CIVIL LAW—PART I

PERSONS AND FAMILY RELATIONS and OBLIGATIONS AND CONTRACTS

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Of the 1971 cases decided by the Supreme Court in the areas of Persons and Family Relations and Obligations and Contracts, two hold more than passing interest for those who are affected.

Moy Ya Lim Yao v. Commissioner of Immigration[1] broke the four-year period of suspense and anxiety for the alien wives who were in effect divested of their Filipino citizenship by the 1967 *Burca* decision.[2]

The case of *Palisoc v. Brillantes*,[3] on the other hand, coming at a time of widespread student activism punctuated by violence in and out of the campus, threw administrators and teachers of vocational schools into a furor when it held them civilly liable for tortious acts committed by students against each other during school hours. Nor were its implications lost on schoolheads of academic institutions.

PERSONS AND FAMILY RELATIONS

NATURALIZATION AND CITIZENSHIP

Grounds for denial of Petition

In a number of citizenship cases, the Supreme Court reversed several decisions of the lower court granting petitions for naturalization on the ground that:

(1) Petitioner did not stay continuously in the Philippines for a period of thirty years where he sought to exempt himself from filing a declaration of intention as required in section 6 of Commonwealth Act No. 473. His stay was interrupted several times by trips to China.[4]

(2) Although the principal of the school where petitioner received his primary and intermediate education stated that the school "is recognized by

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1 G.R. No. L-21289, October 4, 1971, 41 SCRA 292 (1971)

2 Zita Ngo Burca v. Republic, G.R. No. L-24252, January 30, 1967, 19 SCRA 186 (1967)

3 G.R. No. L-29025, October 4, 1971, 41 SCRA 548 (1971)

4 Kaw Seng v. Republic, G.R. No. L-29208, January 28, 1971, 37 SCRA 73 (1971)

the Philippine Government, and that the enrolment of this school is not limited to any race or nationality and Philippine history, government and civics are also taught as part of the school curriculum", nevertheless, there is no evidence that it was "regularly attended by a sizeable number of Filipino students from whcm applicant could have imbibed Filipino customs and traditions".[5]

(3) Applicant did not secure from the Minister of the Interior of the Republic of China the permission required by its laws to renounce his Chinese citizenship and thus divest himself thereof. If he does not renounce beforehand his allegiance to his country, the same would be retained inspite of his Philippine citizenship which is contrary to the spirit and letter of our Naturalization Laws.[6]

(4) Applicant, in not renewing his permit to conduct a bakery business with the Bureau of Commerce, han not acted in a proper and irreproachable manner.[7]

(5) Applicant's character witness were not qualified to say, and their testimony did not prove, that during *all the period* of his residence in the Philippines, he had observed good and irreproachable conduct for said witnesses who were in Zamboanga City had no contact with him during the four years of his stay in Manila.[8]

(6) Petitioner was not receiving a lucrative income (varying amounts in different cases up to ₱4,300 p.a.)[9]

Strict compliance with the requirements cf the law yas firmly held to be jurisdictional.[10]

Change of character witness

In case applicant for naturalization wishes to substitute one character witness for another, the petition should be amended accordingly. Moreover, substitution is not allowed when both character witnesses are alive; only death of one may justify a substitution. Where this is authorized by the courts, the amended petition should be posted on the bulletin board of the court and published in the *Official Gazette* and a newspaper of gen-

[5] Lim v. Republic, G.R. No. L-30424, January 28, 1971, 37 SCRA 96 (1971)

[6] Sy Dy v. Republic, G.R. No. L-25637, February 20, 1971, 37 SCRA 506 (1971)

[7] Yoy On v. Republic, G.R. No. L-28765, April 29, 1971, 38 SCRA 485 (1971)

[8] Lucio Lim Yeo v. Republic, G.R. No. L-22315, May 31, 1971, 39 SCRA 199 (1971); Chua Bon Chiong v. Republic, G.R. No. L-22315, May 31, 1971, 39 SCRA 318 (1971).

[9] Lee Cng v. Republic, G.R. No. L-20[illegible]66, January 30, 1971, 37 SCRA 169 (1971); Chiu Tek Ye v. Republic, G.R. L-22302, January 30, 1971, 37 SCRA 184 (1971); Tan v. Republic, G.R. No. L-28706, January 30, 1971, 37 SCRA 352 (1971); Sy Dy v. Republic, G.R. No. L-25637, February 20, 1971, 37 SCRA 506 (1971); Yoy On v. Republic, G.R. No. L-28765, April 29, 1971, 38 SCRA 485 (1971); Peh Lay Ben v. Republic, G.R. No. L-22314, May 29, 1971, 39 SCRA 60 (1971).

[10] Chiu Tek Ye v. RP, L-22303, January 30, 1971, 37 SCRA 184 (1971)

eral circulation. In one case where this procedural requirement was not observed,[11] the petitioner's certificate of naturalization was declared null and void.

Citizenship of alien women married to Filipino citizen

On the matter of the citizenship of alien women married to Filipino citizens, *Moy Ya Lim Yao v. Commissioner of Immigration*,[12] stands as a landmark decision.

Long awaited in legal circles and particularly by the scores of women who were in effect divested of Filipino citizenship by the 1967 *Burca* decision,[13] the ruling, penned by Justice Antonio P. Barredo, stilled the apprehensions of alien women married to Filipino citizens by declaring that through their marriage, they could be automatically considered Filipino citizens as long as they did not suffer from any of the disqualifications catalogued in the Revised Naturalization Law even if they were not in possession of the requisite qualifications and that therefore, they need not undergo the usual proceedings for naturalization.

Considering the fact that four of the Justices, Chief Justice Roberto Concepcion included, dissented from the stand of the majority when the Court has, in the past, so passionately striven for unanimity in its official actions, one can surmise how the deliberations on this case must have rent the "Eleven Wise Men".

In his 118-page scholarly exposition on the subject, Justice Barredo relied substantially on the interpretation given in American jurisprudence to the counterpart of our section 15 of the Naturalization Law, as well as the practical considerations which impelled him to take up the cudgels for the tens of thousands of alien women affected.

Crucial to the resolution of the case was the interpretation given by the Court to section 15 of the Revised Naturalization Law[14] which provides: "Effect of the naturalization on wife and children. Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines."

At the outset, Justice Barredo cited the first two cases where the aforecited provision underment judicial construction—*Ly Giok Ha v. Galang*[15] and *Cua v. Board of Commissioners*,[16] which were to the effect that the alien

[11] Yao Mun Tek v. Republic, G.R. No. L-23383, January 28, 1971, 37 SCRA 55 (1971)
[12] *Supra*, Note 1.
[13] *Supra*.
[14] Com. Act No. 473 (1939)
[15] 101 Phil. 459 (1957)
[16] 101 Phil. 521 (1957)

woman who marries a Filipino thereby becomes a Filipina if she did not possess any of the disqualifications enumerated in section 4 of the Naturalization Law, no mention being made of qualifications. This stand was modified in *Lee Suan Ay v. Galang*[17] where the Court expressly made mention of the necessity for the alien wife to possess likewise all the qualifications and none of the disqualifications provided for by law to become a Filipino citizen by naturalization. The explicit reason for the insertion of this requirement was provided by Justice Roberto Regala in *Lo San Tuang v. Galang*[18] thus: ". . . . like the law in the United States, our Naturalization Law specified the classes of persons who alone might become citizens, even as it provided who were disqualified" and inasmuch as Commonwealth Act 473, our Naturalization Law since 1939, did not reenact the section providing who might become citizens, in order to remove racial discrimination in favor of Caucasians and against Asiatics, "the only logical deduction is that the phrase who might herself be lawfully naturalized" must now be understood as referring to those who under section 2 of the law are qualified to become citizens of the Philippines" and "there is simply no support for the view that the phrase 'who might herself be lawfully naturalized' must now be understood as requiring merely that the alien woman must not belong to the class of disqualified persons under Section 4 of the Revised Naturalization Law."

