CIVIL LAW

PARTS II & III

PROPERTY, SUCCESSION AND SPECIAL CONTRACTS AND TORTS & DAMAGES AND QUASI-CONTRACTS

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Napoleon Bonaparte, the story is told, openly hoped that his Civil Code would not be subjected to study and comment by those gadflies of every legal system—the commentators. When he was informed that the first commentary on his Code had been published, the Emperor is said to have sighed: *"Mon code c'est perdu"*![1] Justinian before him, when the *Corpus Juris Civilis* was published, entertained a similar hope, and reinforced it with an edict of prohibition against the preparation of any commentaries on the new compilation. The exuberance of the legal scholars, however, proved more powerful than any imperial decree and, like Napoleon's hope, Justinian's command was promptly and completely disregarded. Commentaries on the Corpus started appearing even during his lifetime.

From all of which one can glean the stubborn fact—bitter to a codifier but gratifying to a lawyer—that codes and codification and all the effort in the world cannot possibly foresee and totally provide for the infinite complexity of human life and relations. Contrary to the two emperors' grandiose claims that their respective codes were so clear and complete that any comment on them was superfluous, contrary to fervent hopes that a code can be so comprehensive that appeal to lawyers and judges becomes unnecessary, no code or law or statute can supply every answer to every question. Nowhere is this clearer than in the civil law tradition, in existence now for more than two and a half millennia, the oldest, the most venerable, and in many ways, the grandest legal tradition known to man. For all the intricacy of the system and the codes developed by it, between the threads of its vast tapestry are the ever so numerous, ever so fine little spaces that summon the efforts of its great weavers—the commentators, the judges, the lawyers, scholars of every degree of distinction

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[1] My code is lost!

—to fill up the gaps in the fabric. So it is that year in and year out, for more than two thousand years, new problems in human interrelationships have arisen—unbidden, unforeseen, often unprovided for in the codes —for study and comment, for analysis and resolution, for litigation and decision. That this should be so is cause for discomfort; it is also cause for wonder.

The weavers must continue their work, for meanwhile the tapestry needs filling out.

PROPERTY

Properties for public use not registrable as private property

Article 420 of the Civil Code enumerates the kinds of property of public dominion and the first paragraph of Article 424 defines by enumeration property for public use pertaining to the political subdivisions of the State. A characteristic of these properties referred in the two provisions is that they are not susceptible of private appropriation. Consequently, they cannot be registered in the name of a private owner. The case of *Bishop of Calbayog v. Director of Lands*,[2] involving an application by the Bishop of Calbayog for the registration of three parcels of land in Catarman, Samar, is an application of this principle. The application was opposed by the Municipality and the Director of Lands on the ground that two portions of the lots in question were public property, one of the portions being a public thoroughfare, and the other, a section used as a public plaza. The evidence considered, the Supreme Court found that the disputed portions were indeed a public thoroughfare and a town plaza and consequently held that said parts of the lots whose registration was applied for should be excluded from the Bishop's application.

Patrimonial property of provinces, cities, and municipalities

The first paragraph of Article 424, cited above, enumerates what the properties of the political subdivisions for public use are. The second paragraph thereof provides: "All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws." Patrimonial property, both of the state and its political subdivisions, is considered private property under Article 425. Carried to its logical term, the classification under the Civil Code, if followed, would bar the State from taking patrimonial property of its political subdivisions without payment of just compensation. The Civil Code classification, however, was not followed by the Supreme Court in a

[2] G.R. No. L-23481, June 29, 1972, 45 SCRA 418.

case involving the legality of a statute gratuitously granting to a city certain properties of a province, such as the provincial capitol, a high-school building, among others,[3] properties which, under the Civil Code would clearly be, as the Court itself there stated, patrimonial property. The Court explained that properties of political subdivisions which are devoted to public service are not to be treated as ordinary private property, especially when the controversy is "along the domains of the Law of Municipal Corporations", implying further that such properties cannot be levied upon, attached, or made subject to acquisitive and extinctive prescription. Since such properties are not ordinary private property, they are under the absolute control and disposition of the State to the extent that they can be transferred by it from one municipal corporation to another.

In the writer's opinion the ruling in the *Zamboanga* case in effect seems to disregard the classifications of Articles 424 and 425 almost to the point of rendering the said articles inoperative. This year, the case of *Salas v. Jarencio*[4] restricts the operation of these articles even further. The *Salas* case involves the following facts: In 1919, the Court of First Instance of Manila rendered judgment in a case declaring the City of Manila owner in fee simple of a parcel of land containing 9,689.8 square meters. An original certificate of title was issued in favor of the city. On various occasions in 1924, several portions of the land were sold to Pura Villanueva. A residue of 7,490.10 square meters was left to the city and a transfer certificate of title was issued in its name. In 1960, the municipal board of Manila passed a resolution requesting the President of the Philippines to consider the feasibility of declaring the lot patrimonial property of the city for the purpose of reselling it to actual occupants thereof. In 1964, Republic Act 4118 was passed declaring that the lot, "which is reserved as communal property, is hereby converted into disposable or alienable land of the State, to be placed under the disposal of the Land Tenure Administration" for subdivision among the occupants. The Mayor informed the LTA that his office would interpose no objection to the implementation of the said law. A new transfer certificate of title was issued in the name of the Land Tenure Administration. In 1966, however, the city filed a suit for injunction and/or prohibition against the implementation of the statute.

The issues were: (1) Was the property patrimonial property of the city? (2) Is Republic Act 4118 valid?

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[3] Province of Zamboanga v. City of Zamboanga, G.R. No. L-24440, March 28, 1968.

[4] G.R. No. L-29788, August 30, 1972, 46 SCRA 734.

The Supreme Court, speaking through Mr. Justice Esguerra, noted that the City of Manila, although declared by the Cadastral Court as owner in fee simple of the property, had not shown by any shred of evidence in what manner it acquired the land in question as its private or patrimonial property. "It is true," declared the Court, "that the City of Manila, as well as its predecessor, the Ayuntamiento de Manila, could validly acquire property in its corporate capacity, following the accepted doctrine on the dual character—public and private—of a municipal corporation. And when it acquires property in its private capacity, it acts like an ordinary person capable of entering into contracts or making transactions for the transmission of title or other real rights. When it comes to acquisition of land, it must have done so under any of the modes established by law for the acquisition of ownership and other real rights. In the absence of a title deed to any land claimed by the City of Manila as its own, showing that it was acquired with its private or corporate funds, the presumption is that such land came from the State upon the creation of the municipality.[5]

"It may, therefore be laid down as a general rule that regardless of the source or classification of land in the possession of a municipality, excepting those acquired with its own funds in its private or corporate capacity, such property is held in trust for the State for the benefit of its inhabitants, whether it be for governmental or proprietary purposes. It holds such lands subject to the paramount power of the legislative to dispose of the same, for after all it owes its creation to it as an agent for the performance of a part of its public work, the municipality being but a subdivision or instrumentality thereof for purposes of local administration. Accordingly, the legal situation is the same as if the State itself holds the property and puts it to a different use."[6]

As far as the second issue was concerned, the Court declared that there was no unlawful taking, precisely because the State, through the legislature had disposal of the property.

