CIVIL LAW—PART III

TORTS & DAMAGES AND QUASI-CONTRACTS

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". . . I crave the law, the penalty and forfeit of my bond."

— *Merchant of Venice*,
Act IV, Scene 1

Although the stage of controversy in Torts and Damages this survey year was not a teeming one, neither was it altogether bare. To change the metaphor, no new and overpowering winds of judicial conflict have set the bark of jurisprudence sailing to exotic and hitherto uncharted areas for exploration, but all told, the year's voyage was not totally drab and unrewarding, for, be it ever so slightly, the old sea-routes were restudied, in some cases redefined, in others reclarified.

HUMAN RELATIONS

Offended party in a rape case can claim damages against the offender under Article 21

In the case of *Quimiguing v. Icao*,[1] the Supreme Court had occasion to apply the provisions of Article 21 of the Civil Code to a victim's claim for damages The defendant in that case, a married man, succeeded in having carnal intercourse with the plaintiff through force and intimidation, as a result of which she became pregnant and had to stop studying. The action of damages filed by her was dismissed by the lower court on the ground that the complaint contained no allegation that a child had been born. The Supreme Court reversed the ruling, explaining that, in her own right, independently of the child's right to support, the offended party had a cause of action for damages under Article 21, which provides: "Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." Declared the Court: "For a married man to force a woman not his wife to yield to his lust constitutes a clear violation of

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[1] G.R. No. 26795, July 31, 1970, 34 SCRA 132 (1970).

the rights of his victim that entitles her to claim compensation for the damage caused."

QUASI-DELICTS

What constitutes a negligent act under Article 2176?

Article 2176 of the Civil Code may be called the heart of the law on quasi-delicts, inasmuch as in this article the elements required for a quasi-delictual obligation to arise are given.

Article 2176 provides: "Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this chapter."

The operative elements of the article are three:

(1) There must be damage or prejudice which must be proven by the party claiming it;

(2) There must be an unlawful act or omission amounting to fault or negligence; and

(3) There must be a direct causal connection between the damage or prejudice and the act or omission.[2]

The concept of negligence can be a troublesome one, but in general terms, it is the failure to take the necessary precautions demanded by the circumstances. In the ultimate, the question of its existence is a matter of judicial determination, as illustrated in the case of *Bonifacio v. B.L.T. Bus Company, Inc.*[3] The facts of that case are as follows: Jovito Bonifacio, his wife, and a neighbor used to bathe in the Pansol Hot Spring twice a week. On one such trip to the place, in the morning of 27 February 1964, they met a vehicular accident in San Pedro Tunasan, Laguna, when an LTB passenger bus suddenly swerved to the left and collided with their car, causing the instantaneous death of Jovito and serious injuries to the rest. The question, *inter alia,* that came up for judicial determination was whether the bus driver was negligent. In holding against the bus company, the Supreme Court held that the proximate cause of the accident was the negligence of the LTB bus driver who failed to take the necessary precautions demanded by the circumstances. The Court observed that when the mishap occurred, it was still dark, and, as it was raining, requisite prudence required that he should have been more careful than usual and slackened his pace, for the wet highway could be expected to be slippery. His having failed to see the parked cargo truck until he was only 50 meters from it

[2] 12 MANRESA COMMENTARIOS AL CÓDIGO CIVIL ESPAÑOL, 640-641 (5 ed., 1950).
[3] G.R. No. 26810, August 31, 1970, 34 SCRA 618 (1970).

justifies the inference that he was inattentive to his responsibility as a driver. The Court continued: "That he did not know that anyone else was using the road is no defense to his negligent operation of his vehicle, since he should be especially watchful in anticipation of others who may be using the highway; and his failure to keep a proper look-out for persons and objects in the line to be traversed constitutes negligence.[4] On the part of the driver of the plaintiff's car, there could not be said to have been negligence, inasmuch as a motorist who is properly proceeding on his own side of the highway, even after he sees an approaching motorist coming toward him on the wrong side, is generally entitled to assume that the other motorist will return to his proper lane of traffic." [5]

Effect of force majeure

It is clear that if the damage is caused not by the defendant's negligence but by a fortuitous event or *force majeure,* no quasi-delictual liability is incurred. This principle is applied in *Dioquino v. Laureano,*[6] which was an action for damages resulting from the breaking of the windshield of the plaintiff's car. It appears in that case that while the defendant was using the plaintiff's car with the latter's permission, an unidentified boy hurled stones at the windshield, breaking it. In reversing the lower court's award of damages, the Supreme Court held that the plaintiff could not recover anything as the damage was caused by *force majeure,* for which the defendant could not be held liable.