It was only to be expected, therefore, that Justice Conrado Sanchez in the *Burca* case would reiterate the view that for an alien wife of a Filipino citizen to become a Filipina, she should not suffer from any disqualifications but must in addition, possess all the qualifications required by law. What was precedent-setting in this case was the declaration that any action by any office, agency, board or official, administrative or otherwise, other than the judgment of a competent court of justice, certifying or declaring that an alien wife of a Filipino citizen is also a Filipino citizen was null and void.

At any rate, in the case at bar, Justice Barredo took issue with the rationalization of Justice Regala outlined above. In effect, he countered that since section 15, the pivotal provision under scrutiny, is an exact copy of section 1994 of the Revised Statutes of the United States, which at the time of the approval of Commonwealth Act 473 had already been given a settled construction by American courts and administrative authorities, such construction should be deemed part of our own law. And all authorities in the United States were then unanimously agreed that the qualifications of residence, good moral character, adherence to the Constitution and others were not supposed to be considered, and that the only eligibility to be taken into account was that of the race or class to which the subject belongs. Therefore, this same interpretation should be given section 15 of the Naturaliza-

[17] G.R. No. L-11855, December 23, 1959, 57 O.G. 2312 (Mar., 1961)
[18] G.R. No. L-18775, November 30, 1963, 9 SCRA 638 (1963)

tion Law, i.e. that an alien woman marrying a Filipino, native born or naturalized, becomes *ipso facto* a Filipina provided she is not disqualified to be a citizen of the Philippines under section 4 of the Revised Naturalization Law. Likewise, an alien woman married to an alien who is subsequently naturalized here follows the Philippine citizenship of her husband the moment he takes his oath as Filipino citizen provided again that she does not suffer from any of the disqualifications. The omission of any reference to the required qualifications is highly significant.

Justice Barredo quoted extensively from the motion for reconsideration of petitioner in the *Burca* case to show that practical considerations strongly militated against the construction that would require the alien wife not only to show absence of disqualifications but possession of qualifications as well.

It follows that with the automatic acquisition of the Filipino citizenship of her husband upon marriage, the alien wife need not submit herself to regular naturalization proceedings. The decision stresses that the import of the Revised Naturalization Law is precisely to confer a benefit upon the alien wife with respect to acquisition of her Filipino husband's citizenship; otherwise, "her marriage to a Filipino is absolutely of no consequence to her nationality vis-a-vis that of her Filipino husband."

The question that begs an answer is: What substitute is there for naturalization proceedings to enable the alien wife of a Philippine citizen to have the matter of her own citizenship settled and established so that she may not have to be called upon to prove it everytime she has to perform an act or enter into a transaction or business or exercise a right reserved only to Filipinos? Actually, as Philippine laws stand today, there is none. However, the most appropriate step pointed out by Justice Barredo is indicated in an opinion rendered by then Acting Secretary of Justice Jesus G. Barrera, i.e., the filing of a petition by the alien wife for the cancellation of her alien certificate of registration alleging, among other things, that she is married to a Filipino citizen and that she is not disqualified from acquiring her husband's citizenship pursuant to section 4 of Commonwealth Act No. 473. Once the Commission of Immigration acts favorably on such petition after investigation, there will be less difficulty in establishing her Filipino citizenship in any other proceeding. The Supreme Court reiterated this recommended procedure in *Lee v. Commissioner of Immigration.*[19]

Justice J.B.L. Reyes, in his brief but forceful dissent concurred in by Chief Justice Concepcion and Justices Zaldivar and Makasiar, took issue with the basic proposition of Justice Barredo. Categorically stating that section 15 of our Naturalization Law is not a reproduction of the American model in its entirety, he urged that it should therefore be construed conformably to the context and intendment of the statute of which it is a part

[19] G.R. No. L-23446, December 20, 1971, 42 SCRA 561 (1971)

and in harmony with the whole. Both our Constitution and laws are nationalistic in character, as contrasted with the spirit of the American law which is favorable to the absorption of immigrants.

Furthermore, while the American law of naturalization stresses primarily the disqualifications for citizenship, ours separates qualifications from disqualifications. The positive qualifications are as much expressions of a policy of restriction as the statement of disqualifications.

"In other words, by giving to section 15 of our Naturalization Law the effect of excluding only those women suffering from disqualifications under section 3 could result in admitting to citizenship women that section 2 intends to exclude." Moreover, the effect of the main decision is to introduce marriage to a citizen as a means of acquiring citizenship, a way not contemplated by Article IV of the Constitution.

COMMENTS

For those women whose citizenship had, in the past, been favorably passed upon and declared by administrative agencies only to have the *Burca* ruling nullify the same, *Moy Ya* came as a last-minute reprieve to assure them continuity of the political status which had allowed them to exercise rights and enjoy privileges as Filipino citizens. If only for the fact that the *Burca* decision would have unsettled vested rights and divested at least 15,000 women of Filipino citizenship acquired by virtue of marriage through its retrospective operation, the majority decision lends itself to commendation.

Justice Barredo and his colleagues who concurred with him undeniably endeared themselves to the countless number of alien wives who, by the proverbial stroke of the pen, are now considered as having acquired the Filipino citizenship of their husbands as long as they did not suffer from any disqualification. One can easily imagine how large must be the number of those who stand to benefit from this doctrine which would disregard qualifications as long as no disqualification stood in the way of the vesting of Filipino citizenship. By operation of law, they are deemed Filipino citizens as of the time of their marriage to a Filipino.

Evidently, a shortcut has been assured those alien women who may wish to acquire Filipino citizenship. That the door to Filipino citizenship has been thrown wide open and may be availed of by unscrupulous persons to circumvent our naturalization and immigration laws has been admitted in the main decision. Reasoned out Justice Barredo: "We cannot as a matter of law hold that just because of these possibilities, the construction of the provision should be otherwise than as dictated inexorably by more ponderous relevant considerations, legal, juridical and practical. There can

always be means of discovering such undesirable practices and every case can be dealt with accordingly as it arises."

Transcending the purely personal concern of the scores of women whose political status has now been resolved is the implication of this decision on the issue now hanging fire in the Constitutional Convention regarding the possible replacement of the *jus sanguinis* doctrine with *jus soli* in determining Philippine citizenship. For if a foreigner can, by the mere act of marriage, be vested with the Philippine citizenship of her husband, with more reason should one born and reared in this country be bestowed this "inestimable privilege" hitherto so discriminatingly conferred by our highest court in line with its consistently held policy of "selective admission".