Two principles may be drawn from the *Salas* ruling: first, the criterion for determining whether property of political subdivisions is under the full control of the State or not is not the nature or function thereof, as given by Articles 424 and 425 of the Civil Code, but its source, and if the source or grantor is the State, it is subject to the latter's "paramount power" of disposal; and second, in the absence of proof that the political subdivision acquired the property with its own funds, the presumption is that the property came from the State. In the light of this ruling, it is difficult to see how the above-cited articles can be anything but superfluous.

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[5] Citing Unson v. Lacson, 100 Phil. 695 (1957).

[6] Citing 2 McQUILLIN, MUNICIPAL CORPORATIONS, 3rd ed., 197 (1949); Monaghan v. Armatage, 218 Minn. 27, 15 N. W. 2d. 241 (1944).

Owner's right of recovery in cases of unlawful deprivation

Once more the Supreme Court had occasion, during this survey year, to explain the meaning of Article 559, which provides:

> "The possession of movable property acquired in good faith is equivalent to a title. Nevertheless, one who has lost any movable or has been unlawfully deprived thereof, may recover it from the person in possession of the same.
>
> If the possessor of a movable lost or of which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner cannot obtain its return without reimbursing the price paid therefor."

The crucial words in the article are "unlawfully deprived." What, in other words, are the meaning and scope of unlawful deprivation? The Court, in *Dizon v. Suntay*,[7] held that there is unlawful deprivation if an agent, without the owner's knowledge and consent, pledges the thing in a pawnshop in violation of the agency. In the *Dizon* case, the respondent was the owner of a diamond ring which she turned over to one Clarita Sison for sale on commission. Sison pledged it to the petitioner, who owned a pawnshop. The respondent, upon learning of it, tried to recover the ring from the petitioner, but the latter refused. The Supreme Court, in holding for the respondent, cited the 1971 case of *De Garcia v. Court of Appeals*.[8] According to the Court, the right of the lawful owner to recover cannot be defeated even by proof that there was good faith in the acquisition by the possessor.[9]

Mr. Justice Teehankee's concurring opinion is enlightening. Taking issue with Senator Tolentino's opinion on the matter, Justice Teehankee states: "Tolentino's opinion that 'unlawfully deprived' should be limited to unlawful taking, such as theft or robbery is, as he himself admits, based on the express provision of the French Code which used the word 'stolen'.[10] He concedes that our Code, following the Spanish Code, uses broader language than the French Code. He also concedes that there are writers who opine that this article extends to all cases where there has been no valid transmission of ownership, including the case where the proprietor has entrusted the thing to a borrower, depository or lessee who has sold

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[7] G.R. No. L-30817, September 29, 1972; 47 SCRA 160.

[8] 37 SCRA 129 (1971); Cf. 47 Phil. L. J. No. 2, pp. 234-235.

[9] Citing Cruz v. Pahati, 98 Phil. 788 (1956). Aznar v. Yapdiangco, 13 SCRA 486 (1965).

[10] The provision of the Code Napoleon referred to is Article 2279 thereof, which provides: "In the case of movables, possession is equivalent to a title.

Nevertheless, the party who has lost anything, or from whom it has been *stolen*, may reclaim it within three years computing from the day of the loss or robbery, against the party in whose hands he finds it; saving to the latter his remedy against the person from whom he obtained it."

the same.[11] Indeed, if our legislature had intended to narrow the scope of the term 'unlawfully deprived' to 'stolen', as advocated by Tolentino, it certainly would have adopted and used such a narrower term rather than the broad language of Article 464 of the Spanish Code."

The rule, therefore, is that the lawful owner's right to cover his property from the possessor extends to all cases where there has been no valid transmission, including transmissions characterized by fraud or abuse of confidence.

Usufruct and trust distinguished

A usufruct and a trust are different and distinct one from the other and are governed by different legal provisions. In the case of *Palad v. Governor of Quezon*,[12] the plaintiffs allege that they are the heirs of one Luis Palad, who in 1897 executed a last will and testament establishing a trust for the erection and establishment of a high school in the town of Tayabas out of the income of two lots for the benefit of the town of Tayabas. The provincial governor was constituted the trustee and the town the beneficiary. In 1932 a high school was established but the lots continued to be held by virtue of the trust. Suit was brought for reversion to the plaintiffs, Luis Palad having died in 1904. One of the issues was whether the continued trust was a violation of Article 605 which reads: "Usufruct cannot be constituted in favor of a town, corporation, or association for more than fifty years. If it has been constituted, and before the expiration of such period the town is abandoned, or the corporation or the association is dissolved, the usufruct shall be extinguished by reason thereof."

The Supreme Court declared that it was not, because what was established was a trust, and not a usufruct.[13] Article 605 was therefore inapplicable.

Nuisance

Extra-judicial abatement of public nuisances

Under Article 699, there are three remedies against a public nuisance: (1) a prosecution under the Penal Code or any local ordinance; (2) a civil action; and (3) abatement, without judicial proceedings.

A public nuisance *per se* is one that "is recognized as a nuisance under any and all circumstances because it constitutes a direct menace to public

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[11] Citing De Buen: 2-II Colin & Capitant 1008; 1 Bonet 234.
[12] G.R. No. L-24302, August 18, 1972; 46 SCRA 354.
[13] Citing Government v. Abadilla, 46 Phil. 642 (1924).

health or safety and, for that reason, may be abated summarily under the undefined law of necessity."[14] The Supreme Court had occasion to apply this principle in the case of *Homeowners Association of El Deposito v. Lood*,[15] where the petitioners had constructed houses and shanties on land owned by the Metropolitan Water District. The municipality of San Juan passed an ordinance providing for the summary demolition of the houses. Upon challenge, the summary demolition was sustained as lawful by the Supreme Court which declared: "At any rate, the decisive point is that, independently of the said ordinance, petitioners' construction which have been duly found to be public nuisances *per se* (i.e., because the constructions were without provision for the accumulation or disposal of waste matter and were constructed without building permits contiguously to one of the main water pipelines which supply potable water to the Greater Manila area, and, therefore, liable to pollute said pipeline) may be abated without judicial proceedings under our Civil Code." Abatement or destruction of public nuisances *per se* by summary proceedings was, according to the Court, justified by the police power of the State.[16]

In connection with public nuisances, Article 702 has the following provision:

> "The district health officer shall determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance."

Clarifying this article, the Supreme Court, in *Farrales v. City Mayor of Baguio*,[17] explained that failure to observe the provisions thereof is not in itself a ground for an award of damages in the owner's favor.

The plaintiff in the *Farrales* case was a holder of a municipal license to sell liquor and various goods. When the temporary building where she had her stall was demolished in order that the city might construct a permanent building, the plaintiff was ordered to move her goods to another temporary place until the permanent building was completed. She did not like the location pointed out by the city officials where she could install her temporary stall. Consequently, she built a temporary shack on the cement passageway at the end of the rice section building of the city market. When the police threatened to demolish the shack, the plaintiff went to court for an injunction, but, after hearing, the court refused to issue an injunctive order unless the plaintiff could show a permit. The plaintiff had nothing to show, so the police demolished the shack and

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[14] JARENCIO, TORTS AND DAMAGES IN PHILIPPINE LAW, 1972 ed., p. 195; citing Salao v. Santos, 67 Phil. 547 (1939).

[15] G.R. No. L-31864, September 29, 1972; 47 SCRA 174.

