guidelines provided by the Supreme Court, it would be interesting to note some cases whose results were made to depend on whether a conveyance was *inter vivos* or *mortis causa*.

A. *Donations which were held to be mortis causa.*

In *Cariño v. Abaya*,[16] two sisters, both in their seventies and with no compulsory heirs, executed a conveyance, valid in form as a donation *inter vivos* but void as a donation *mortis causa* because it was not in form of a will.

The Supreme Court held the donation to be *mortis causa* for the following reasons:

> "The seventh clause of the document reciting that 'we the sisters do hereby order that all these properties shall be given to those to whom they have been assigned by virtue of this instrument at the expiration of thirty days after the death of the last one to die between us,' considered in conjunction with the fact that

[14] Puig v. Peñaflorida, note 1, *supra*.
[15] See cases cited in note 10, *supra*.
[16] *Supra*, note 8.

> the grantors employed the terms 'there shall be given to,' 'shall administer,' and 'shall be administered,' which have reference to the future, clearly brings forth the intention on the part of the Gray sisters to make the distribution of their estate, . . . effective after their death. . . . It is worthy of observation, also, that in the ninth clause . . . the phrase 'together with those who had been mentioned to inherit from us' supplies a cogent reason for concluding that the grant therein made was meant to take effect after the death of the grantors, for the word 'inherit,' as used here, implies the acquisition of property by the heirs after the death of the Gray sisters."[17]

In *David v. Sison,*[18] the question was whether the donation executed by Margarita David should be considered as *inter vivos* or *mortis causa.*

The donees were two sisters who were the nieces of Margarita David whom she had adopted. They were her universal heirs and would have inherited the donated properties by operation of law. At the time of the donation David knew that her death was imminent because she was already irretrievably ill and in fact she died less than six months afterwards.

The deed of donation provided that all rents, proceeds, and fruits of the donated properties shall remain for the exclusive benefit and disposal of the donor during her lifetime; and that, without her knowledge and consent, the donated properties could not be disposed of in any way, whether by sale, mortgage, barter, or in any other way possible.

In an eminently correct decision, the Supreme Court held the disposition to be a donation *mortis causa* because of the circumstances surrounding its execution and the provision which made of the donees paper owners only. Said the Court: "According to the terms of the deed, the most essential elements of ownership — the right to dispose of the donated properties and the right to enjoy the products, profits, possession — remained with Margarita David during her lifetime, and would accrue to the donees only after Margarita David's death."[19]

In *Bautista v. Sabiniano,*[20] the donor executed by means of a public instrument a "Deed of Conditional Donation" over several

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[17] At pp. 191-192.
[18] 76 Phil. 418 (1946).
[19] At p. 423.
[20] *Supra,* note 8.

parcels of land. The donation contained the following conditions, among others:

> "1. That meantime I am still living, these properties donated are all yet at my disposal as well as the products therein derived, and whatever properties or property left undisposed by me during my lifetime will be the ones to be received by the donees if any;
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> "2. That in case of my illness, I have still the perfect right to dispose said properties if necessary to finance all the expenses to be incurred for my sustenance and medical treatment, and whatever left, if any, of these properties will be the one to be received by the herein donees."[21]

The Supreme Court held that there was no donation whether *inter vivos* or *mortis causa*. It said: "If the donor reserves the right to revoke it or if he reserves the right to dispose of all the properties purportedly donated, there is no donation. If the disposition or conveyance or transfer takes effect upon the donor's death and becomes irrevocable only upon his death, it is not an *inter vivos* but a *mortis causa* donation. The disposition of the properties . . . not having been done in accordance with the provisions of [the law on wills], there was no lawful and valid transmission."[22]

In *Puig v. Peñaflorida*,[23] the donor executed two notarial deeds of donation. One dated December 28, 1949, entitled "Escritura de Donacion Mortis Causa" sought to convey several parcels of land subject, *inter alia*, to the following conditions:

1. That if on her death the donor had not sold or ceded to third persons her half interest in a certain parcel of land and the donee had paid a sum of money to a designated person, the donee could then take said half interest;

2. That prior to her death the donor could alienate, sell, transfer or encumber to any person or entity the properties donated;

3. That the deed of donation could be registered in the office of the Register of Deeds only after the donor's death; and

4. That the donee should accept the donation subject to the conditions stipulated.

The conditions prescribed by the donor easily identifies the donation as *mortis causa* even without reference to the title of the

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[21] At p. 247.
[22] At p. 249.
[23] *Supra*, note 1.

deed or document. And the Supreme Court did declare the conveyance to be *mortis causa* which was invalid because it was not executed with the testamentary formalities required by law.