Reparation of filipina citizen

What is the proper procedure for the repatriation of a female citizen of the Philippines who has lost her citizenship by reason of marriage to an alien? *Lim v. Republic* points out that all that is required of her, upon termination of her marital status, is for her to take the necessary oath of allegiance to the Republic of the Philippines and to register said oath in the proper civil registry in accordance with sections 2 and 4 of Commonwealth Act No. 63.[20]

Accordingly, the lower court erred in permitting petitioner to take her oath of allegiance as a Filipino citizen and declaring her repatriated, granting her prayer that she "be permitted to take the oath of allegiance as a Filipina citizen and thus repatriated." It is apparent through the petition that petitioner hopes to establish that she was a citizen of the Philippines before she contracted marriage. In effect, her petition was for a declaratory relief which the Supreme Court, in numerous past decisions, has held to be inapplicable to the political status of natural persons.

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Civil effects of void marriages

In the case of *Vda. de Consuegra v. Government Insurance System*[21] the Supreme Court resolved the conflicting claims of two women married to the same man over the proceeds of the latter's retirement insurance in favor of both claimants.

Two aspects of this decision bear comment: the status of the second marriage and its civil effects, more specifically, the shares of both spouses in the proceeds of the retirement insurance of their common husband.

[20] G.R. No. L-29535, February 37, 1971, 37 SCRA 783 (1971)
[21] G.R. No. L-28093, January 30, 1971, 37 SCRA 315 (1971)

Regarding the status of the second marriage, the facts show that Consuegra contracted the second marriage on May 1, 1957 while the first which was solemnized on July 15, 1937 was still subsisting. Under Article 80 (4) of the Civil Code, the following marriage is void from the beginning: "Bigamous or polygamous marriages not falling under Article 83, number 2. Undoubtedly, the second marriage did not fall under Article 83, number 2 for it was not contracted under circumstances of absence or presumed death of one of the spouses under Articles 390 and 391, hence it was void from the beginning.

While the Supreme Court admitted that the second marriage was void *ab initio,* it added that there still is need for a judicial declaration of *nullity,* to wit: "......although the second marriage can be presumed to be void *ab initio* as it was celebrated while the first marriage was still subsisting, *still there is need for judicial declaration of such nullity".*

It is submitted that the very nature of a void marriage is that it is inexistent, as if no marriage had transpired and therefore, there is nothing to declare null. This is a basic characteristic that distinguishes it from the merely voidable or anullable marriage which "shall be valid ... until declared null and void by a competent court."[22]

The Supreme Court itself stated earlier in *People v. Mendoza*[23] that no judicial decree is necessary to establish the invalidity of void marriages.

And to cite *American Jurisprudence,* "A marriage void in its inception does not require the sentence, decree, or judgment of any court to restore the parties to their original rights or to make the marriage void, even where the statute makes provision for such annulment but for the sake of the good order of society and for the peace of mind of all persons concerned, it is generally expedient that the nullity of the marriage should be ascertained and declared by the decree of a court of competent jurisdiction."[24]

On the disposition of the retirement proceeds, the Supreme Court allotted equal rights to both spouses taking into consideration the fact that "the second marriage ... was contracted in good faith." Citing its decision the preceding year in a similar case, *Gomez v. Lipana,*[25] it stated: "Since the defendant's first marriage has not been dissolved or declared void the conjugal partnership established by that marriage has not ceased. Nor has the first wife lost or relinquished her status as putative heir of her husband under the new Civil Code, entitled to share in his estate upon his death should she survive him. Consequently, whether as conjugal partner in a still subsisting marriage or as such putative heir, she has an interest in the husband's share in the property here in dispute..."

22 CIVIL CODE, Art. 83.
23 95 Phil. 845 (1954)
24 35 AM. JR. *Marriage,* sec, 57 (1941)
25 G.R. No. L-23214, June 30, 1970, 33 SCRA 615 (1970)

And on the share of the second wife, "although the second marriage can be presumed to be void *ab initio* as it was celebrated while the first marriage was still subsisting, still there is need for judicial declaration of such nullity. And inasmuch as the conjugal partnership formed by the second marriage was dissolved before judicial declaration of its nullity, 'the only just and equitable solution in this case would be to recognize the right of the second wife to her share of one-half in the property acquired by her and her husband, and consider the other half as pertaining to the conjugal partnership of the first marriage.' "

The Supreme Court, in affirming the lower court's decision, relied substantially on their 1924 ruling in *Lao v. Dee Tim* [26] which was in turn grounded on the more humane provisions of the *Leyes de Partidas* which were in force in the Philippines at the turn of the century under the American regime. It held that two women who "innocently and in good faith were legally united in holy matrimony to the same man were ... entitled to one-half of the estate of the husband upon distribution of his estate." Obviously, the element of good faith swung the scales in favor of the second spouse who had no knowledge of the pre-existing marriage.

Under the present Civil Code, however, it is doubtful whether the presence of good or bad faith would be relevant for the pertinent portion of Article 144 provides: "When a man and a woman live together as husband and wife . . . but their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership. Therefore, whether their be good or bad faith of the parties to the bigamous marriage, the effect will be the same. The rules on co-ownership will govern their property relations.

Probably taking into consideration Article 144 the Court of Appeals, in *Ricafrente v. Ventura*,[27] disregarded in effect the bad faith of the parties to the second marriage and gave the second wife her due share in the properties acquired during their cohabitation. Actually, since the two acted in bad faith in entering into the marriage, they were both deemed to have acted in good faith, applying the in *pari delicto* doctrine.

Curiously, however, the Supreme Court made absolutely no mention of Article 144 in resolving the claims of the second wife, anchoring its decision on the statement that the retirement benefits should accrue to the legal heirs, absent a designation of beneficiary or beneficiaries. In other words, the second spouse received her half share as an heir to the common husband and not under Article 144.

Under the rules of co-ownership, the shares of the co-owner depend on the amount of contribution of each to the common property. In the

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[26] 45 Phil. 739 (1924)
[27] G.R. No. 13263-R, May 23, 1957

absence of proof as to their respective contributions, it is presumed that the parties have equal shares.[28] The spouse, more often than not the wife, who makes no material contribution, would share, just the same in the properties acquired during cohabitation. In whatever capacity she shares, the net result may, on occasion, be the same, but not necessarily so.

Donations between common-law spouses void

Matabuena v. Cervantes[29] lays down the rule that Article 133 of the Civil Code prohibiting matrimonial donations is likewise applicable to spouses living in common-law relationship. Citing the decision of then Justice J.B.L. Reyes of the Court of Appeals in *Buenaventura v. Bautista,*[30] the High Court pointed out that if the policy behind the prohibition is due to the fear of undue and improper pressure and influence upon the donor by the donee spouse, the danger in the case of common-law spouses is magnified because "assent to such irregular connection for thirty years bespeaks greater influence of one party over the other."

Hence, the stand of the sister of the deceased Felix Matabuena in assailing the validity of the donation made by her brother to appellee Petronila Cervantes at a time when the two were living extra-maritally was upheld by the Supreme Court.

Conjugal rights to friar lands

The presumption that all onerous acquisitions during coverture are conjugal in nature was not rebutted in the case of *Balicudiong v. Balicudiong.*[31] Hence, the parcel of Friar Lands acquired during the marriage by installment payments, which payments were completed by the husband after the death of his wife as statutory liquidator of the conjugal properties independently of his wife's administrator, was conjugal in character.