[16] Citing Sitchon v. Aquino, 98 Phil. 458 (1956).

[17] G.R. No. L-24245, April 11, 1972; 44 SCRA 239.

delivered the materials and goods to the plaintiff. On appeal to the Supreme Court, the plaintiff insisted that the proper procedure should have been for either the City Engineer or the City Health Officer to have commenced legal proceedings for abatement. Her contention was that the shack was not a nuisance, or if it was a nuisance at all, it was one *per accidens* and not *per se*.

The Supreme Court brushed aside the plaintiff's contention, pointing out that the plaintiff had no permit to put up the temporary stall in the place in question and that its construction on the cement passageway was such that it constituted an obstruction to the free movement of people.

The Court then went on to explain the import of the seemingly mandatory provision of Article 702, and declared that the said article must be correlated with Article 707, with the consequence that a public official extrajudicially abating a nuisance is not necessarily liable for damages upon failure to observe Article 702, a liability for damages arising only if, under Article 707, he causes unnecesssary injury or if an alleged nuisance is later declared by the courts to be not a real nuisance. Neither condition was present in the *Farrales* case; hence the plaintiff was not entitled to damages.

SUCCESSION

Article 777 of the Civil Code gives the manner in which succession, as a mode of acquiring ownership, operates. The article provides: "The rights to the succession are transmitted from the moment of the death of the decedent." Despite a serious defect in phraseology, the meaning of the article is clear—from the very moment of the decedent's death, without a moment's interval or interruption, the right of the heir, devisee, or legatee to his share in the estate becomes vested, absolute, perfect.[18] Hence, from that very moment, the heir, devisee, or legatee may give it away, sell it, compromise it, or otherwise dispose of it.

Article 777 was applied in *Testate Estate of Josefa Tangco; Jose de Borja v. Tasiana Vda. de Borja;*[19] the facts of which case are: When Josefa Tangco died in 1940, her husband, Francisco de Borja, filed a petition for the probate of her will. Francisco died in 1954 and his second wife, Tasiana Ongsingco, instituted testate proceedings. There were a number of disputes between the widow and her stepchildren, marked by a number of lawsuits. In 1963, while both testate proceedings were pending, the contending parties entered into a compromise agreement whereby, *inter*

[18] This is, of course, without prejudice to suspensive conditions or terms.
[19] G.R. No. L-28040, August 18, 1972, 46 SCRA 577.

alia, Jose Borja, Francisco's son by Josefa Tangco and administrator of the latter's estate, obligated himself to pay Tasiana the sum of ₱800,000 as full and complete payment and settlement of her hereditary share in the estates whose settlement proceedings were pending. However, when the document was submitted to the respective courts, Tasiana opposed, claiming, among other things, that the heirs could not enter into such an agreement without first probating Francisco's will.

Sustaining the validity and effectivity of the agreement, the Supreme Court, speaking through Mr. Justice J.B.L. Reyes, held: "There was here no attempt to settle or distribute the estate of Francisco de Borja among the heirs before the probate of his will. The clear object of the contract was merely the conveyance by Tasiana of her share in the two estates. As a hereditary share in a decedent's estate is transmitted or vested immediately from the moment of the death of such *causante* or predecessor in interest, there is no legal bar to a successor disposing of his or her hereditary share immediately after such death, even if the actual extent of such share is not determined until the subsequent liquidation of the estate."

Does a trust in excess of twenty years violate Article 870?

In the *Palad* case,[20] this question was answered in the negative. Basing its holding both on the letter and intent of Article 870, which provides: "The dispositions of the testator declaring all or part of the estate inalienable for more than twenty years are void", the high court said that Article 870 was not violated in *Palad* because the testator's will there did not interdict the alienation of the lots. The will merely directed that the income of the parcels be utilized for the establishment, maintenance, and operation of the high school. Looking into the legislative intent, the Court explained that Article 870 was designed "to give more impetus to the socialization of the ownership of property and to prevent the perpetuation of large holdings which give rise to agrarian troubles."[21] The trust involved in *Palad,* continued the Court, covered only two lots, which were not shown to be large landholdings. And the income derived therefrom was being devoted to a public and social purpose—the education of the youth of the land. Therefore, the use of said parcels was in a sense socialized. Furthermore, there was no hint in the record that the trust had spawned agrarian conflicts. Lastly, the Court stated that, even if the trust fell within the prohibition of Article 870, said article could not be given retroactive effect, the testator in the *Palad* case having died long before the new Civil Code took effect.[22]

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[20] *Supra,* note 12.
[21] Citing the Report of the Code Commission, p. 111.
[22] Citing Articles 2252, 2253, 2258 and 2263.

PRESCRIPTION

Old law governs acquisitive prescription completed before the new Code

The case of *Narag v. Cecilio*[22] involves a donation of two parcels of land made by the plaintiff's natural father to the plaintiff. The donation was effected in 1924, and immediately thereupon the plaintiff took possession of the property. In 1950 the defendants, who were legitimate children of the donor, took possession of the lands. The plaintiff filed suit but the lower court held for the defendants, holding that under Articles 1117, 1129, 1134, and 1137 of the new Civil Code, there was no just title for the reason that the deed of donation, which did not conform to the requirements laid down for wills, was defective. There being no just title, there could be, according to the lower court, no ordinary prescription. Overruling the lower court, the Supreme Court held that the governing law was section 41 of the Code of Civil Procedure, under which just title was not required. Under that statute, adverse possession for ten years, regardless of good or bad faith, ripens into ownership.[24]

Meaning of good faith and just title for purposes of ordinary prescription

Ordinary prescription, which for immovables is a period of ten years[25] needs the twin elements of good faith and just title.[26] Good faith is defined in Articles 526 and 1127, while the definition of just title is found in Article 1129.

The case of *Negrete v. Court of First Instance of Marinduque*[27] involves an application and explanation of the two requisites of good faith and just title. The facts of the case are the following: In 1956, the plaintiff filed an action for forcible entry against the defendant, claiming that since 1945 she had been in continuous and peaceful possession of a parcel of land in Mogpog, Marinduque. The inferior court held for the defendant because the action was filed beyond the one-year period. In 1967, the plaintiff instituted an *accion reivindicatoria,* claiming possession of the parcel for seventy years (personally and through her predecessor-in-interest) and that, shortly after the liberation, the defendant entered the land. The defendant contended that in 1954, he bought the parcel for ₱150 from one Tito Oriendo, as evidenced by a deed of sale. The lower court held for the defendant, stating that even if there was a flaw in defendant's title, he

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[23] G.R. No. L-23408, November 24, 1972; 48 SCRA 11.

[24] Citing Altman v. Commanding Officer, 11 Phil. 516 (1908). PP Agustinos Recoletos v. Crisostomo, 32 Phil. 427 (1915); Locsin v. Montelibano, 36 Phil. 136 (1917); Santos v. Heirs of Crisostomo, 41 Phil. 342; Labot v. Librada, 72 Phil. 433 (1941); Arboso v. Andrade, 87 Phil. 782 (1950); Ongsiaco v. Dallo, 27 SCRA 161 (1969); Alvero v. Reas, 35 SCRA 210 (1970).

[25] Article 1134.

[26] Article 1117.

[27] G.R. No. L-31267, November 24, 1972, 48 SCRA 113.

had already acquired it by acquisitive prescription, having possessed the land in good faith for more than ten years.