B. *Donations which were held to be inter vivos.*

In *Laureta v. Mata,*[24] the donor, a 70-year old widow, donated "*mortis causa*" certain lands to Pedro Mata as "a reward for the services which he is rendering me, and as a token of my affection toward him and of the fact that he stands high in my estimation." The conveyance, which was not executed in the form of a will, stipulated that "the donee cannot take possession of the properties donated before the death of the donor."

Laureta, who had been appointed administrator of the donor's estate, sought to recover the lands from the donee, who had in the meantime taken possession, on the ground that the donation was void. It was claimed that the donation was *mortis causa* in the light of the prohibition against the donee taking possession of the properties donated before the death of the donor and therefore void because it was not executed in the form of a will.

The Supreme Court, relying on Manresa,[25] distinguished between *disposition* and *realization.* It held that the donation became perfect and irrevocable the moment the donor disposed freely of her properties and such disposal was accepted by the donee; and that until the arrival of the term stipulated, the donation, although valid when made, could not be realized.[26]

It is not difficult to agree with the Supreme Court that there was a donation in *praesenti* as distinguished from a gift *in futuro,* subject only to the life estate of the donor and that the conveyance was valid and passed title to the donee because it was executed in accordance with the requisite legal formalities.

In *Zapanta v. Posadas*[27] the issue was not the validity of the donations but their classification for tax purposes. Were the do-

[24] *Supra,* note 11.

[25] 5 MANRESA, COMMENTARIOS AL CODIGO CIVIL, 82 (1910).

[26] This distinction was also applied in several other cases notably in Concepcion v. Concepcion, note 13 *supra,* Sambaan v. Villanueva, 71 Phil. 303 (1941), Joya v. Tiongco, 71 Phil. 379 (1941), and Cuevas v. Cuevas, note 13, *supra.*

[27] *Supra,* note 10.

[28] At pp. 559-560.

nations *mortis causa* and therefore subject to the inheritance tax or were they *inter vivos* and therefore not subject to such tax?

The texts of the donations are not given in the decision but the court said they "were made in consideration of the donor's affection for the donees, and of the services they had rendered to him." The donor imposed "the condition that some of them would pay him a certain amount of rice, and others of money every year, and with the express provision that failure to fulfill this condition would revoke the donations *ipso facto*." The donations also provided that they would take effect upon acceptance and they were in fact accepted by each of the donees during the donor's lifetime.

The Supreme Court held the donations *inter vivos*, saying:

> "The principal characteristics of a donation *mortis causa*, which distinguished it essentially from a donation *inter vivos*, are that in the former it is the donor's death that determines the acquisition of, or the right to, the property, and that it is revocable at the will of the donor. In the donations in question, their effect, that is, the acquisition of, or the right to, the property, was produced while the donor was still alive, for, according to their expressed terms they were to have this effect upon acceptance, and this took place during the donor's lifetime. The nature of these donations is not affected by the fact that they were subject to a condition, since it was imposed as a resolutory condition, and in this sense, it necessarily implies that the right came into existence first as well as its effect, because otherwise there would be nothing to resolve upon the non-fulfillment of the condition imposed. Neither does the fact that these donations are revocable, give the character of donations *mortis causa*, inasmuch as the revocation is not made to depend on the donor's exclusive will, but on the failure to fulfill the condition imposed. In relation to the donor's will alone, these conditions are irrevocable. On the other hand, this condition, in so far as it renders the donation onerous, takes it further away from the dispositions *mortis causa* and brings it nearer to contract."[28]

In *Balaqui v. Dongso*,[29] the donor conveyed several parcels of land to the donee "in recompense for her services" but added that the gift "does not pass title to her during my lifetime." The donor also bound herself "to answer to said — [donee] and her heirs and successors for this property, and that none shall question or disturb her right."