Scope of parent's responsibility for damages caused by their minor children

Article 2180 provides for vicarious responsibility; in other words, "in certain situations persons may also be held responsible for the acts or omissions of others." [7]

The second paragraph of the said article provides: "The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company." It must, however, be borne in mind here that the basis of liability is the presumptive fault or negligence of those vicariously responsible in the supervision of their agents or wards. The case of *Cuadra v. Monfort* [8] pointed this out clearly. The facts are the following: A child of 13, Ma. Teresa Monfort by name, was assigned with four of her classmates to weed grass in the school premises. As they were thus engaged, the child found a plastic head-

[4] Citing 7 AM. JUR. 2d, *Automobiles and Highway Traffic,* sec. 355 (1963).
[5] Citing 8 AM. JUR. 2d 319.
[6] G.R. No. 25906, May 28. 1970, 33 SCRA 65 (1970).
[7] JARENCIO, TORTS & DAMAGES 43 (1968 ed.).
[8] G.R. No. 24101, September 30, 1970, 35 SCRA 160 (1970).

band and jokingly said aloud that she had found an earthworm and tossed it at one of the other girls, Ma. Teresa Cuadra, who turned around to look and at that precise moment the object hit her in the right eye. The injury caused the loss of her right eye's vision. An appeal from the lower court's award of damages having been made, the issue that came up for adjudication by the Supreme Court was whether the Monfort girl's parents should be held liable for damage under Article 2180. The Court held in the negative, declaring: "The underlying basis of liability imposed by Article 2176 is fault or negligence accompanying the act or omission, there being no willfulness or intent to cause damage thereby. When the act or omission is that of one person for whom another is responsible, the latter becomes liable under Article 2180. The basis of this vicarious, though primary, responsibility is, as in Article 2176, fault or negligence, which is presumed from that which accompanied the causative act or omission. The presumption is *prima facie* and maybe rebutted." Continued the Court: "What is the exact degree of diligence contemplated and how does a parent prove it, especially when the act or omission takes place in his absence or outside his immediate company is something of which there can be no meticulously calibrated measure. It depends on the attendant circumstances in every individual case."

Applying these principles to the case under consideration, the Court found that there was nothing from which it might be inferred that the defendant could have prevented damage by the observance of due care, or that he was in any way remiss in the exercise of his parental authority in failing to foresee such damage or the act which caused it. The Court went to say: "On the contrary, his child was at school, where it was his duty to send her and where he was, as he had the right to expect her to be . . . The act was an innocent prank not unusual among children at play and which no parent, however careful, could anticipate or guard against. Nor did it reveal any mischievous propensity which would reflect unfavorably on her up-bringing." On the basis of the attendant circumstances, therefore, there was no basis for the enforcement of the quasi-delictual liability under Article 2180.

Liability of employer for employee's negligent acts

The fifth paragraph of Article 2180 reads:

> "Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry."

In the *Bonifacio* case,[9] the bus company sought to exculpate itself by attempting to show that it had observed the diligence of a good father of

[9] *Supra*, note 3.

a family to prevent damage.[10] The Court, however, refused to entertain the defense, holding that the evidence showed inexcusable laxity in the supervision of the driver [11] and the maintenance of the company's vehicles. The salient bits of evidence were: (1) the brake lining was changed over a month prior to the accident, although it lasts for only about 30 days; (2) the driver was required to be on the road for more than eleven hours; (3) the driver had repeatedly violated company rules, but, despite these infractions, 31 in all since 1951, the company took no drastic action against him; and (4) the overhauling of the bus was overdue by 6 months.

Thus, taking into account the circumstances, the Court held the company liable under Article 2180.

DAMAGES

Amount of damages must always be proved by claimant

A long line of decisions has established the doctrine that the party claiming damages must satisfactorily prove the amount thereof. This rule was further amplified by the Supreme Court in the case of *De la Cruz v. Cruz,*[12] where two claims for actual damages in the counterclaim were not specifically denied by the plaintiff. Rejecting the counterclaimant's contention that such failure to deny constituted an admission of the allegation, the Court held that although the rule is that failure to specifically deny the material allegations in the complaint or counterclaim is deemed an admission of said allegations, an exception is when the allegation refers to the amount of damages, in which case the allegation must still be proved. Citing an earlier ruling,[13] the Court stated:

> "Under Sec. 8, Rule 9 (now Section 1, Rule 9 of the New Rules of Court), allegations regarding the amount of damages are not deemed admitted even if not specifically denied, and so must be duly proved. Appellants did not offer to present evidence to prove their damages but merely asked for judgment on the pleadings. Hence, they must be considered to have waived or renounced their claim for damages."