However, the assignment made by the husband of the whole lot to his son was void *ab initio* as to the share pertaining to the deceased wife, such alienation having been made after November 24, 1924, when Act No. 3176 took effect. Previous to this date, a surviving husband could encumber or alienate the half belonging to the other spouse as statutory liquidator of the conjugal partnership; but after Act No. 3175, such surviving spouses could no longer do so.[32]

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[28] CIVIL CODE, Art. 485

[29] G.R. No. L-28771, March 31, 1971, 38 SCRA 284 (1971)

[30] G.R. No. 3787-R, February 20, 1954

[31] G.R. No. L-29603, June 7, 1971, 39 SCRA 386 (1971)

[32] Under Sec. 685 of Act No. 3176, "when the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated; and the debts thereof shall be paid, in the testamentary or intestate proceedings of the deceased spouse, in accordance with the provisions of this Code relative to the administration and liquidation of the estates of deceased persons, or in an ordinary liquidation and partition proceeding, unless the parties,

PATERNITY AND FILIATION

Compulsory recognition of natural child

In an action to compel appellee to acknowledge the plaintiff as his natural child, and for support and damages, the lower court was held to have erred in merely ordering the former to pay damages for the facts as found by said court showed that the latter had evidence to show the former is her father. Upon the evidence of record, the trial court made a positive finding "that the defendant is the father of the plaintiff Maria Bihildes Velasquez: that appellee admits having had sexual intercourse with Laureana Velasquez, although he claimed that this took place in December 1959 and that this being so, the appellant minor, who was born on November 27, 1960 could not have been his daughter; that notwithstanding appellee's contention regarding the date when he had sexual intercourse with appellant Laureana Velasquez, the trial court gave more credit to the latter who testified that appellee had deflowered her in the month of February 1959, and that she had a second sexual intercourse with him in the first week of March 1960; and that the defendant did not even insinuate, much less prove, that the plaintiff had any illicit relation with another man."

Pursuant to paragraph 4 of Article 283 of the Civil Code, the father is obliged to recognize the child as his natural child "when the child has in his favor any evidence or proof that the defendant is his father". The trial court erred in dismissing appellant minor's action on the ground that she had not been "in continuous possession of the status of a child of the alleged father by the direct acts of the latter or of his supposed family" under paragraph 2 of the same provision. Paragraph 4 and not paragraph 2 is applicable in the case at bar.[33]

ADOPTION

Disqualification to adopt

May a grandmother adopt her grandchildren who are the natural children of her legitimate son?

Confronted with this problematic situation, the Supreme Court answered in the negative in the case of *In re Adoption of Millendez*[34] invoking the disqualification in Article 335 of the Civil Code which runs thus: "The following cannot adopt: (1) Those who have legitimate . . . . children." Petitioner who seeks to adopt the six natural children of her sole legitimate child is therefore barred from so adopting because she falls within the express

being all of age and legally capacitated, avail themselves of the right granted to them by this Code of proceeding to an extrajudicial partition and liquidation of said property."

[33] Velasquez v. Asignar, G.R. No. L-23133, May 31, 1971, 39 SCRA 184 (1971)
[34] G.R. No. L-28195, June 10, 1971, 39 SCRA 499 (1971)

terms of the law, having already a legitimate child, the father of the minors she seeks to adopt.

It is of no consequence that the parents consented to said adoption or that the father of said minors has become wayward and led a dishonorable life and has abandoned his children for over three years. For while it is true that the intendment of adoption statutes is the promotion of the welfare of the children, such that the modern trend is to encourage adoption by persons who can provide them with proper care and education, adoption may be allowed only where it is possible without doing violence to the terms of the statute.

The rationale behind the prohibition to adopt under Article 335 (1) of the Civil Code was explained thus by the Supreme Court: "Not only would the adoption introduce a foreign conflicting element into the family unit, but it would, in the present case, result in the reduction of the legitimate of the son to the benefit of the prospective adoptees, who are not forced heirs of the would-be adopter, thereby producing an indirect disinheritance in a manner not authorized by law, i.e., by a testament expressly stating the legal cause for the disinheritance. Not only this, but the adoption would make the disinheritance of the son permanent and irrevocable, contrary to the policy of the law that a 'subsequent reconciliation between the offender and the offended person deprives the latter of the right to disinherit and renders, ineffectual any disinheritance that may have been made.' "

Appellant's claim that no disqualification attaches to her having one legitimate child because Article 335 speaks of "children" was held devoid of merit for the use of said term in the law does not mean that an adopter must have more than one legitimate child before the disqualification to adopt shall attach. The use of the word "children" instead of "child" appears more to have been called for by grammatical correctness than anything else, to complement the plural subject "those".

Consent of adoptee required

In resolving a jurisdictional question, the Supreme Court incidentally stated that "it is elementary that a person may legally adopt two or more children and that if the children to be adopted are all of age, the consent of neither of their legitimate parents is necessary, all that is needed being their own consent.[35]

OBLIGATIONS AND CONTRACTS

NATURE AND EFFECTS OF CONTRACTS

The contract as law between the parties

Where under the provisions of a contract to sell a house and lot, failure to pay the balance of the purchase price on a specified date would render

[35] Paulino v. Belen, G.R. No. L-28863, January 30, 1971, 37 SCRA 357 (1971)

the agreement null and void and vendee would be under an obligation to vacate the premises within ninety days from said violation, the happening of said contingency would perforce bring about said automatic resolution. It would be less than accurate for appellants to allege that the appellees have in effect unilaterally declared the contract to sell as null and void contrary to the principle that rescission of a contract must be judicially authorized. The nullification of the contract and the demand to vacate were merely by way of enforcing what had been expressly stipulated between the parties.[35a]

Law forms part of contract

Maritime Co. of the Philippines v. Reparations Commission[36] stands for the well-settled doctrine that the law, in this case, section 11 of the Reparations Act, is considered as read into the contract between the parties. Said provision states: "Nothing herein shall be construed as exempting the end-user from paying in full all the necessary costs, charges and expenses incident to the application for and the procurement, production, delivery and acquisition, of, the goods concerned."

Inasmuch as the abovequoted provision is free from any ambiguity, the task of the court is clear. All it needs must do is to apply the law; there is not even any need for construction. Hence, defendant Reparations Commission as consignee of reparations goods could not be held liable by plaintiff shipping lines for the corresponding freight charges. As a matter of fact, plaintiff in its prior dealings with the defendant had accepted the setup laid down in said section 11.

To repeat the fundamental rule, the law forms part of, and is read into every contract, unless clearly excluded therefrom in those cases where such exclusion is allowed. Thus, every contract contains not only what has been explicitly stipulated, but the statutory provisions that have any bearing on the matter.

Article 1169 applied

An attempt to make out a case under the last paragraph of Article 1169 of the Civil Code as to exculpate defendant-appellant from his obligations under the contract failed in *Limjoco v. Court of Appeals.*[37]

In a sale of land by Angel T. Limjoco to Robert Tan, the respondent in this case, the latter gave ₱5,000.00 as earnest money while the former undertook, among other things, to execute the deed of sale within sixty days and to arrange the assumption of the mortgage lien by the latter in favor of the Rehabilitation Finance Corporation, failing which, he would return the

35a Simpao Jr. v. Lilles, G.R. No. L-29662, July 30, 1971, 40 SCRA 180 (1971)
36 G.R. No. L-29203, July 26, 1971, 40 SCRA 70 (1971)
37 G.R. No. L-20656, February 27, 1971, 37 SCRA 663 (1971)

earnest money within a certain period of time, otherwise he would still be liable for the additional amount of ₱5,000.00 as damages. The lower court and respondent Court of Appeals both found that there was a failure to consummate the proposed sale due to the fault of vendor Limjoco. As a consequence, he was ordered to return the earnest money to Tan and was furthermore, ordered to pay the liquidated damages agreed upon.