The phrase "does not pass title to her during my lifetime" strongly suggests that the donor's intention was to make a gift *in*

[29] 53 Phil. 673 (1929).

futuro. However, the Supreme Court held it to be nothing more than a reservation of possession and usufruct until the donor's death. On the other hand, the court gave much emphasis to the remuneratory character of the donation and the fact that the donor guaranteed the property conveyed. As to the guarantee, the court said that the donor must have conveyed title during her lifetime; otherwise, there would have been no need to guarantee said right.

This is a case which could have been decided either way but one cannot seriously question the desirability of the result in the light of the rule that in case of doubt a donation should be deemed *inter vivos* so that uncertainty as to the ownership of the property is avoided.

In *De Guzman v. Ibea*,[30] the donor sought to revoke a donation of several parcels of land because the donee's husband had allegedly spoken ill and discourteously of the donor. The revocation was resisted by the donee on the ground that the donation was *inter vivos* and as such could not be revoked except for causes established by law. It was pointed out that the cause invoked by the donor is not one of them.

Examining the donation which reads in part — "It is my will and desire under this deed that all these properties be administered and held by the said Juana Abella in the concept of owner, although it is provided in this deed that all the rental of these lands should be delivered to me while I am living for my enjoyment and disposal as I may see fit, but, upon my death, Juana Abella may enjoy all the fruits or harvest of these properties, with the power to adjudicate the same by way of inheritance and dispose thereof as she may deem convenient"[31] — the Supreme Court correctly held the donation to be *inter vivos* and not revocable for the reason alleged because it is not included in the causes provided by law.[32]

The donations examined in *Bonsato v. Court of Appeals*,[33] like the one in *Balaqui v. Dongso*, were easily susceptible of being classified either as *mortis causa* or *inter vivos*.

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[30] *Supra*, note 10.
[31] At p. 635.
[32] The grounds for revoking donations *inter vivos* are provided in arts. 760, 764 and 765 of the Civil Code.
[33] *Supra*, note 1.

Each of the conveyances stated that it was "una donacion perfecta e irrevocable consumada" — arguing for a donation *inter vivos* — but each also provided, "Que después de la muerte del donante entrará en vigor dicha donacion" — arguing for a donation *mortis causa.* Deciding in favor of the former, the Supreme Court said:

> "It is true that the last paragraph in each donation contains the phrase 'that after the death of the donor the aforesaid donation shall become effective' (que despues de la muerte del donante entrara en vigor dicha donacion). However, said expression must be construed together with the rest of the paragraph and thus taken, its meaning clearly appears to be that after the donor's death, the donation will take effect so as to make the donees the absolute owners of the donated property, free from all liens and encumbrances, for it must be remembered that the donor reserved for himself a share of the fruits of the land donated. Such reservation constituted a charge or encumbrance that would disappear upon the donor's death, when full title would become vested in the donees."
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> "Any other interpretation of this paragraph would cause it to conflict with the irrevocability of the donation and its consummated character, as expressed in the first part of the deeds of donation, a conflict that should be avoided (Civil Code of 1889, Art. 1285; New Civil Code, Art. 1374; Rule 123, sec. 59, Rules of Court)."[34]

The Supreme Court added, "[t]hat the conveyance was due to the affection of the donor for the donees and the services rendered by the latter, is of no particular significance in determining whether the deeds Exhibits 1 and 2 constitute transfer *inter vivos* or not, because a legacy may have identical motivation. Nevertheless, the existence of such consideration corroborates the express irrevocability of the transfers and the absence of any reservation by the donor of title to, or control over, the properties donated, and reinforces the conclusion that the act was *inter vivos.*"[35]