The issue, on appeal to the Supreme Court, was: Did the case involve ordinary or extraordinary prescription? If it was the former, the whole period had already run; if the latter, the period had been interrupted.

Declaring that the case could not be one of ordinary prescription, the Court explained that ordinary acquisitive prescription requires good faith and just title. The law[28] defines a possessor in good faith as one who is not aware of any flaw in his title or mode of acquisition; and conversely, one who is aware of such a flaw is a possessor in bad faith. The essence of *bona fides* lies in the honest belief in the validity of one's right, ignorance of a superior claim, and the absence of an intention to overreach another.[29]

On the other hand, to constitute a just title under Article 1129, the document should refer to the same parcel of land which is adversely possessed.

In the *Negrete* case, the parcel referred to in the deed is patently different from that in litigation—the area of the land as specified in the deed is 3700 square meters whereas the disputed parcel is 9 hectares in area; the land specified in the deed is situated in Barrio Puyog, Boac, Marinduque whereas the disputed parcel is in Barrio Puting Buhangin, Mogpog, Marinduque.

The element of just title was, therefore, not present in *Negrete*. Nor could the defendant claim good faith because he must have known what lot was sold to him. He is conclusively presumed to have read the deed of sale and to have noticed the glaring discrepancy.

Consequently, the only mode through which the defendant could have acquired the land was extraordinary prescription of 30 years, and since only 13 years had passed when suit was filed, no right had been acquired by him.

Prescriptive period for cases arising under Article 1357

Article 1357 reads:

> "If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract."

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[28] Article 526.

[29] Citing Bernardo v. Bernardo, 96 Phil. 202 (1954).

In *Espiritu v. Court of First Instance of Cavite*[30] the issue that arose for judicial determination was the period within which the right granted to the contracting parties by Article 1357 could be enforced by judicial action.

The petitioner in the *Espiritu* case alleged that in 1948 the respondent verbally sold to her two parcels of land for ₱3,000. Although the parcels, together with their Torrens titles, were delivered to her, no deed of sale was executed, the arrangement being that the respondents would execute a deed as soon as the titles (which were in the names of their predecessors-in-interest) were transferred to their names. The petitioner claimed that, notwithstanding repeated demands, the respondents refused to execute the deed of sale. The suit was filed in 1964. The respondents filed a motion to dismiss on the ground of prescription, but the petitioner contended that she was seeking nothing more than to compel the respondents to execute the promised deed of sale in her favor and that such action was imprescriptible under Section 38 of the Code of Civil Procedure.

The Court, in striking down petitioner's contention, pointed out that the whole statute of limitations in Chapter III of the Code of Civil Procedure must be deemed supplanted by Chapter III, Title V, Book III of the new Civil Code, which in itself is a complete and comprehensive body of rules on prescription intended to cover all conceivable situations. The new Civil Code, according to the Court, does not consider an action by the vendee of real property to compel the execution of a deed of conveyance under Article 1357 as imprescriptible. Under Article 1143, only two rights are not extinguished by prescription.[31] The specific enumeration in the new Civil Code of imprescriptible actions excludes all other ones. The petitioner's right would fall either under Article 1145, paragraph 1, in which the prescriptive period is six years, or Article 1149, where the period is five years.

SALES

Vendor must have the right to transfer title over the thing sold

For a contract of sale to be efficacious, the vendor, according to Article 1459, "must have a right to transfer the ownership thereof at the time

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[30] G.R. No. L-30486, October 31, 1972; 47 SCRA 354.

[31] Article 1143 provides: "The following rights, among others specified elsewhere in this Code, are not extinguished by prescription: (1) To demand a right of way, regulated in article 649; (2) To bring an action to abate a public or private nuisance."

it is delivered." Conversely, if the vendor is no longer the owner of the thing at the time he must deliver, the vendee will acquire nothing.[32]

The case of *Viacrucis v. Court of Appeals*[33] illustrates the operation of this article. The case was an action to establish title to a parcel of land of about four hectares in Leyte. The land in question was part of a bigger tract of about 14.6 hectares covered by OCT No. 243 in the name of Pedro Sanchez. On 8 June 1936, Sanchez executed a deed selling the said lot to the plaintiff Orais. The deed was on 10 September 1936 filed with the Register of Deeds. On 7 July 1941, Sanchez executed another deed conveying the four hectares in question to Balentin Ruizo who, on 10 October 1945 sold to defendant Viacrucis. On 12 January 1959, Orais formally demanded from Viacrucis that the latter vacate the portion in question. The demand was not heeded, Viacrucis instead selling the said portion to one Claros Marquez. The deeds in favor of Ruizo, Viacrucis and Marquez were never registered. The defendants-petitioners claimed that although the sale to Orais was earlier, they had a better right, because the sale to Orais was merely simulated—a claim to which the court gave no credence.

Holding for the plaintiff-respondent Orais, the Supreme Court, speaking through Mr. Chief Justice Roberto Concepcion, held that title to the land passed to Orais either on 8 June 1936, the date of the deed of sale; or on 30 July 1936, the date of the document executed by one Costelo, who was in physical possession of the land, acknowledging Orais as the rightful owner; or, at the latest, on 10 September 1936, the date of registration with the Register of Deeds. Accordingly, explained the Court, Sanchez was no longer the owner of the land when he sold it to Ruizo on 7 July 1941. The latter consequently acquired no title to the land and conveyed none.[34]

Options to buy

Two cases of major importance concerning the application of Article 1479, paragraph 2 were, during this survey year, decided by the Supreme Court. The said portion of Article 1479, which contains the following provision: "An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price," has always been

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[32] This rule should be understood to be without prejudice to the operation of the Land Registration Law.

[33] G.R. No. L-29831, March 29, 1972; 44 SCRA 176.

[34] It should be mentioned here that, by the time the second sale had been effected, delivery had already been made to the first vendee. If there is no delivery in any form to the first vendee between the time of the first sale and that of the second, Article 1544 shall govern.

a troublesome one, as professors and students of the law on sales will testify. The leading case on the matter was *Southwestern Sugar and Molasses Co. v. Atlantic Gulf and Pacific Co.*,[35] which held that a unilateral promise to buy or to sell, even if accepted, is binding only if supported by a consideration, and this meant, according to Southwestern, that the option can still be withdrawn, even if accepted, if the same is not supported by any consideration. As interpreted, Article 1479 came in conflict with Article 1324, providing that: "When the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn *at any time before acceptance* by communicating such withdrawal, except when the option is founded upon a consideration, as something paid or promised." As far as unilateral options to buy or to sell are concerned, however, the *Southwestern* ruling held that Article 1324, a general provision, is qualified or modified by Article 1479, a specific provision.

As stated earlier, two cases decided in 1972 concerned the interpretation of the second paragraph of Article 1479. Of the two, the more important by far was the case of *Sanchez v. Rigos*,[36] modifying the *Southwestern* decision. The second was *Nietes v. Court of Appeals*,[37] settling the question as to whether an option to buy may be validly exercised so as to bind the owner by merely notifying the latter or whether full payment is necessary.