In an effort to exempt himself from the onerous judgment against him, petitioner sought to show that respondent Tan failed to comply in a proper manner with what was incumbent upon him and that, therefore, under Article 1169 of the Civil Code, he could not be considered to have incurred any delay in the fulfillment of his own obligations. The last paragraph of Article 1169 is as follows: "In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins."

The Supreme Court upheld the findings of fact of the respondent Court of Appeals to the effect that petitioner failed to execute the deed of sale within the time limit agreed upon due to his inability to secure the signatures of all his children who were his co-owners. No fault was attributable to respondent Tan. Nor could the payment of the liquidated damages agreed upon be assailed as iniquitous for both parties, being property owners and men of affairs, were presumed to know how to protect their interests in dealing with others. Petitioner Limjoco could not be heard to invoke Article 1169.

Fortuitous event extinctive of civil liability

In *Austria v. Court of Appeals*[38], a commission agent sought to exempt herself from civil liability to the petitioner for loss of a piece of jewelry consigned to her on the ground that the same was stolen from her. She, being the victim of robbery, which is a fortuitous event, her obligation was extinguished in accordance with Article 1174 which provides: "Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen were inevitable."

Petitioner countered however that for robbery to fall under the category of a fortuitous event and relieve the obligor from his obligation under a contract pursuant to the abovecited provision, there ought to be a prior finding on the guilt of the persons responsible therefor. In other words, the occurrence of the robbery should be proved by a final judgment of conviction in a criminal case, otherwise a different view would encourage per-

[38] G.R. No. L-29640, June 10, 1971, 39 SCRA 527 (1971)

sons accountable for properties received on consignment basis to connive with others who would be willing to be accused in court for the robbery in order to be absolved from civil liability for the loss of the entrusted articles.

Brushing aside such contention, the Supreme Court pointed out that the emphasis of Article 1174 is on the events, not on the agents or factors responsible for them. To avail of the exemption granted in the law, it is not necessary that the persons responsible for the occurrence should be found or punished; it would only be sufficient to establish that the robbery did take place without any concurrent fault on the debtor's part, and this can be done by preponderant evidence. To require the prior conviction of the culprits in the criminal case in order to establish the robbery as a fact, would be to demand proof beyond reasonable doubt to prove a fact in a civil case.

Since it was not disputed that respondent was indeed the victim of robbery at which the jewelry was stolen, the fortuitous event had extinguished her liability.

Rescission of contracts

The rule that a judicial action for the rescission of a contract is not necessary where the contract provides expressly that it may be revoked and cancelled for violation of any of its terms and conditions was reiterated by the High Tribunal in *Lopez v. Commissioner of Customs.*[39]

A conditional contract of purchase and sale of a vessel was entered into between the Reparations Commission and petitioner Lopez whereby the former was granted the option to rescind said contract in the event of non-compliance by the latter with the provisions thereof. The pertinent portion of the contract runs thus: "Should the Conditional Vendee (Lopez) fail to pay any of the yearly installments when due, or utilize the goods for any illicit purpose or for purposes other than that for which the goods have been procured....then the Conditional Vendor (Reparations Commission) is hereby given the option to either rescind the contract upon notice to the Conditional Vendee....or sue for specific performance...."

The alternative remedies of rescission or specific performance is authorized under Article 1191 of the Civil Code, thus: "The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case."

The vessel, having been seized by the Collector of Customs of Davao for smuggling, the Reparations Commission notified petitioner Lopez that the conditional contract of sale was to be rescinded. Moreover, petitioner

[39] G.R. No. L-28235, January 30, 1971, 37 SCRA 327 (1971)

had failed to make payments as stipulated. In the face of such violations of the terms and conditions of the contract, the Supreme Court held the Reparations Commission justified in rescinding the contract. It brushed aside petitioner's argument that the Commission should have sought first a judicial declaration of rescission with the declaration that the validity of the stipulation cannot be seriously disputed for it is in the nature of a facultative resolutory condition which in many cases has been upheld.

Article 1250 inapplicable to torts

In an earlier action against Manila Electric Company,[40] plaintiff succeeded in obtaining a Supreme Court ruling to the effect that the sound emitted by the electric company's substation constituted an actionable nuisance for which he was entitled to relief. Damages in the amount of ₱20,000 was awarded to him.

Filing a motion for reconsideration[41], plaintiff appellant alleged that the damages awarded him were inadequate considering the high cost of living. He likewise called attention to Article 1250 of the Civil Code which provides: "In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary."

Brushing aside plaintiff's contention, the Supreme Court declared that the cited provision envisages contractual obligations where a specific currency is selected by the parties as the medium of payment; hence it is inapplicable to obligations arising from tort and not from contract. This can be deduced from the employment of the words "extraordinary inflation or deflation of the currency *stipulated.*"

Article 1266 inapplicable to a surety upon a bail bond

Appellant surety company, upon failure to produce accused in court, was held to have forfeited the bail bond. Invoking Article 1266 of the Civil Code, it sought to exonerate itself from liability on the ground that the accused managed to leave the country because of the negligence of the Philippine Government in issuing her a passport. The provision in question states: "The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor."

Article 1266, clarified the Supreme Court in *People v. Franklin,*[42] does not apply to the case of a surety upon a bail bond on the one hand and

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[40] Velasco v. Manila Electric Co., G.R. No. L-18390, August 6, 1971, 40 SCRA 342 (1971)

[41] Velasco v. Manila Electric Co., G.R. No. L-18390, August 6, 1971, 40 SCRA 342 (1971)

[42] G.R. No. L-21507, June 7, 1971, 39 SCRA 363 (1971)

the State on the other for it has reference to the relation between a debtor and a creditor. Citing itself in an earlier decision.[43], it stressed: "The rights and liabilities of sureties on a recognizance or bail bond are, in many respects, different from those of sureties on ordinary bonds or commercial contracts. The former can discharge themselves from liability by surrendering their principal; the latter, as a general rule, can only be released by payment of the debt or performance of the act stipulated."

NOVATION

Was there novation?

Whether novation has taken place or not is not infrequently a thorny problem to resolve. In *Millar v. Court of Appeals*,[44] the issue confronting the Court was whether the judgment obligation in a civil case in favor of present petitioner had been impliedly novated by a subsequent agreement of the parties embodied in a deed of chattel mortgage.

It appears that petitioner had obtained a favorable judgment from the Court of First Instance condemning the private respondent to pay the sum of ₱1,746.98 with interest at 12% per annum from the date of the filing of the complaint, the sum of ₱400.00 as attorney's fees, and the costs of suit. Subsequently, upon motion of petitioner, a writ of execution issued, on the basis of which the sheriff of Manila seized respondent's jeep. The parties later executed a chattel mortgage on the jeep whereby the mortgage was given by respondent as security for the payment of the judgment debt. The instrument specified that the amount of ₱1,700 was to be paid in two monthly installments. Upon failure on the part of the respondent to pay and the return of several writs of execution obtained by petitioner unsatisfied, the sheriff levied on the former's personal properties and scheduled them for execution sale, whereupon he filed an urgent motion for the suspension of said execution sale on the ground of payment of the judgment obligation. In other words, he averred that the chattel mortgage served as payment of the judgment debt. The lower court, however, ruled that no novation had taken place and that the chattel mortgage had been executed only to secure or get better security for the judgment.