Minimum amount of damages for death caused by crime or quasi-delict

The minimum amount of damages under Article 2206 for death caused by a crime or a quasi-delict has been fixed by a string of recent cases at

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[10] This in accordance with the last paragraph of Article 2180, which provides: "The responsibility treated of 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 damage."

[11] Negligence in supervision, or *culpa in vigilando,* negatives the defense of due diligence on the part of the employer. The other factor that disproves diligence is negligence in the selection of employees, or *culpa in eligiendo.*

[12] G.R. No. 27759, Aprii 17, 1970, 32 SCRA 307 (1970).

[13] Rili v. Chunaco, 98 Phil. 505 (1956).

₱12,000.00. The case of *People v. Empeño* [14] reiterated this when it increased the lower court's award to the heirs of the two murder victims from ₱6,000 to ₱12,000 for each offense.[15]

Loss of earning capacity of the deceased must be taken into account

In the *Bonifacio* case,[16] the Court considered the fact that the deceased was a successful businessman when he died at the age of 49. It, therefore, saw no reason for disturbing the lower court's findings that, had he lived to 55, he would have earned a total net income of ₱144,000. In fact, the Court observed, the 6-year life expectancy allowed by the trial court was shorter than that shown by the insurance or mortality tables.

The above ruling is in accordance with paragraph (1) of Article 2206 which provides, *inter alia,* that "[T]he defendant shall be liable for the loss of the earning capacity of the deceased . . ."

Bases for determining loss of earning capacity

The case of *Villa Rey Transit v. Court of Appeals,*[17] involving death arising from breach of the contract of carriage, gave the Supreme Court occasion to clarify the provisions of Article 2206[18] regarding the amount of damages awardable. The Court there held that the determination of the amount of damages depends mainly upon two factors: (1) the number of years on the basis of which damages should be computed, and (2) the rate at which the losses sustained by the heirs should be fixed.

Regarding the first factor, the trial court used as a basis the deceased's life expectancy as adopted in the American Expectancy Table of Mortality. The petitioner bus company took exception to this, citing the case of *Alcantara v. Surro* [19] where damages were computed on a 4-year basis. The Supreme Court, in turning down petitioner's contention, held that the *Alcantara* case was not controlling, for the reason that there none of the parties questioned the propriety of the 4-year basis, but only the amount of damages due to the non-inclusion in its computation of the bonuses received by the deceased. Accordingly, the *Alcantara* holding did not lay

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[14] G.R. No. 27610, May 28, 1970, 33 SCRA 40 (1970).

[15] Citing People v. Pantoja, G.R. No. 18793, October 11, 1968; People v. Sangaran, G.R. No. 21757, November 26, 1968; People v. Gutierrez, G.R. No. 25372, November 29, 1968; People v. Buenbrazo, G.R. No. 27852, November 29, 1968; People v. Bakang, G.R. No. 20908, January 31, 1969; People v. Ompad, G.R. No. 23513, January 31, 1969; People v. Acabado, G.R. No. 26104, January 31, 1969; People v. Vacal, G.R. No. 20913, February 27, 1969; People v. Angeles, G.R. Nos. 23303-04, May 20, 1969; Tapac v, People, G.R. No. 26491, May 20, 1969.

[16] *Supra* note 3.

[17] G.R. No. 25499, February 18, 1970, 31 SCRA 511 (1970).

[18] Article 1764 expressly makes Article 2206 applicable to deaths caused by breach of the contract of carriage.

[19] 93 Phil. 472 (1953).

down any rule on the length of time to be used in the computation of damages. The Court went on to say: "Life expectancy is not only a relevant but an important element in fixing the amount recoverable by the private respondents herein. Though it is not the sole element determinative of said amount, no cogent reason has been given to warrant its disregard and the adoption of a purely arbitrary standard, such as a 4-year rule."