First the *Sanchez* Case: On 3 April 1961, the plaintiff and the defendant executed an instrument, entitled "Option to Purchase" whereby the defendant promised to sell to the plaintiff, for the sum of ₱1,510 a parcel of land in San Jose, Nueva Ecija within two years. The contract stipulated that the option would be deemed terminated and elapsed if the plaintiff should fail to exercise his right within the stipulated period. Several tenders of payment were made by the plaintiff within the stipulated period, but the defendant rejected them all, as a result of which the plaintiff instituted an action for specific performance, simultaneously making consignation of the amount agreed upon. The defendant, in resisting the plaintiff's suit, relied on the *Southwestern* case which held: "There is no question that under article 1479 of the new Civil Code 'an option to sell,' or 'a promise to buy or to sell' as used in said article, to be valid must be supported by a consideration distinct from the price.' This is clearly inferred from the context of said article, that a unilateral promise to buy or to sell, even if accepted, is only binding if supported by a consideration. In other words, 'an accepted unilateral promise' can only have a binding effect if supported by a consideration, which means that the option can

[35] G.R. No. 7382, June 29, 1955; 51 O.G. 3447 (July, 155).
[36] G.R. No. L-25494, June 14, 1972; 45 SCRA 368.
[37] G.R. No. L-32873, August 18, 1972; 46 SCRA 654.

still be withdrawn, even if accepted, if the same is not supported by any consideration. Here it is not disputed that the option is without consideration. It can therefore be withdrawn notwithstanding the acceptance made of it by appellee."

The Supreme Court in *Sanchez* considered as sufficiently established two material facts,—first, that the promise involved in the contract was a unilateral one to sell and, second, that said promise was *not* supported by a distinct consideration. Nevertheless, the Court held for plaintiff, declaring that the option generated a bilateral contract of purchase and sale upon acceptance by the plaintiff (evidently referring to the plaintiff's tender of the stipulated price). Quoting in part from *Atkins, Kroll and Co. v. Cua Hian Tek,*[38] the Supreme Court stated: Upon accepting defendant's offer a bilateral promise to sell and to buy ensued, and the plaintiff *ipso facto* assumed the obligation of a purchaser. He did not just get the right subsequently to buy or not to buy. It was not a mere option then; it was a bilateral contract of sale. It can be taken for granted, as contended by the defendant, that the option contract was not valid for lack of consideration. But it was, at least, an offer to sell, which was accepted, and of the acceptance the offerer had knowledge before said offer was withdrawn. The concurrence of both acts—the offer and the acceptance —could at all events have generated a contract, if none there was before. In other words, since there may be no valid contract without a cause or consideration, the promisor is not bound by his promise and may, accordingly, withdraw it. Pending notice of its withdrawal, his accepted promise partakes, however, of the nature of an offer to sell which, if accepted, results in a perfected contract of sale.

Thus, the ruling in *Southwestern* was expressly abandoned by the Court.

An analysis of the *Sanchez* decision tells us that a distinction must be made between an acceptance of the promise and an acceptance of the offer. The promisee, in accepting the promise, binds himself to nothing; he merely becomes the recipient of the promisor's offer to buy or to sell, without obligating himself to enter into any contract over the thing. It is to this that Article 1479, paragraph 2 refers. Acceptance of the offer, however, means that the promisee has bound himself to buy or sell the thing offered. It becomes a bilateral affair, and is thus mutually demandable. In *Sanchez*, the plaintiff had not merely accepted the promise. When he offered to pay, he had accepted the offer.

The *Nietes* case, as manifested above, is authority for the rule that full payment of the purchase price need not be paid for an effective exer-

[38] 102 Phil. 948 (1958).

cise of the option to buy. The case arose from the following facts: On 19 October 1959, the petitioner and the respondent entered into a contract of lease with option to buy over the Angeles Education Institute in Pampanga. The consideration for the option to buy was a distinct one. On 31 July 1964, respondent's counsel informed the petitioner of the respondent's decision to rescind the contract due to alleged violations thereof. Petitioner's counsel replied that the petitioner had not violated any stipulation and that the petitioner was exercising his option to buy. The respondent was requested to make available the land title and to execute the deed of sale within fifteen days. As the respondent refused, the petitioner commenced action for specific performance.

The Court of First Instance held for the petitioner but the Court of Appeals reversed, declaring that "the full purchase price must be paid before the option could be exercised." Upon appeal to the Supreme Court, the Court of Appeals holding was in turn reversed on the following ground: In an option to buy, the creditor (i.e., the party who has the option) may validly and effectively exercise his right by merely advising the debtor of the former's decision to buy and expressing his readiness to pay the stipulated price, provided that the same is available and actually delivered to the debtor upon the execution and delivery by him of the deed of sale. Unless and until the debtor shall have done this, the creditor is not and cannot be held in default in the discharge of his obligation to pay.[39] Notice of the creditor's decision to exercise his option need not be coupled with actual payment of the price, so long as this is delivered to the owner of the property upon the performance of his part of the agreement.

Article 1592 not applicable to contracts to sell

Article 1592 reads as follows:

> "In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term."

On several occasions, notably the case of *Sing Yee v. Santos*[40] the Supreme Court has drawn a distinction between a contract of sale and a contract to sell, declaring that Article 1592 applies only to contracts of sale

[39] Citing Abesamis v. Woodcraft Works, G.R. No. L-18916, November 28, 1969; Causing v. Bencer, 37 Phil. 417 (1918).

[40] CA-G.R. No. 2081-R, January 20, 1950; 47 O.G. 6372 (Dec. 1951).

and not to the other kind of contract. In the case of *Luzon Brokerage v. Maritime Building Co., Inc.*,[41] the Court had yet another occasion to dwell upon the important distinction.

The defendant (Myers Building Co.) in that case, on 30 April 1949, entered into a contract entitled "Deed of Conditional Sale" with Bary Building Co., later known, as Maritime Building Co., involving three parcels of land in Manila, together with the improvements thereon. The purchase price was ₱1,000,000. The amount ₱50,000 was paid upon the execution of the deed and the balance of ₱950,000 was to be paid in monthly installments at ₱10,000 a month with 5% interest. It was agreed that, in case of failure to pay any of the installments, the contract would be annulled at the vendor's option, all payments forfeited, and the property repossessed. Subsequently, the monthly installment was decreased to ₱5,000 a month and the interest raised to 5½%. Maritime failed to pay the installment for March 1961 and its Vice-President asked for a moratorium until the year's end due to business difficulties, but Myers refused the request. Maritime failed to pay the March, April, and May installments; Myers made a demand for payment, but the letter was returned unclaimed, whereupon, on 5 June 1961, Myers advised Maritime of the cancellation of the deed of conditional sale and demanded the return of the properties.

Upon suit, Maritime invoked Article 1592 but the Supreme Court, through Mr. Justice J.B.L. Reyes, dismissed Maritime's contention, pointing out that the contract in question was not the ordinary contract of sale envisaged in Article 1592, transferring ownership simultaneously with delivery, but one in which the vendor retained ownership. Thus in suing to recover possession, the vendor was not setting aside the contract but precisely enforcing the provisions of the agreement.[42]

Upon motion for reconsideration,[43] the Supreme Court handed down a resolution reiterating its previous ruling, and, explaining the matter further, declared: "Maritime's insistence upon the application of Article 1191[44] studiously ignores the fact that Myer's obligation to convey the

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[41] G.R. No L-25885, January 31, 1972, 43 SCRA 93.