In *Cuevas v. Cuevas,*[36] the donor executed a notarized conveyance entitled "Donacion Mortis Causa," ceding to her nephew the undivided half of a parcel of land, which the donee accepted in the same instrument. Subsequently, the donor executed another

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[34] At p. 488.
[35] At p. 489.
[36] *Supra,* note 13.

notarial instrument revoking the donation on the ground, among others, that since it was *mortis causa* she could lawfully revoke it.[87]

The claim that the donation was *mortis causa* was based on the fact that the donor reserved to herself "[t]he right of possession, cultivation, harvesting and other rights and attributes of ownership while I am not deprived of life by the Almighty." But the Supreme Court construed this as a mere reservation of a life estate and held that the naked title had irrevocably passed to the donee because the donor had stated in the conveyance that she "will not take away" the property "because I reserve it for him (the donee) when I die."

Puig v. Peñaflorida,[88] as stated above, involved two donations. The one executed on November 24, 1948 was also entitled "Donacion Mortis Causa" but was not made in the form of a will. It was, however, notarized and contained the following stipulations:

1. That the donor reserved the right to mortgage or even sell the donated property if she should need funds;

2. That the donee shall pay all the medical, hospital and burial expenses of the donor;

3. That the conveyance shall take effect only upon the death of the donor:

4. That if the donee should predecease the donor, the donee's obligation shall be assumed by her husband especially the expenses for the donor's last illness and burial, which condition was accepted by the husband; and

5. That the deed of donation shall not be registered in the Office of Register of Deeds until the death of the donor.

The title of the conveyance together with the conditions imposed contribute to the ambiguity of the donor's intention. But the ambiguity was resolved in favor of the donee by the Supreme Court in order to avoid uncertainty as to the ownership of the property. The title and condition No. 3 were held to give way to the other conditions pointing to a contrary intent. The donor, according to the court, did not by the first condition reserve an absolute right

[87] If the donation was *mortis causa* as alleged, it was void *ab initio* for failure to comply with testamentary formalities and the action to revoke may be regarded as a superfluity.

[88] *Supra*, note 1.

to mortgage or sell the property donated and the limited nature of the reservation was incompatible with the grantor's freedom to revoke a conveyance *mortis causa.* Conditions Nos. 2 and 4, said the court, made the conveyance contractual because they were onerous in character. The court did not say so but it implied that an onerous donation must necessarily be *inter vivos.*

III. Donations Inter Vivos Classified on the Basis of Cause.

We have attempted to show how to recognize an *inter vivos* from a *mortis causa* donation. Where the donation is *inter vivos* it is necessary to further classify it. This is so because the applicable law to a problem or problems concerning a donation will depend on its kind. For instance, can a donation be reduced or revoked for being inofficious? Is a donation of real property valid if the conveyance and the acceptance are not embodied in a public document?

A donation *inter vivos* may be simple, remuneratory, conditional, or onerous.

A simple donation is an act of liberality whereby a person disposes gratuitously of a thing or a right in favor of another, who accepts it.[39] It is remuneratory when a person gives to another a thing or right on account of the latter's merits or services provided they do not constitute a demandable debt.[40] It is conditional when the gift imposes upon the donee a burden which is less than the value of the thing given.[41] It should be noted that the donation is conditional because of the burden imposed on the donee which is less than the value of the thing given and not because its realization is made to depend on a future or uncertain event or upon a past event unknown to the parties. And a donation is onerous when it is given for a valuable consideration, e.g., for past services which constitute a demandable debt, for services to be performed in the future, or in exchange for a burden imposed on the donee which is equal to or greater in value than that of the thing donated.

Most of the problems in respect of donations *inter vivos* arise because of non-observance of the law in respect of the form for each kind or the limitations which must be observed by the donor.