With regard to the second factor, the petitioner bus company impugned the lower court's decision on the ground that the damages awarded would have to be paid immediately, whereas most of those sought to be indemnified would be suffered years later. Again rejecting petitioner's argument, the Supreme Court held: "This argument is basically true but it is offset by the fact that, although the payment of the award will have to take place upon the finality of the decision, the petitioner's liability has been fixed at only ₱2,184 a year, which was the victim's annual salary at the time of his death. In other words the court did not consider the victim's potentiality and capacity to increase his future income."

The *Villa Rey* ruling is important furthermore in clarifying that the damages to be awarded to the heirs and dependents of the deceased are not the full amount of the latter's earnings but the amount of the support the heirs and dependents would have received had the deceased not died. Hence, earning capacity as an element of damages is the *net* earning capacity less the necessary expenses for the decedent's own living.

The heirs of the deceased are entitled to damages even if they should testify in favor of the accused.

According to Article 2206, "the indemnity shall be paid to the heirs of the latter (i.e. the deecased)". The question, however, arises: in cases of death caused by crime, are the heirs entitled to damages even if they should present themselves as witnesses for the accused?

The case of *People v. Manos*[20] presents an interesting situation involving the above quoted provision of Article 2206. That was a case of parricide against the accused for killing his father. The lower court, in its judgment of conviction, awarded damages to the heirs of the deceased (who were also the mother, brothers, and sisters of the accused), who, however, had taken the witness stand for the accused. The Supreme Court, in upholding the lower court's award, stated: "Nor did the lower court misapply the law when it required the appellant to indemnify the heirs of the deceased even if, as alleged, the mother as well as the brothers and sisters of the appellant, such heirs, would, perhaps feeling the natural impulse, hope to exculpate appellant, a mother and a brother testifying in his favor."

[20] G.R. No. 27791, December 24, 1970, 36 SCRA 457 (1970).

Attorney's fees addressed to the sound discretion of the Court

Article 2208 enumerates the instances where attorney's fees are recoverable:

> "ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
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> (1) When exemplary damages are awarded;
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> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
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> (3) In criminal cases of malicious prosecution against the plaintiff;
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> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
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> (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
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> (6) In actions for legal support;
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> (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
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> (8) In actions for indemnity under workmen's compensation and employer's liability laws;
>
> (9) In a separate civil action to recover civil liability arising from a crime;
>
> (10) When at least double judicial costs are awarded;
>
> (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.
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> In all cases, the attorney's fees and expenses of litigation must be reasonable."

It will be seen that the article, particularly because of paragraph 11 thereof, grants the court a wide latitude of discretion both as to the awardability of attorney's fees and the amount thereof, if they should be granted. Mindful of this, the Supreme Court, during this survey year, in all pertinent cases save one, refused to disturb the exercise by trial courts of their discretion on the matter. The discretion, however, must in all instances be reasonably or soundly exercised.

In the *De la Cruz* case[21] for instance, where the appellant contested the award of attorney's fees on the ground that such fees do not accrue merely because of an adverse decision, the Supreme Court refused to interfere with the lower court's decision, holding that: "he (appellant) does not claim that the court below had abused its discretion in giving the award, which is a matter that is discretionary with it under Article 2208 of the Civil Code of the Philippines, especially since the action was clearly unfounded."[22]

Complementary to the above holding was the case of *Reparations Commission v. Northern Lines*[23] where the Supreme Court declared as well

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21 *Supra*, note 12.

22 Citing Heirs of Justiva v. Gustilo, G.R. No. 16396, January 31, 1963; Lopez v. Gonzaga, G.R. No. 18788, January 31, 1964.

23 G.R. No. 24835, July 31, 1970, 34 SCRA 203 (1970).

settled the doctrine that courts of justice have the discretion to fix the amount of attorney's fees.[24]

The court's discretion can be exercised in fact even if a stipulation on the amount of attorney's fees demandable exists, if under the circumstances attendant to the case, the enforcement of the stipulation becomes unconscionable. Thus, in the case of *Araḥay Incorporated v. Aquino*,[25] where the lower court awarded attorney's fees in the amount of only ₱20,000 despite the fact that the agreement called for 20% of the collectible amount of ₱753,000, the Supreme Court refused to disturb the lower court's award, holding that the allowance of attorney's fees by way of liquidated damages is a matter within the sound discretion of the trial court and that no abuse of discretion had been committed under the circumstances, considering the amount involved in the case.

Commissioner's report and recommendation do not embarrass court's discretion as to amount of attorney's fees.