[42] Citing Manila Racing Club v. Manila Jockey Club, 69 Phil. 57; Caridad Estates v. Santero, 71 Phil. 114 (1940); Miranda v. Caridad Estates, G.R. No. L-2077, October 3, 1950; Jocson v. Capitol Subdivision, G.R. No. L-6573, February 28, 1955, Manuel v. Rodriguez, 109 Phil. 1 (1960); Sing Yee & Cuan, Inc. v. Santos, 47 O.G. 6372. (Dec. 1951).

[43] G.R. No. L-25885, August 18, 1972, 46 SCRA 381.

[44] The article provides: "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. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

property was expressly made subject to a suspensive (precedent) condition of the punctual and full payment of the balance of the purchase price. What it (the vendor) sought was a judicial declaration that because the suspensive condition (full and punctual payment) had not been fulfilled, its obligation to sell to Maritime never arose or never became effective and, therefore, it (Myers) was entitled to reposses the property object of the contract, possession being a mere incident to its right of ownership. In seeking the ouster of Maritime for failure to pay the price as agreed upon, Myers was not rescinding (or more properly, resolving) the contract, but precisely enforcing it according to its express terms."

Sales with pacto de retro—Vendee a retro acquires ownership immediately, subject only to resolutory condition of repurchase

A *pacto de retro* in a contract of sale is not a suspensive but a resolutory condition. Hence transfer of ownership, assuming the requirements as to tradition to be present, takes place immediately, without prejudice to the reversion of the ownership to the vendor *a retro*, if redemption should be made within the period agreed upon by the parties or prescribed by law. The consequences of the principle can be far-reaching, as shown in a case[45] involving a Chinese vendee *a retro*. The sale with right of repurchase was made in 1932, before the adoption of the old Constitution. No repurchase was made by the vendors. Declaring the vendee qualified to hold the land as owner, the Supreme Court held that the fact that at the expiration of the right of repurchase, the 1935 Constitution was already in force did not affect the vendee's right. Citing a number of cases,[46] the Court explained that the nature of a sale with right of repurchase is such that the ownership over the thing sold is transferred to the vendee upon the execution of the contract,[47] subject only to the resolutory condition that the vendor exercise his right of repurchase within the period agreed upon. Thus, the prohibition in Article XIII, Section 1 of the 1935 Constitution[48] against aliens owning lands would not apply to an alien who acquired the land by a sale with *pacto de retro* before said Constitution became effective. To couch the principle in more general

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The Court shall decree of the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law."

[45] Heirs of Francisco Parco v. Haw Pia, G.R. No. L-22478, May 30, 1972, 45 SCRA 164.

[46] Manalansan v. Manalang, G.R. No. L-13646, July 26, 1960; Almirañez v. Devera, G.R. No. L-19496, February 27, 1965; Rosario v. Rosario, G.R. No. L-13018, December 29, 1960.

[47] More properly, upon delivery, because of the principle to which our law adheres: *Non nudis pactis, sed traditione, dominia rerum transferuntur.*

[48] Art. XIV, Sec. 9 of the 1973 Constitution.

terms, the effects of a sale with *pacto de retro* arise from the time of said sale or from the time of delivery to the vendee *a retro*, as the case may be, subject to the condition subsequent of repurchase.

Nature of sale with pacto de retro will be upheld if it is the true agreement of the parties

The law looks with exceedingly suspicious eyes upon sales with *pacto de retro*. The reason for this is that parties may disguise as *pactos de retro* what really are usurious contracts of loan. Thus, Article 1602 enumerates certain circumstances which, if present in a contract purporting to be a sale with *pacto de retro*, will give rise to the disputable presumption that the agreement is really one of loan with mortgage.

However, if, from all indications, the contract is a genuine sale with right of repurchase and no suspicious circumstances are present, the courts will not hesitate to uphold the validity of the agreement. Thus the Supreme Court held in *De Luna v. Valle*,[49] involving a sale with *pacto de retro* for a period of five years, entered into in 1928. No repurchase was effected but in 1965, the vendors' heirs (the vendors had died in the meantime) executed a deed of extrajudicial partition covering the property in question. The vendees' heirs sued to have the deed annulled and to have a new title issued in their name.

The Court held for the vendees' heirs, declaring the contract to be a true sale with right of repurchase. The following circumstances were considered material: (1) there was no indication in the contract that a different transaction was intended by the parties; (2) no evidence was adduced to show that the contract was really a mortgage or an agreement of antichresis; (3) no proof was offered that the purchase price was ever repaid; (4) the vendees assumed possession immediately after the execution of the deed. Being a genuine sale with *pacto de retro*, therefore, the right of ownership was consolidated in the person of the vendee upon the expiration of the five-year period for repurchase.

Requirement of judicial declaration of consolidation in sales with pacto de retro—purpose and effect

According to Article 1607, "in case of real property, the consolidation of ownership in the vendee by virtue of the failure of the vendor to comply with the provisions of Article 1616 shall not be recorded in the Registry of Property without a judicial order, after the vendor has been duly heard."

[49] G.R. No. L-26878, December 27, 1972, 48 SCRA 361.

Explaining the above provision, the Supreme Court in *Yturralde v. Court of Appeals*[50] held that the law contemplates an ordinary civil action, not a mere motion, and that the vendor *a retro* should be made a party defendant, who should be served with summons in accordance with Rule 14 of the Revised Rules of Court.[51] The Supreme Court went on to discuss the purpose of the said requirement: "[E]xperience has demonstrated too often that many sales with right of repurchase have been devised to circumvent or ignore our usury laws and for this reason, the law looks upon them with disfavor.[52] Furthermore, the obvious intent of our Civil Code in requiring a judicial confirmation of the consolidation in the vendee *a retro* of the ownership over the property sold, is not only to have all doubts over the true nature of the transaction speedily ascertained and decided, but also to prevent the interposition of buyers in good faith while such determination is being made."[53]

The requirement of Article 1607, however, should not be understood to suspend or hold in abeyance the consolidation of ownership in the vendee *a retro,* which consolidation takes place automatically upon the lapse of the time for repurchase without the vendor having exercised the right of redemption.[54] The only effect of failure to comply with Article 1607 is that the absolute ownership of the vendee *a retro* cannot be recorded in the Registry of Property.[55]

Legal redemption of urban land—requisites for the existence of the right must be alleged and proved

In order that an adjoining owner may exercise the right of legal redemption of urban land under Article 1622, certain conditions must be fulfilled. As the said article provides: "Whenever a piece of urban land which is so small and so situated that a major portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation, is about to be re-sold, the owner of any adjoining land has a right of pre-emption at a reasonable price.

If the re-sale has been perfected, the owner of the adjoining land shall have a right of redemption, also at a reasonable price.

When two or more owners of adjoining lands wish to exercise the right of pre-emption or redemption, the owner whose intended use of the land in question appears best justified shall be preferred."

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[50] G.R. No. L-31586, February 28, 1972, 43 SCRA 313.
[51] Citing Teodoro v. Arcenas, 110 Phil. 222 (1960).
[52] Citing Report of the Code Commission, pp. 63-64.
[53] Citing Teodoro v. Arcenas, *supra,* note 51; Ongoco v. Judge Ct. of First Instance of Bataan, 15 SCRA 30 (1965).
[54] Rosario v. Rosario, *supra,* note 46.
[55] Heirs of Francisco Parco v. Haw Pia, *supra,* note 45.