[39] Civil Code, art. 725.
[40] *Ibid,* art. 726.
[41] *Idem.*

Simple and remuneratory donations of personal property must comply with Article 748 of the Civil Code which provides:

> "The donation of a movable may be made orally or in writing.
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> "An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated.
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> "If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing. Otherwise, the donation shall be void." (632a)

Similar donations of real property should be in the form prescribed by Article 749 of the same code which stipulates:

> "In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.
>
> "The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.
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> "If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments." (633)

A conditional donation, as regards that portion which exceeds the value of the burden imposed, must comply as to form with either Article 748 or 749 of the Civil Code, and insofar as it is onerous it should follow the form prescribed for contracts.[42]

An onerous donation, being in fact a contract, must in all respects follow the form prescribed for contracts. It is useful to note in this connection that Article 1356 of the Civil Code provides:

> "Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. . . ."

The principal limitations in respect of donations *inter vivos* are contained in Articles 750-752 of the Civil Code as follows:

> "Art. 750. The donation may comprehend all the present property of the donor, or part thereof, provided he reserves, in full ownership or in usufruct, sufficient means for the support of himself, and of all relatives who, at the time of the acceptance of the

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[42] *Ibid*, art. 733. However, in Abragan v. Centenera, note 9, *supra;* citing Castillo v. Castillo, 23 Phil. 364 (1923), a conditional donation is said to be "governed by the provisions relating to gifts and not contracts." At p. 216.

donation, are by law entitled to be supported by the donor. Without such reservation, the donation shall be reduced on petition of any person affected."

"Art. 751. Donations cannot comprehend future property.

"By future property is understood anything which the donor cannot dispose of at the time of the donation."

"Art. 752. The provisions of article 750 notwithstanding, no person may give or receive, by way of donation, more than he may give or receive by will.

"The donation shall be inofficious in all that it may exceed this limitation."

It should be noted that the limitations imposed by Articles 750 and 751 of the Civil Code, *supra,* cannot apply to onerous donations because the donor receives something in exchange for that he gives away. The same provisions will have partial application only in conditional donations since the donor also receives something from the donee.

Anent these provisions the Supreme Court has said:

"Public policy requires that limitations of the character mentioned should be imposed upon the owner, but a law which would impose restrictions further than such as are required by public policy may well be regarded unjust and tending in a contrary direction, as destroying the incentive to acquire property, and as subduing the generous impulse of the heart.

"Beyond these limitations the law does not attempt to adjust claims to generosity."[43]

Let us now examine some of the leading cases dealing with the problems mentioned above.

A. *In respect of form.*

In the following cases, some donations were held valid for having complied with the form required by law while others were held ineffectual for lack of compliance.

In *Carlos v. Ramil,*[44] two persons advanced in years, being entirely alone and requiring the care of younger people, entered into an agreement whereby in consideration of such care during the lifetime of the former, they transferred their real estate to the persons thus caring for them. The grantees complied with the agreement but for reasons which are not clear in the decision, the plain-

[43] Martinez v. Martinez, 1 Phil. 182, 184 (1902).
[44] 20 Phil. 183 (1911).

tiff, presumably a relative of the grantors, sought to test the title and right of possession of the grantees. In affirming a judgment of dismissal, the Supreme Court said:

> "If the transaction between Carlos and the defendant was a donation it was *una donacion con causa onerosa* and not *una donacion remuneratoria*. One of the leading differences between these two classes of donations or gifts is that in the one *con causa onerosa* the services which form the consideration for the gift have not yet been performed, while in the other they have. At the time of the transaction heretofore referred to none of the services which formed the consideration for the agreement in question had yet been performed. They were all to be performed in the future. Under the provisions of the Civil Code *una donacion con causa onerosa* is governed by the provisions of said code relative to contracts."[45]

In *Manalo v. De Mesa*,[46] two elderly spouses, by means of a private document, conveyed to the defendant certain parcels of land in consideration of the services which had been rendered by the latter to the former. The spouses, moreover, ratified and agreed to the grant with the condition that the grantees should meet and bear the burial expenses of one of the grantors. After the death of one of the spouses, the administratrix of the deceased spouse questioned the validity of the conveyance on the ground that it was a donation of real property which was void for not having been embodied in a public instrument as required by law. But the Supreme Court said:

