

COMMERCIAL LAW

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The decisions of the Supreme Court for 1972 made no significant changes in the legal principles involving the commercial laws. However, certain decisions touching mainly on constitutional issues regarding alien control and participation may create a considerable impact in commercial law and practice and cast doubts on the legality of otherwise accepted legal interpretations. Aside from these, well-settled rules were either reaffirmed in similar situations or used to meet novel ones.

ADMIRALTY

Arrastre Operators

Although not strictly covered by admiralty law, arrastre operation is closely linked to carriage of goods by sea, since an arrastre operator is one who takes delivery of the goods alongside the ship and, carries the same to the customs warehouse for proper clearance by the customs authorities, after which he makes delivery to the consignee.¹ This is why arrastre operation and its incidence are usually discussed under the general topic of admiralty.

The case of *Domestic Insurance Co. of the Philippines v. Maersk Line et al.*² resolved the question of whether two (2) causes of action brought respectively and in the alternative against two sets of defendants may be joined in the Court of First Instance, although one of the said causes of action, standing alone, would fall within the exclusive jurisdiction of the city court. The appellant, Manila Railroad Company, was sued as depositary or custodian of the goods, while Maersk Line and its Philippine agent were impleaded as carrier under the contract of carriage of goods by sea. This latter cause is one in admiralty falling within the exclusive jurisdiction of Courts of First Instance.³ Reiterating the ruling in *Rizal Surety & Insurance Co. v. Manila Railroad Co.*,⁴ the Supreme Court held that since one of the causes of action is cognizable by the Court of First Instance, the suit should be filed with said Court even if the other cause

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¹ Campos *Commercial Law*, SURVEY OF PHILIPPINE LAW AND JURISPRUDENCE, Law Center, 253 (1967).

² G.R. No. 27808, June 29, 1972.

³ Judiciary Act, (Rep. Act. 296) as amended, Sec. 44(d).

⁴ G.R. No. 20875, April 30, 1966, 16 SCRA 908 (1966).

of action, if standing alone, would fall within the jurisdiction of the municipal court.⁵ In several instances,⁶ the Court held that the municipal court lacked jurisdiction where one of the alternative causes of action, [against the shipping firm] was an action in admiralty cognizable by the Court of First Instance.

Filing of Claims

The claim requirements of the Management Contract were again at issue. Under paragraph 15 of this contract, filing of a claim is necessary to hold the Arrastre operator liable for loss or damage for misdelivery or non-delivery of goods. In this case, the claim filed by the consignee was alleged to be speculative because it did not state the nature or extent of the shortage or damages supposedly suffered.

The Court upheld the claimants stating that a provisional claim may be sufficient, even without statement of the value of the goods if the goods are sufficiently described to permit the identification and determination by the arrastre operator of the relevant facts, such as the name of the carrying vessel, its date of arrival, the corresponding bill of lading or other shipping documents in which the value of the goods is set forth, while these facts are still fresh in the minds of the persons who took part in the transaction, and while the pertinent documents are still available.⁷ The claim filed within the stated period substantially fulfills the requirements for recovery even if it failed to specify the amount of loss. The consignee may later ascertain the actual loss or damage. Besides the extent of the contractor's liability for goods damaged or lost in its custody is already defined in paragraph 15 of the Management Contract itself. The liability is limited to "the invoice value of each package but which in no case shall be more than P500.00 for each package unless the value is otherwise specified, and the corresponding arrastre charges had been paid." Where the records do not show that the value of the goods in question was specified or manifested, the liability of the arrastre operator is limited to the invoice value of each package which may not exceed P500.00.

The time and manner of making a claim under the Arrastre Management Contract was further clarified in the case of *Manila Port Service and/or Manila Railroad Co. v. Fortune Insurance & Surety Co., Inc. and*

⁵ Sapico v. Manila Oceanic Lines, G.R. No. 18776, January 30, 1964.

⁶ International Harvester Co. v. Judge Aragon 84 Phil. 363, (1949); Hanover Insurance Co. v. Manila Port Service and Manila Railroad Co., G.R. No. 20976, January 23, 1967, 19 SCRA 69 (1967); Insurance Co. of North America v. Manila Port Service, G.R. No. 24887, April 20, 1968, 23 SCRA 114 (1968); Firemen's Insurance Co. v. Manila Port Service, G.R. No. 22810, August 31, 1967, 20 SCRA 1273 (1967).

⁷ Filipro Inc. v. Manila Port Service, G.R. No. 25724, October 8, 1968, 25 SCRA 457, (1968); Philippine Education Co. v. Manila Port Service, G.R. No. 23444, October 29, 1971, 42 SCRA 31 (1971).