The redemptioner cannot avail himself of this right unless, first, the elements are present, and, second, their presence is alleged and established. Thus held the Supreme Court in the case of *De Santos v. City of Manila*[56] the facts of which are the following: On 1 October 1958, the City of Manila and the Arellano University entered into a contract of exchange whereby five parcels belonging to the city were ceded to the University for three parcels belonging to the latter. The plaintiff brought action, claiming the right of redemption and/or pre-emption over one of the five city lots. The lot in question contained 221.50 square meters and was part of a partially dried estero and adjoins both plaintiff's property and the University lot.

Holding against the plaintiff, the Supreme Court declared that the exercise of the right granted by Article 1622 is premised on the existence of two conditions: (1) the piece of urban land is so small that it cannot be used for any practical purpose within a reasonable time; and (2) such small urban land was bought merely for speculation.[57] The existence of these two conditions must be alleged and proved. In the *Santos* case, not only had the plaintiff not alleged them, but could not have proved them because, in the first place, the city did not acquire the lot by purchase, and, in the second place, the lot consists of 221.50 square meters, an area bigger than the average size of lots in Manila and besides it is alleged by the University that, as an educational institution whose present site is not enough for its needs, it can devote the said parcel to serve public interest.

GUARANTY AND SURETYSHIP

Guarantor or surety liable not only for the principal but also for the interest

The extent to which a guarantor or surety is liable is specified for in Article 2055 which provides:

> "A guaranty is not presumed; it must be express and cannot extend to more than what is stipulated therein.
>
> If it be simple or indefinite, it shall comprise not only the principal obligation, but also all its accessories, including the judicial costs, provided with respect to the latter, that the guarantor shall only be liable for those costs incurred after he has been judicially required to pay."

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[56] G.R. No. L-21677, June 29, 1972; 45 SCRA 409.

[57] Citing De la Cruz v. Cruz, 32 SCRA 307 (1970); Soriente v. Court of Appeals, 8 SCRA 750 (1963).

The second paragraph was applied in *Republic v. Pal-Fox Lumber Co.*[58] where the principal debtor and the surety company were held liable jointly and severally to pay the sum of ₱5,000 plus legal interest from the time of the filing of the complaint to the time the surety company offered to pay. The surety company objected to the portion of the decision requiring it to pay interest, basing its objection on the stipulation in the bond that it was liable for ₱5,000. The Supreme Court held the surety liable for the interest, stating that Article 2055, paragraph 2 was clearly applicable, particularly that part thereof which specifies the accessories of the principal obligation.[59]

Remedy of surety in case the period for the payment of the principal obligation expires

Article 2071 enumerates the instances when the guarantor or surety may proceed against the principal debtor and specifies the remedy to which the guarantor or surety is entitled. It provides:

> "The guarantor, even before having paid, may proceed against the principal debtor:
>
> (1) When he is sued for the payment;
>
> (2) In case of insolvency of the principal debtor;
>
> (3) When the debtor has bound himself to relieve him from the guaranty within a specified period, and this period has expired;
>
> (4) When the debt has become demandable, by reason of the expiration of the period for payment;
>
> (5) After the lapse of ten years, when the principal obligation has no fixed period for its maturity, unless it be of such nature that it cannot be extinguished except within a period longer ten years;
>
> (6) If there are reasonable grounds to fear that the principal debtor intends to abscond;
>
> (7) If the principal debtor is in imminent danger of becoming insolvent.
>
> In all these cases, the action of the guarantor is to obtain release from the guaranty, or to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvency of the debtor."

An interesting case arose during this survey year, involving the application of the above-cited article. The facts of the case[60] are rather unusual. In 1952, one Maximo Sta. Maria obtained crop loans from the PNB, with the Associated Insurance and Surety Co. (AISCO) acting as

[58] G.R. No. L-26473, February 29, 1972; 43 SCRA 365.
[59] Citing Namarco v. Marquez, 26 SCRA 722 (1969).
[60] Banzon v. Cruz, G.R. No. L-31789, June 29, 1972; 45 SCRA 475.

Surety. The petitioners in turn acted as indemnitors of AISCO. Sta. Maria failed to pay his obligations to the bank as they fell due, as a result of which the bank demanded payment from AISCO. Instead of paying the bank, AISCO filed a complaint against Sta. Maria and the petitioners, and the trial court rendered judgment ordering Sta. Maria and the petitioners jointly and severally to pay AISCO for the benefit of the PNB. In a subsequent action by AISCO, the Court ordered Banzon (one of the petitioners) to surrender for cancellation his owner's duplicates of title over two lots which had been levied upon and purchased at an execution sale by AISCO in satisfaction of the judgment in the first case. In spite of these judgments in favor of AISCO, however, it never discharged its liability as surety to the bank nor even made any payment to the bank to discharge Sta. Maria's outstanding obligations. In fact, since the PNB failed to exact payment from AISCO as surety, it (PNB) filed its own complaint against Sta. Maria and AISCO itself for the collection of the outstanding indebtedness. The judgment in favor of the PNB was in the amount of ₱15,446.44. Sta. Maria thus had been making payments all along to the bank, so much so that by the time the PNB obtained judgment against him, there remained only a little over one-half of the advance judgment of ₱30,000 obtained by AISCO six years earlier against Banzon and which, as stated above, AISCO never paid the bank. By 1970, Sta. Maria had paid the bank the full amount.

Striking down as irregular the judgment obtained by AISCO against Banzon as indemnitor, the Supreme Court, speaking through Mr. Justice Teehankee, held: The suit of AISCO against Banzon as indemnitor and the execution against the latter of the judgment obtained in trust "for the benefit of PNB" were absolutely premature and uncalled for, since Article 2071 permits the surety, even before having paid, to proceed only "against the principal debtor . . . when the debt has become demandable by reason of the expiration of the period for payment" and "the action of the guarantor is to obtain release from the guaranty, or to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvency of the debtor." AISCO thus did not even have any valid cause of action against Banzon as its indemnitor but could proceed only against Sta. Maria as principal debtor. And even as against such principal debtor, it could not prematurely demand payment even before it had paid the creditor, its action being limited only for the purpose of obtaining release from the guaranty, or a security against an eventual insolvency of the debtor. An action by the guarantor (or surety) against the principal debtor for payment before the former has paid the creditor, is premature.

DAMAGES

Survey year 1972 was a particularly lean year for the field of Torts and Damages, although among the three decisions on damages, the case of *Zulueta v. Pan American World Airways*[61] brightens the scene somewhat. The two other cases have to do with the application of Articles 102 and 103 of the Revised Penal Code and Article 2180 of the Civil Code.