> "There can be no doubt that the donation in question was made conditional upon the donee's bearing the expenses that might be occasioned by the death and burial of the donor Placida Manalo, a condition and obligation which the donee Gregorio de Mesa carried out in his own behalf and for his wife Leoncia Manalo; therefore in order to determine whether or not said donation is valid and effective it should be sufficient to demonstrate that, as a contract, it embraces the conditions the law requires and is valid and effective, although not recorded in a public instrument."[47]

In *Abragan v. Centenera*,[48] two gifts of real properties were made to a mother and her daughter. Neither was embodied in a public instrument. Both gifts were declared by the donor to rest in part upon consideration of the past services rendered to him by

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[45] At p. 184.
[46] 29 Phil. 495 (1915).
[47] At p. 500.
[48] *Supra*, note 9.

the mother. The gifts were held to have had no effect *per se* for failure to comply with the legal requirement on form. In answer to the contention that the gifts were *con causa onerosa,* the court said that a gift would be of that kind "only when the services have not yet been rendered."

In one of the donations, which sought to convey a piece of hemp land measuring twenty hectares, the donor stipulated that the donees pay off a mortgage for ₱5,000 in favor of a bank. Presumably acting on the assumption that the value of the land was more than the burden imposed, a reasonable one in the light of banking practice, the court held the gift to be a conditional and not an onerous donation, governed by the provisions relating to gifts and not to contracts.

In *Legasto v. Verzosa,*[49] several gifts of realty were made in public instruments but none of them contained the acceptance of the respective donees nor was acceptance made in separate public instruments. The Supreme Court held: "[T]hat the gift of realty made in a public instrument which fails to show the acceptance, or wherein the formal notice of the acceptance is either not given to the donor or else not noted in the deed of gift and in the separate acceptance, is null and void."[50]

Uson v. Del Rosario,[51] was an action to recover the ownership and possession of five parcels of land. Several defenses were interposed by the defendants, and one of them was an allegation that the plaintiff had orally agreed to assign the lands in question to the defendants. The Supreme Court in waiving aside the defense said:

> "[A]part from the fact that this claim is disputed, we are of the opinion that said assignment, if any, partakes of the nature of a donation of real property, inasmuch as it involves no material consideration, and in order that it may be valid it shall be made in a public document and must be accepted either in the same document or in a separate one (Article 633, old Civil Code). Inasmuch as this essential formality has not been followed, it results that the alleged assignment or donation has no valid effect."[52]

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[49] *Ibid.*
[50] At p. 774.
[51] *Supra,* note 9.
[52] At p. 534.

B. *In respect of the limitations.*

The Filipino although generous does not practice this virtue to a fault. The cases examined in Part II show a donor either reserving the right to dispose of the property donated during his lifetime which made the gift *mortis causa* or reserving a life estate despite an *inter vivos* gift. This prudence has undoubtedly minimized litigation concerning limitations on donation. Thus we find only one case worth reporting.

In *Andrada v. Sevilla,*[53] the plaintiffs who claimed to be intestate heirs, questioned the validity of a donation made by their predecessor. They claimed that it violated Article 634 of the old Civil Code, now Article 750 of the new Civil Code. But the court found that there had been no violation because the donor had in fact reserved a monthly sum of money for her support.

IV. THE LESSON.

We have seen that the first task which must be solved by a person confronted with a projected donation as well as an accomplished donation is to clarify the donor's intention. Failure to do this can lead to vexing results. Accordingly, it is advisable to bear in mind the suggestion of the Supreme Court:

> "[I]t is highly desirable that all those who are called to prepare or notarize deeds of donation should call the attention of the donors to the necessity of clearly specifying whether, notwithstanding the donation, they wish to retain the right to control and dispose at will of the property before their death, without need of the consent or intervention of the beneficiary, since the express reservation of such right would be conclusive indication that the liberality is to exist only at the donor's death, and therefore, the formalities of testaments should be observed; while, a *converso,* the express waiver of the right of free disposition would place the *inter vivos* character of the donation beyond dispute."[54]

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[53] 19 Phil. 441 (1911).
[54] Cuevas v. Cuevas, note 13, *supra,* at p. 72.