In the case of *Kalalo v. Luz*[26] the lower court fixed the amount of attorney's fees at ₱8,000, despite the report of the commissioner recommending an award of only ₱5,000. The Supreme Court, on appeal, upheld the lower court, declaring that the latter was not bound by the Commissioner's estimate, it being a settled rule that the amount of attorney's fees is addressed to the sound discretion of the court.

Exercise of discretion in the award of attorney's fees must at all times be reasonable

The latitude of discretion granted to the courts in the matter of attorney's fees does not, of course, go so far as to justify a capricious, whimsical, or unfounded award, as held in *Pacific Merchandising Corp. v. Diestro Logging Development Corp.*[27] In that case, the plaintiff filed suit for the recovery of a sum of money. In a stipulation of facts the lower court sentenced the defendant *inter alia,* to pay the plaintiff a sum equivalent to 25% of the indebtedness as attorney's fees, declaring that the defendants' liability is not based on contract, but on the refusal to pay the obligation notwithstanding repeated demands. The Supreme Court, in disallowing the award, pointed out that only two paragraphs 5 and 11 of Article 2208 could possibly apply to the case. Paragraph 5 is ruled out because there was neither

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[24] Citing SMB v. Magno, G.R. No. 21879, September 29, 1967; Insurance Co. of North America v. Manila Port Service, G.R. No. 23124, October 11, 1967; Balmes v. Suson, G.R. No. 27235, May 22, 1969; Philippine Trust Co. v. Policarpio, G.R. No. 22685, August 25, 1969; Nielson & Co. v. Lepanto Consolidated, G.R. No. 21601, December 28, 1968; De la Cruz v. De la Cruz, G.R. No. 27759, April 17, 1970.

[25] G.R. No. 29033, July 31, 1970, 34 SCRA 159 (1970).

[26] G.R. No. 27782, July 31, 1970, 34 SCRA 337 (1970).

[27] G.R. No. 23916, August 31, 1970, 34 SCRA 704 (1970).

allegation nor proof that the defendant refused, in gross and evident bad faith, to comply with the plaintiff's extrajudicial demands for payment. Nor, on the other hand, could paragraph 11 be cited since an award in this case would in effect impose a penalty on the right to litigate.[28]

Adjudication of interest as part of damages

Article 2211 provides:

> "In crimes and quasi-delicts, interest as a part of the damages may, in a proper case, be adjudicated in the discretion of the court."

In the *Bonifacio* case,[29] the lower court awarded an interest at 6% per annum on the damages, in spite of the lack of a prayer for interest in the complaint. The Supreme Court upheld the grant of interest because of Article 2211, which places it in the discretion of the court.

Mitigation of damages

Under Article 2215, damages may be mitigated under certain circumstances, as, under paragraph (5) thereof, when "the defendant has done his best to lessen the plaintiff's loss or injury."

This provision was applied in the case of *Lopez v. Court of Appeals*,[30] the facts of which are as follows: A sanitary inspector assigned to the Babuyan Islands, Fidel Cruz by name, figured in the papers when he perpetrated a hoax by sending a distress signal to a passing USAF plane. An American army plane dropped on the beach an emergency-sustenance kit containing a two-way radio set, which Cruz utilized to inform authorities in Manila that the people in the place were living in terror due to a series of killings committed on the island. A platoon of rangers was sent to the island — Babuyan Claro — but found that Cruz merely wanted transportation home to Manila.

In two issues of the This Week Magazine of the Manila Chronicle, a pictorial was devoted to the story, with a purported photograph of Cruz, with the title "Hoax of the Year". Unfortunately, however, the picture was of the wrong Cruz, Fidel G. Cruz, a businessman-contractor and former Mayor of Sta. Maria, Bulacan. On 27 January 1957, the necessary correction and apology were published by the magazine.

Upon suit, ex-mayor Cruz was awarded by the trial court ₱5,000 as actual damages, ₱5,000 as moral damages, and ₱1,000 as attorney's fees.

Although, on appeal, the Supreme Court refused to absolve the defendants from pecuniary responsibility, declaring that "a rectification or

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[28] Citing Koster v. Zulueta, 99 Phil. 945 (1956).
[29] *Supra*, note 3
[30] G.R. No. 26549, July 31, 1970, 34 SCRA 116 (1970).

clarification does not wipe out the responsibility arising from the publication," it conceded that such a retraction should mitigate the responsibility.[31] Hence the Court, on the basis of Article 2215, reduced the damages to ₱500 as moral damages and ₱500 as attorney's fees.