Conviction of employee condition precedent to an action for subsidiary liability based on Articles 102 and 103 of the Penal Code

The controversy in *Jamelo v. Serfino*[62] arose from the following facts: The plaintiff filed a civil action for damages against one Antonio Regoles for the death of plaintiff's son due to Regoles' negligent driving. The CFI awarded damages in the amount of ₱8,000, which award the Court of Appeals affirmed. The writ of execution was, however, returned unsatisfied because Regoles was insolvent. The plaintiff then filed an action against the defendant, Regoles' employer, for subsidiary liability as the truck owner and as employer, for the amount of ₱8,000. There was no criminal case filed against Regoles but the complaint against the defendant was evidently filed under Articles 102 and 103 of the Revised Penal Code. The defendant filed a motion to dismiss, contending that, there being no judgment of conviction against the driver, the defendant could not be held subsidiarily liable. The issue, then, was whether the conviction of the employee is a condition precedent to an action for subsidiary liability based on Articles 102 and 103 of the Penal Code. Deciding the issue in the affirmative, the Supreme Court held that there can be no automatic subsidiary liability of the employer under Article 103 of the Revised Penal Code where his employee has not been previously criminally convicted. The judgment in the civil action filed by the plaintiff against the driver is enforceable solely and exclusively against the only defendant therein, namely, the erring driver. However, a direct and separate civil action for damages against the employer for quasi-delict under Article 2180 of the Civil Code, subject to the defense therein provided of proving due diligence in the choice and supervision of the employee, would, according to the Court, have lain against the employer, if seasonably filed.

Action for quasi-delict distinct from civil liability arising from crime

The distinction between liability arising from quasi-delict and one arising from crime was redefined by the Supreme Court in *Manio v.*

[61] G.R. No. L-28589, February 29, 1972; 43 SCRA 397.
[62] G.R. No. L-26730, April 27, 1972; 44 SCRA 464.

Gaddi.[63] The pertinent facts are as follows: In 1968, the fiscal of Angeles City filed an information with the City Court of Angeles charging Luis Balanza, 16, with homicide through reckless imprudence. Balanza pleaded guilty and was given a suspended sentence, and was ordered to pay the amount of ₱16,000 to the heirs of the deceased. In 1969, the widow and children of the deceased filed with the Court of First Instance a complaint against Balanza, his parents, and his employers, for damages. The defendants defaulted but the court dismissed the complaint on the ground that the award of damages in the criminal case barred the institution of a civil action for damages.

Mr. Chief Justice Concepcion, speaking for the Supreme Court, pointed out that the allegations in the complaint were such as to indicate clearly the intention to base the action upon a quasi-delict and the provisions of Article 33 and 2180 of the Civil Code. Stated the decision: "It has been consistently held . . . that the responsibility arising from fault or negligence in quasi-delict is entirely separate and distinct from the civil liability arising from negligence under the Penal Code . . . . It should be here emphasized that these two actions are separate and distinct and should not be confused one with the other. On the supposition that the one accused in the criminal case is a driver, employee, or dependent . . . ., the failure to reserve the right to institute a separate civil action in the criminal case would not necessarily constitute a bar to the institution of the civil action against the said respondent, for the cause of action in one is different from that in the other. These are two independent actions based on distinct causes of action."[64]

The civil action was therefore allowed.[65]

Moral and exemplary damages

The grant of moral damages under Article 2217 and of exemplary damages under Articles 2229 and 2232 is rather dramatically illustrated in the case of *Zulueta v. Pan American World Airways*,[66] the facts of which are the following: On 23 October 1964, the plaintiff, his wife, and his daughter, were passengers aboard a Pan-Am plane from Honolulu to Manila. The first leg of the flight was Wake Island. When the plane landed on Wake, the passengers were advised that they could disembark for a stopover of about 30 minutes. The plaintiff, having disembarked and found

[63] G.R. No. L-30860, March 29, 1972; 44 SCRA 198.

[64] Citing Formento v. Court of Appeals, G.R. No. L-26442, August 29, 1969; Parker v. Panlilio, 91 Phil. 1 (1952).

[65] Attention is, however, invited to the second sentence of Article 2177, which provides: "But the plaintiff cannot recover damages twice for the same act or omission of the defendant."

[66] *Supra*, note 61.

the need to relieve himself, went to the comfort room at the terminal building, but found it full of soldiers, whereupon he walked down to the beach some 100 yards away. The flight was called but when the passengers had boarded the plane, the plaintiff's absence was noticed. The take-off was delayed and a search for him was conducted by his wife, daughter, and others. Minutes later, the plaintiff was seen walking back from the beach towards the terminal. Heading towards the plane's ramp, the plaintiff remarked: "You people almost made me miss your flight. You have a defective announcing system and I was not paged." On the ramp, one Kenneth Sitton, Pan-Am airport manager in Wake, met the plaintiff and said: "What in the hell do you think you are? Get on that plane." An altercation followed, in the course of which the plaintiff, his wife, and his daughter were referred to as "monkeys" and the plaintiff was told by Sitton to open his bags, which the plaintiff refused to do. As a result of all this, the plaintiff was informed that he would be held in Wake, and the plane departed without him. By Sitton's own admission, he had been told by the plaintiff the latter's social position in Manila. The plaintiff was able to return to Manila via Honolulu and Tokyo a few days later, at his own expense.

The lower court awarded: (1) ₱5,502.85 as actual damages; (2) ₱1,000,000 as moral damages; (3) ₱400,000 as exemplary damages; and (4) ₱100,000 as attorney's fees. The defendant appealed.

Several issues were raised on appeal:

(1) The defendant contended that, at most, the plaintiff was entitled only to actual damages because he was the first to commit breach of contract, for having gone over 200 yards away from the terminal, where he could not expect to be paged. The Court, however, noted that the defendant did not point out what part of the contract had been violated, apart from the fact that the award of damages was made not due to Pan-Am's failure to page the plaintiff but to Pan-Am's deliberate act of leaving him behind.

(2) The defendant contended that there was contributory negligence for failure to reboard on time. But the Court dismissed the contention, stating that the plaintiff's act might have justified a reduction of damages had he been unwittingly left behind owing to the defendant's negligence, or even, perhaps, wittingly, if he could not be found before the plane's departure. But the plaintiff, observed the Court, showed up before take-off and was off-loaded intentionally and with malice aforethought, due to the unpleasant incident.

(3) The grant of moral and exemplary damages. Citing Articles 21, 2217, 2229, and 2232, the Court held that the law as applied to the

facts amply established the plaintiff's right to recover moral and exemplary damages. The following circumstances were considered relevant: (1) the rude and rough treatment received by the plaintiff from the defendant's agents; (2) the abusive language and highly scornful reference to the plaintiff, his wife and daughter as monkeys by one of dependant's employees; (3) the menacing attitude of defendant's agents and the supercilious manner in which the plaintiff was told to open his bags; (4) the unfriendly attitude, the ugly stares, and the unkind remarks to which the plaintiff was subjected; (5) the defendant's refusal to allow the plaintiff to board the plane and (6) the nervous breakdown suffered by the plaintiff's wife due to embarrassment.

The moral and exemplary damages, however, were reduced to half because, according to the Court, "the plaintiff had contributed to the gravity of the situation because of the extreme belligerance with which he reacted on the occasion." The Court went on: "We do not overlook the fact that he justly believed he should uphold and defend his dignity and that of the people of this country; that the discomfort, the difficulties, and, perhaps, the ordeal through which he had gone to relieve himself—which were unknown to Pan-Am's agents—were such as to put him in no mood to be understanding of the shortcomings of others; and that said Pan-Am agents should have first inquired, with an open mind, about the cause of his delay, instead of assuming that he was at fault and of taking an arrogant and overbearing attitude, as if they were dealing with an inferior. Just the same, there is every reason to believe that, in all probability, things would not have turned out as bad as they became had he not allowed himself, in a way to be dragged to the level or plane on which Pan-Am's personnel had placed themselves."