Upon appeal, the Court of Appeals held that the facts amply demonstrated that the chattel mortgage had impliedly novated the judgment obligation due to incompatibility between the two.

Reversing the appellate court, the Supreme Court interpreted the facts to mean that there had been no novation inasmuch as there was no substan-

[43] U.S. v. Bonoan, 22 Phil. 1 (1912)
[44] G.R. No. L-29981, April 30, 1971, 38 SCRA 642 (1971)

tial incompatibility between the chattel mortgage and the judgment liability of the respondent. The unmistakable terms of the deed revealed that it was the intent of the parties to constitute the chattel mortgage purposely to secure the satisfaction of respondent's liability. How? Through payment in two equal installments. If there was a discrepancy in the amounts, it stemmed from the desire of the parties to avoid future confusion as to the amounts already paid and the sum still due, stating with specificity in the deed only the balance of the judgment debt properly collectible from the respondent.

Reiterating the basic principles to test novation, the High Court said: "Where the new obligation merely reiterates or ratifies the old obligation, although the former effects but minor alterations or slight modifications with respect to the cause or object or conditions of the latter, such changes do not effectuate any substantial incompatibility between the two obligations. Only those essential and principal changes introduced by the new obligation producing an alteration or modification of the essence of the old obligation result in implied novation.

". . . The defense of implied novation requires clear and convincing proof of complete incompatibility between the two obligations. The law requires no specific form for the effective novation by implication. The test is whether the two obligations can stand together. If they cannot, incompatibility arises, and the second obligation novates the first. If they can stand together, no incompatibility results and novation does not take place.

Hence, there was no finding of novation, express or implied.

As with the preceding case, the issue involved in *Sandico v. Piguing* [45] is whether an agreement between the parties litigant to reduce a money judgment of the Court of Appeals from ₱6,000 to ₱4,000 constituted novation or whether it completely extinguished the judgment debt. The Supreme Court was of the opinion that said agreement which cannot be deemed objectionable had completely extinguished the judgment debt and released the respondent from his pecuniary liability inasmuch as the petitioner stated in the receipt he issued acknowledging said reduced amount that it was "in full satisfaction of the money judgment rendered . . ."

There could not possibly have been any novation as stated by the respondent judge in her ruling. Novation results in two stipulations—one to extinguish an existing obligation, the other to substitute a new one in its place. It effects a substitution or modification of an obligation by another or an extinguishment of one obligation by the creation of another. In the instant case, there was no new or modified obligation which arose out of the payment by the respondent of the reduced amount of ₱4,000. Moreover, to sustain novation necessitates that the same be so declared in un-

[45] G.R. No. L-26115, November 29, 1971, 42 SCRA 332 (1971)

equivocal terms—clearly and unmistakably shown by the express agreement of the parties or by acts of equivalent import—or that there is complete and substantial incompatibility between the two obligations.

Consent of creditor required

The Supreme Court applied Article 1293 in *Rodriguez v. Reyes*[46]. The highest bidder in a public auction sale, by buying property with notice that it was mortgaged, only undertook either to pay or else allow the land's being sold if the mortgage creditor could not or did not obtain payment from the principal debtor when the debt matured. He could not have obligated himself to replace the debtor in the principal obligation, and he could not do so in law without the creditor's consent.

Novation, whether through *expromision* or *delegacion*, to be effective must always have the consent of the creditor.

Contracts pour autrui

Plaintiff-appellant in *Constantino v. Espiritu*[47] was shown to have executed a fictitious deed of absolute sale of some properties to appellee with the understanding that the latter would hold the same in trust for their illegitimate son still unborn at the time of the conveyance. Appellee, however, twice mortgaged the same and later tried to sell them. Action was commenced to compel vendee-appellee to comply with the agreement by executing the corresponding deed of conveyance in favor of their minor son, and to desist from further doing any act prejudicial to the interests of the latter.

The Supreme Court, declaring the contract as one *pour autrui* although couched in the form of a deed of absolute sale, held that appellant's action was, in effect, one for specific performance. It further added: "That one of the parties to a contract is entitled to bring an action for its enforcement or to prevent its breach is too clear to need any extensive discussion. Upon the other hand, that the contract involved contained a stipulation *pour autrui* amplifies this settled rule only in the sense that the third person for whose benefit the contract was entered into may also demand its fulfillment provided he had communicated his acceptance thereof to the obligor before the stipulation in his favor is revoked.

"On the other hand, the contention that the contract in question is not enforceable by action by reason of the provisions of the Statute of Frauds does not appear to be indubitable, it being clear upon the facts alleged in the amended complaint that the contract between the parties had already been partially performed by the execution of the deed of sale, the action

[46] G.R. No. L-22958, January 30, 1971, 37 SCRA 195 (1971)
[47] G.R. No. L-22404, May 31, 1971, 39 SCRA 206 (1971)

brought below being only for the enforcement of another phase thereof, namely, the execution by appellee of a deed of conveyance in favor of the beneficiary thereunder."

Reformation of contracts

Plaintiff City sought the reformation of a lease agreement it had entered into with defendant alleging that due to mistake or accident, the latter had been given an option to renew the lease for another ten years after the expiration of the original ten-year period when the former had no authority to do so. Defendant contended, among other things, that the action was premature.

In reversing the appellate court, the Supreme Court cited the rationale behind the doctrine allowing reformation of instruments embodied in the Code Commission's Report. It would be unjust and inequitable to allow the enforcement of a written instrument which does not reflect or disclose the real meeting of the minds of the parties. Every party to a contract has a clear interest that the instrument embodying its terms should conform to the actual and true agreement. Hence, if by accident or mistake, as expressly pleaded in the complaint, the document does not conform to the real agreement, either party can ask for the reformation of the instrument as provided in Article 1359, et seq. of the Civil Code.

That the lessee's option to renew the contract for another term of ten years was not yet exercisable when the suit for reformation was instituted by the City because the original and uncontested lease term of ten years had not yet expired does not render the action premature. Precisely, the purpose was to have such option declared ineffective as one not agreed upon by the parties. If the plaintiff City is to wait for the lapse of the first ten years, reformation would be rendered more difficult, for the evidence on the true intent of the parties may disappear before the first ten years are over.[48]

Contracts which are clear should be enforced and need not be construed

Where the parties to a contract bind themselves clearly to certain obligations, subsequent self-serving statements made by one, no matter how high his station, should not be accepted by the court to prove that the intent of the parties was other than what it purports to be under the contract.[49]

It appears from the facts that the defendant National Merchandising Corporation (NAMERCO), a domestic corporation engaged in the importation and sale of farm equipment entered into a financing contract with plain-

[48] City of Cabanatuan v. Lazaro, G.R. No. L-29256, June 30, 1971, 39 SCRA 653 (1971)

[49] Development Bank of the Philippines v. National Merchandising Corporation, G.R. Nos. L-22957 & 23737, August 31, 1971, 40 SCRA 624 (1971)

tiff Development Bank of the Philippines (DBP) under which it was to acquire a certain number of tractors and other machineries paying fifty percent of the total cost thereof with its own funds, and the remaining fifty percent with funds borrowed from the defendant Bank. As finally agreed upon, the contract recited that the principal stockholders and officers of NAMERCO would be jointly and severally liable with the corporation itself on the promissory notes.