Moral damages — mere improper inclusion of innocent parties in a complaint does not necessarily give rise to a cause of action for moral damages

Article 2217 provides for moral damages:

> "Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission."

Not every case where the plaintiff experiences vexation justifies a grant of moral damages. In the *Dioquino* case[32] for instance, where the plaintiff mistakenly impleaded the defendant's wife and father for damages, the latter would recover moral damages for the anxiety allegedly suffered by them. The Supreme Court denied the claim, holding: "Mistaken as plaintiff was, it cannot be concluded that he was prompted solely by a desire to inflict needless and unjustified vexation. Considering the equities of the situation, plaintiff having suffered a pecuniary loss which, while resulting from a fortuitous event, perhaps would not have occurred at all had not defendant borrowed his car, we feel that he is not to be penalized further for his mistaken view of the law in including them in his complaint. Citing American jurisprudence,[33] the Court concluded: "well-worth paraphrasing is the thought expressed in a U.S. Supreme Court decision as to the existence of an abiding and fundamental principle that the expenses and annoyance of litigation form part of the social burden of living in a society which seeks to attain social control through law."

Acquittal on the ground of reasonable doubt excludes possibility of malicious prosecution as basis for moral damages

Article 2219 allows the recovery of moral damages in the instances therein enumerated, among them malicious prosecution (paragraph 8). In the case of *Martinez v. United Finance Corp.*,[34] the Supreme Court explained the elements of malicious prosecution as a basis of a suit for moral damages. In that case, the plaintiff sold postdated checks at a discount to the defendant. Subsequently, to secure plaintiff's unpaid balance, he executed a chattel mortgage covering the merchandise inventory of a department store.

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[31] Citing Jimenez v. Reyes, 27 Phil. 52 (1914).

[32] *Supra*, note 6.

[33] Petroleum Exploration v. Public Service Commission, 304 U.S. 209, 58 S. Ct. 834 (1937).

[34] G.R. No. 24017, August 31, 1970, 34 SCRA 524 (1970).

Upon the plaintiff's failure to pay, the defendant extrajudicially foreclosed the mortgage but fetched an amount very much smaller than the outstanding indebtedness. The defendant then filed a criminal complaint for estafa but the plaintiff was acquitted. The plaintiff now avers that the defendant knew all the time that the plaintiff had not committed estafa, but with malice and evident bad faith the defendant filed the charge in order to embarrass and harass the plaintiff. As a result, the plaintiff claims damages of over ₱140,000.

The Supreme Court, in affirming the order of dismissal, held that malicious prosecution, to be the basis of a suit, requires the elements of malice and want of probable cause in the prosecution of an action against the plaintiff. In addition, declared the Court, the defendant must himself be the prosecutor or investigator of the prosecution which ended in acquittal.[35] Turning then to the circumstances surrounding the case, the Court held: The complaint fails to satisfy the test of sufficiency. It contains allegations which belie a conclusion with respect to malice and want of probable cause; *viz:* (1) the holding of a preliminary investigation; (2) after preliminary investigation, the plaintiff filed a motion to quash which the defendant opposed; (3) the fiscal filed the information in court; (4) the plaintiff was acquitted only after a protracted trial. Moreover, the plaintiff was acquitted on the ground of reasonable doubt. The foregoing facts show that in filing the charge, the defendant was not actuated by malice, nor was there want of probable cause. The very fact that the plaintiff's acquittal was based on reasonable doubt demonstrates that the defendant was justified in submitting its grievance for judicial adjudication. Moral damages were consequently not awarded.

Moral damages arising from willful injury to property

Article 2220 reads:

> "Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith."

This article was applied by the Supreme Court in a case[36] involving a dispute over water rights, the facts of which are as follows: In 1918, the defendants were granted water appropriation rights on a river by the Department of Commerce and Communications. In 1940, the plaintiffs constructed at the mouth of a creek (which was joined to the river) and across it, a concrete dam that impeded and reduced the water flow, and in 1952, with the construction of a higher dam, completely shut off the water supply.

[35] Citing Buchanan v. Esteban, 32 Phil. 363 (1915).

[36] Tiongson v. Fernandez, G.R. No. 26403, October 20, 1970, 35 SCRA 352 (1970).

The defendants are owners of irrigated ricelands that abut the creek. Because of the concrete dam constructed by the plaintiffs, the defendants demand moral damages of ₱165,000 and exemplary damages of ₱66,000.