Since the project was envisioned to help farmers produce cheaper and abundant farm products through wide-scale use of mechanized farming, another contract was entered into by NAMERCO, as seller, with separate groups of Cotabato farmers, as buyers, for the conditional resale to the latter of the agricultural equipment to be acquired by the former with the understanding that title thereto would pass to the farmers only upon full payment of the agreed cost.

Upon default by NAMERCO and its co-obligors in the payment of the loans, the Bank eventually sold and itself bought, the mortgaged properties at public auction sales. Subsequently, the Bank filed an action in the Court of First Instance against NAMERCO to recover the unpaid balance due on the promissory notes. The trial court rendered judgment dismissing the complaint and ordered the plaintiff bank instead to pay the defendants damages.

In arriving at this decision, the lower court was of the view that it was necessary to determine "the exact nature of the contract between the parties". It then proceeded to accept testimony of the president and general manager of the NAMERCO to the effect that it was not the corporation that undertook to pay plaintiff Bank the loan but the different farmers who were members of the so-called Tractors Pools. The gist of said official's testimony was to the effect that President Magsaysay had verbally assured them in a personal conversation that they would be relieved from liability to pay the Bank and that in case of default, the latter would go after the farmers instead of the NAMERCO and its co-obligors.

Upon appeal, the Supreme Court reversed the lower court and sentenced the NAMERCO and its co-obligors to pay jointly and severally the amount demanded by appellant Bank, in accordance with the express terms of the contract.

In the first place, the contract between the Bank and NAMERCO was crystal clear. There was no need for construction and no amount of quibbling could render them ambiguous or uncertain. The Court expressed surprise that the trial judge should deny recovery to the Bank in accordance with the contract but should instead depart from its clear terms merely on the basis of the testimony of the corporation's president which suffered from the

infirmity of being self-serving and imputing statements to a dead person, the late President Magsaysay.

Said the Court: "The well settled jurisprudence applicable to the issue under consideration is that, to justify disregarding the legal effects and consequences of contracts formally and voluntarily entered into, the evidence must be clear and convincing and more than merely preponderant."

It concluded with these remarks: "The principal stockholders and officers of NAMERCO, were, as the lower court found, businessmen of experience and intelligence. It must be assumed that they knew what they were doing. . . . it must be presumed that they had acted with due care and to have signed the documents in question with full knowledge of their import and the obligations they were assuming thereby; that this presumption of law may not be overcome by the mere testimony of the obligor or obligors that to permit a party when sued upon a contract, to admit that he signed it but to deny that it expressed the agreement he had made, or to allow him to admit that he signed it solely on the verbal assurance given by one party, however high his station may be, that he would not be held liable thereon, would destroy the value of all contracts. Instead, it would be disastrous to give more weight and reliability to the self-serving testimony of a party bound by the contract than to the contents thereof."

Construction of contracts

In *Gotamco Hermanos v. Shotwell,*[50] the Supreme Court was called upon to apply the rules in the construction of contracts. It upheld the action of the Court of Appeals in going behind the reasons and the circumstances surrounding the execution of the contract in order to place itself in the situation of the parties concerned at the time the writing was executed.

Interpretation of, and compliance with, contractual obligations

Ramos v. Central Bank of the Philippines[51] stands for the proposition that where one party, the respondent Central Bank in this case, engages to rehabilitate a distressed bank, the Overseas Bank of Manila of which petitioners are the controlling stockholders, in exchange for control of its management and additional mortgages in its favor, the former is duty bound to comply with its obligations in good faith once the conditions are performed and cannot renege on its promises.

The Supreme Court found the Central Bank guilty of deception in the light of the following antecedent and subsequent circumstances: That after repeatedly demanding the execution by petitioners of a voting trust agreement "as a measure to stave off liquidation", it thereafter considered itself

[50] G.R. No. L-22519, March 27, 1971, 38 SCRA 107 (1971)
[51] G.R. No. L-29352, October 4, 1971, 41 SCRA 565 (1971).

not bound by the terms thereunder, alleging that only its Superintendent of Banks as trustee was so obligated; that after several communications where it unequivocally agreed to provide adequate funds for the "rehabilitation, normalization and stabilization" of the Overseas Bank of Manila, it procrastinated for six months without taking any positive step towards said normalization; that after setting up its own team to manage the bank, it failed to act upon the request of said team for an advance of ₱30 million, even keeping it in the dark about future plans; and finally, that by the liquidation it eventually ordered, depositors and other creditors of the distressed bank would have to share in the latter's assets while its own credits for advances were secured by the new mortgages it had obtained from petitioners, thereby gaining for it what amounts to an illegal preference.

Article 1159 and 1315 of the Civil Code were found by the Court to have been violated by the respondent Central Bank in not performing its commitments, promises and representations in good faith.

Article 1159 states: "Obligations arising from contracts have the force of law between the contracting parties *and should be complied with in good faith.*" And Article 1315 provides: "Contracts are perfected by mere consent, and from that moment the parties are bound not only to be fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, *may be in keeping with good faith, usage and law.*" (Underscoring supplied in both articles.)

Usurious contracts

The issue in usurious contracts which remained unresolved until the case of *Angel Jose v. Chelda Enterprises*[52] was whether a creditor in a contract of loan tainted with usury could recover the principal of the loan or whether he was considered to have forfeited everything including principal.

Brushing aside the application of the *in pari delicto* doctrine embodied in Article 1411 [53] of the Civil Code which would have nullified the whole contract and prevented any recovery from either side, the Supreme Court unequivocally took the position that the contract being divisible, the prestation of the debtor to pay the principal debt should stand and only the accessory obligation to pay a usurious interest should be nullified as being

[52] G.R. No. L-25704, April 24, 1968, 23 SCRA 119 (1968)

[53] Article 1411 provides: When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being *in pari delicto*, they shall have no action against each other and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

This rule shall be applicable when only one of the parties is guilty, but the innocent one may claim what he has given and shall not be bound to comply with his promise.

illegal, in accordance with Article 1273.[54] All Justices then present concurred in the decision penned by Justice Bengzon.

In the instant case of *Briones v. Cammayo*,[55] with similar facts, the Supreme Court arrived at the same conclusion but three registered their dissent this time, led by Justice Fred Ruiz Castro. Invoking Article 1957 which was not mentioned at all in the *Angel Jose v. Chelda Enterprises* case, Justice Castro took the position that in usurious contracts, the prestation to pay illegal interest is an integral part of the cause of the contract. The motive of the creditor/usurer, which is to acquire inordinate gain, becomes an integral part of the cause. One cannot be considered separate and distinct from the other. Accordingly, the entire indivisible contract is void, applying Article 1957 which states: "Contracts and stipulations, under any cloak or device whatever, intended to circumvent the laws against usury shall be void. The borrower may recover in accordance with the laws on usury."

Under this provision of law, the debtor can therefore recover the amount he has paid as usurious interest. In fact, Article 1413 explicitly authorizes that "Interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor, with interest thereon from the date of payment." The lender, however, is not allowed to recover the principal at all; therefore, he falls within the general rule of Article 1411.