Held: The abusiveness of the erection (and subsequent elevation) of the dam across the mouth of the creek, to the detriment of the appellants who derive from the latter the water for their own ricefields, is the remark of the plaintiff's own witness.

Considering that plaintiffs, not content with reducing the water available for the defendants' fields by the construction of the dam in controversy, deliberately blocked totally their water supply by increasing the elevation of the dam, without appellants' consent and without government authorization, this Court finds that said defendants are entitled to recover moral damages, pursuant to the first part of Article 2220.

Requirement for the award of temperate damages

According to Article 2224,

> "Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty."

The Supreme Court, in the case of *Chaves v. Gonzales*,[37] interpreted the requirement of above-cited article as requiring, first that an allegation of temperate damages must be made in the complaint and, second, that the existence of the actual basis thereof must be proved.

TRADE-MARKS & TRADE-NAMES

Under Section 4(c) of the Trade-Marks Law, the names of the deceased wives of Presidents may be appropriated as trade-names

Section 4(c) of Republic Act No. 166 prohibits the registration of a trade-mark or trade-name or service-mark which "consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of his widow, if any, except by written consent of the widow."

The question that arose in the case of *De la Rama Steamship Co. v. National Development Co.*[38] was whether the names of deceased wives of former presidents could be appropriated as trade-names. Answering the question in the affirmative, the Supreme Court declared: Under Section 4(c) of Republic Act No. 166, what is prohibited from being appropriated

[37] G.R. No. 27454, April 30, 1970, 32 SCRA 547 (1970).
[38] G.R. No. 26966, October 30, 1970, 35 SCRA 567 (1970).

and registered are trade-names consisting of, or comprising, a name identifying a particular living individual, or the name of a deceased President of the Philippines. The names of deceased wives of Presidents are not included in the prohibition.

Test of similarity of trade-marks

Section 4(d) of the same law prohibits the registration as trade-mark, trade-name, or service-mark of anything which "consists of or comprises a mark or trade-name which so resembles a mark or trade-name registered in the Philippines or a mark or trade-name previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with goods, business or services of the applicant, to cause confusion or mistake or to deceive the purchasers."

The test of determining resemblance or similarity under the above-quoted section has not been easy to apply and, in the ultimate, must be decided according to the peculiar circumstances of the case. Such a case that came up for judicial determination during this survey year was that of *American Wire and Cable Co. v. Director of Patents.*[39] The facts are the following:

The appellant is the owner of the registered trademark DURAFLEX for electric wires. The appellee Central Banahaw Industries, sometime in 1962, applied for the registration of the trademark DYNAFLEX and Device to be used in connection with electric wires. The appellant-oppositor opposed the application on the ground that the appellee-applicant's use of the trademark DYNAFLEX would cause confusion or result in mistakes for purchasers intending to buy DURAFLEX electric wires and goods, the trademark DYNAFLEX allegedly having practically the same spelling, pronounciation, and sound, and covering the same goods as that of the oppositor.

The issue, therefore, was whether such a confusing similarity existed between DURAFLEX and DYNAFLEX.

The Supreme Court held: It is clear from Section 4(d) of Republic Act No. 166 that the determinative factor in a contest involving the registration of trade-marks is not whether the challenged mark would *actually* cause confusion or deception of the purchasers but whether the use of such mark would *likely* cause confusion or mistake on the part of the buying public. To constitute an infringement of an existing trademark and warrant a denial of an application for registration, the law does not require that the competing trademarks must be so identical as to produce actual error or mistake; it would be sufficient, for purposes of the law, that the similarity

[39] G.R. No. 26557, February 18, 1970, 31 SCRA 544 (1970).

between the two labels is such that there is a possibility or likelihood of the purchasers of the older brand mistaking the new brand for it. Earlier rulings seem to indicate reliance on the *dominancy* test or the assessment of the essential or *dominant* features in the competing labels to determine whether they are confusingly similar.[40] The present case is governed by the principles laid down in the preceding cases. Similarity between the competing trademarks is apparent. The names and designs are similar. Moreover, buyers are less concerned with etymology than with their sound and the dominant features of the design. The registration of the applicant's trademarks was therefore denied.

[40] Citing Co Tiong Sa v. Director of Patents, 95 Phil. 1 (1954); Lim Hoa v. Director of Patents, 100 Phil. 214 (1956).