It is significant that while in the *Angel Jose v. Chelda Enterprises* case, there was no dissenting opinion, in *Briones v. Cammayo* involving substantially the same set of facts, three of the Justices who had concurred in the majority decisions of the earlier case saw fit to deviate from their former stand. To this extent, the old Supreme Court ruling that the usurious creditor can recover the principal of the loan has been watered down although it, of course, still stands as the present law.

Estoppel by laches

In an action to recover possession of a parcel of land, plaintiffs grounded their claim on the fact that the sale made by their predecessor of the land which was acquired by free patent was absolutely null and void, having been made within five years from its issuance. The defendants pleaded laches inasmuch as thirty-two years had elapsed since the conveyance made by plaintiff's predecessor to their own predecessor and through plaintiff's inaction and neglect, their claim had been coverted into a stale demand.

The Supreme Court upheld defendant-appellees on the ground that the defense of laches is an equitable one and does not concern itself with the character of the title, but only with whether or not by reason of the plain-

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[54] Article 1273 provides: The renunciation of the principal debt shall extinguish the accessory obligations; but the waiver of the latter shall leave the former in force.
[55] G.R. No. L-23559. October 4. 1971, 41 SCRA 404 (1971)

tiff-appellants' long inaction or inexcusable neglect, they should be barred from asserting their claim at all, because to allow them to do so would be inequitable and unjust to appellees. In other words, the plaintiffs could not avail of the nullity of the conveyance as an excuse to avoid the consequences of their own unjustified inaction and as a basis for the assertion of a right on which they had slept for so long, especially since such right is not expressly conferred by law in the first place.[56]

Trusts

The Supreme Court refused to apply the principle of "constructive trust" in one case where the property in question was not fraudulently acquired by the successor in interest of the original vendees and it was subsequently brought under the operation of the Land Registration Act.[57] In an earlier case,[58] the Court had ruled that if a person obtains legal title to property by fraud or concealment, a court of equity will impress upon the title a constructive trust. It was not so in this case.

OBLIGATIONS ARISING FROM QUASI-DELICT

Liability of school administrators for quasi-delict under article 2180

The case of *Palisoc v. Brillantes*[59] delineates the scope of responsibility of teachers and heads of vocational schools for damages caused by their pupils against fellow students on the school premises.

The trial court's findings of fact are that plaintiff's son died in the course of an altercation with a fellow student during recess time in the laboratory of their vocational school. In an action for damages by the parents against the school administrators and the student who inflicted the injury that precipitated the death of the victim, the trial court absolved the former from liability on the basis of Article 2180 which provides: "x x x Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students and apprentices, so long as they remain in their custody."

In the opinion of the trial court, the term "so long as they remain in their custody" contemplates only a situation where the pupil lives and boards with the teacher, such that the control of the said teacher over the pupil supersedes that of the parents, in line with the ruling in *Mercado v. Court of Appeals*.[60] Since in the instant case, the deceased student did not live or

[56] Pabalate v. Echarri, Jr., G.R. No. L-34357, February 22, 1971, 37 SCRA 518 (1971)

[57] Godinez v. Pelaez, G.R. No. L-18491, February 27, 1971, 37 SCRA 625 (1971)

[58] Bancairen v. Diones, G.R. No. L-8013, December 20, 1955, 98 Phil. 122 (1955)

[59] G.R. No. L-29025, October 4, 1971, 41 SCRA 548 (1971)

[60] G.R. No. L-14342, May 30, 1960, 58 O.G. 1301 (Feb., 1962)

board with his teacher or the other defendant officials of the school, the latter could not be made responsible for the tort of defendant pupil.

Reversing the lower court, the Supreme Court interpreted the phrase "so long as they remain in their custody" to mean "the protective and supervisory custody that the school and its heads and teachers exercise over the pupils and students for as long as they are at attendance in the school, including recess time, thus setting aside the dictum in the *Mercado* case. Nothing in the law as cited requires that for liability to attach, the pupil who commits the tortious act must live and board in the school.

The Court explained the rationale of such liability of school heads and teachers thus: ". . . . they stand, to a certain extent, as to their pupils and students, *in loco parentis* and are called upon to exercise reasonable supervision over the conduct of the child. Since the protective custody of the schoolheads and teachers is mandatorily substituted for that of the parents, it becomes their obligation to provide proper supervision of the students' activities during the whole time that they are at attendance in the school, including recess time, as well as to take the necessary precautions to protect the students in their custody from dangers and hazards that would reasonably be anticipated, including injuries that some students themselves may inflict willfully or through negligence on their fellow students."

The law holds said school administrators liable unless they can prove, in compliance with the last paragraph of Article 2180 that "they observed all the diligence of a good father of a family to prevent damage." This, the defendants failed to prove. Hence, both the president and teacher-in-charge of the school were held jointly and severally liable for the quasi-delict of their co-defendant student who caused the death of plaintiffs' son.

Four Justices, expressing their dissent through Justice Makalintal, opined that the more restrictive interpretation of the *Mercado* case should have been retained. They underscored the fact that under "present conditions", the interpretation by the majority of Article 2180 would demand responsibility without commensurate authority, rendering teachers and school heads open to damage suits for causes beyond their power to control.

What are these "present conditions" which influenced the dissenters in their thinking? "It is highly unrealistic and conducive to unjust results, considering the size of the enrollment in many of our educational institutions, academic and non-academic, as well as the temper, attitudes and often destructive activism of the students, to hold their teachers and/or the administrative heads of the schools directly liable for torts committed by them. When even the school authorities find themselves besieged, beleaguered and attacked, and unable to impose the traditional disciplinary measures formerly recognized as available to them, such as suspension or outright expulsion of the offending students, it flies in the face of logic and reality to consider

such students, merely from the fact of enrollment and class attendance, as 'in the custody' of the teachers or school heads within the meaning of the statute. . . ."

Under the *Palisoc* doctrine, administrators and teachers of vocational schools justifiably feel that the responsibilities of their office have been immeasurably broadened. At a time when violence, even on school premises, is no longer an uncommon occurrence and peace officers are often powerless to stem the rising tide of lawlessness, these educators have grown apprehensive over this wider interpretation of Article 2180. The majority, however, is left no choice for the wording of the laws is clear and does not require that for the liability to attach, the pupil or student should actually reside in the school.

Parental liability for child's misconduct

Is the mother of a nineteen-year old minor convicted of homicide who had him in her custody at the time of the commission of the offense liable for the civil indemnity to be paid to the heirs of the victim?

This issue raised in *Paleyan v. Bangkili*[61] was answered in the affirmative by the Supreme Court invoking Article 2180 which provides: "The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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."

The allegation that said provision is applicable only for obligations arising from quasi-delicts since it is included in the Chapter of the Civil Code on quasi-delicts was not entertained by the Court. To sustain such position would result in the absurdity that while for an act where mere negligence intervenes the father or mother may stand subsidiarily liable for the damage caused by his or her son, no liability would attach if the damage is caused with criminal intent. In fact, the void in the Revised Penal Code is subserved by this provision in the Civil Code.

The contention of the mother that Article 2180 should be relaxed, considering that her son, although living with her, was already nineteen years of age and hence, mature enough to have a mind of his own, was not accepted by the Court as constituting a legal defense that would exempt her from her responsibility as parent and natural guardian. The only exemption recognized by the law is proof that the mother "observed all the diligence of a good father of a family to prevent damage"; there is no such proof in this case.

[61] G.R. No. L-22253, July 30, 1971, 40 SCRA 133 (1971)