*Court of Appeals.*⁸ Following a series of precedents, the Court held that the consignee, by availing itself of the service of the arrastre operator, and taking delivery of the goods with the use of the permit and gate passes⁹ became bound by the provisions of the Management Contract, including Section 15. The arrastre operator became liable for the value of lost or undelivered goods only where claim has been filed within 15 days from the discharge of the last package from the carrying vessel.¹⁰ A long line of decided cases has ruled that this requirement is satisfied where the claim for value of the lost goods was filed within 15 days (1) from the unloading of the last package from the carrying vessel, or (2) from the time the claimant learns of the loss, damage or misdelivery of the goods, or (3) from the date on which, with the exercise of due diligence, such information could have been obtained. This time limitation enables the arrastre operator to check on the validity of the claimant's demand while the facts are still fresh for recollection of the persons who took part in the undertaking and the pertinent papers are still available.

A provisional claim however, which is filed prior to the unloading of the shipment does not comply with these requirements. Such provisional claim is presumably filed in anticipation of any possible loss or damage that may take place while the goods are in the arrastre operator's custody. This is speculative and premature. It fails to constitute the demand contemplated in the management contract. The fifteen-day period is to be reckoned from notice of the loss of goods when the last item was delivered to the consignee and not from the certification by the arrastre operator of the existence of shortage executed beyond that date. This certification to that effect is nothing more than a formal attestation or confirmation of a fact that the consignee already knew all along. It cannot work to revive a right that by then has already been lost. Laches or unreasonable delay in filing the claim is determined by the time the consignee acquired knowledge of the loss or shortage, or with exercise of reasonable diligence such knowledge could have been secured.¹¹

Distinction must be made however, between a provisional claim filed prior to the unloading of the shipment, as in the case of *Manila Port Service and/or Manila Railroad Co. v. Fortune Insurance Surety Co., and Court of Appeals*,¹² and the claim, made after the unloading of the last

⁸ G.R. No. L-29812, May 24, 1972, 45 SCRA 45 (1972).

⁹ These passes bear uniformly the notice that presentation thereof subjects the user to the terms and conditions of the Management Contract.

¹⁰ "... releasing the Company from liability unless suit is brought within one year from the date of discharge of the goods, or from the date when the claim has been rejected, provided, such claim shall have been filed with the company within 15 days from the date of discharge of the last package from the carrying vessel."

¹¹ *Insurance Co. of North America, supra*, note 6.

¹² *Supra*, note 8.

package or from knowledge of loss, damage or misdelivery but provisional in the sense that claimant does not yet know the full nature yet, extent and value of the loss or damage as in the case of *Domestic Insurance Co. v. Maersk Line et al.*¹³ The former bars recovery as being purely speculative while the latter is substantial compliance with the requirement of the management contract.

Customs Arrastre Service—

Going a step further than arrastre operations is the process of carrying the goods to the customs warehouse for proper clearance by the customs authorities, prior to final delivery by the arrastre operator to the consignee. A series of problems has arisen along this line caused by damages or loss of goods while in the hands of the Customs Arrastre Service. On this score, private parties are at a disadvantage. In a long line of decisions, the Supreme Court has consistently upheld the immunity from suit of the state and its instrumentalities, including the Customs Arrastre Service and/or the Bureau of Customs.

In 1972, private parties still seemed dauntless in pursuing legal remedies against the Customs Arrastre Service. Whether or not the Bureau of Customs and the Customs Arrastre Service have a juridical personality of their own and may, together with the Republic of the Philippines, be sued without their consent was again the issue in several cases.¹⁴ These cases arose by reason of damages or short delivery of goods consigned to the claimants allegedly caused by acts of the Customs Arrastre Service. As laid down by numerous precedents, the Supreme Court reaffirmed the rule that the State cannot be sued without its consent and that the Bureau of Customs and the Customs Arrastre Service being merely offices of the government partake of this immunity from suit.

In the case of *Federal Insurance Co. v. R. P.*¹⁵ the Supreme Court reaffirmed its ruling in *Mobil Philippines Exploration Inc. v. Custom Arrastre Service*¹⁶ stating that the Bureau of Customs, acting as part of the machinery of the national government, in the operation of the arrastre service as a necessary incident of its prime governmental functions, is immune from suit, there being no statute to the contrary. Following several other cases, the Supreme Court held that the Bureau of Customs cannot be a party defendant in a suit because it is neither a natural nor a juridical person. It is not an entity authorized by law to be sued. The

¹³ *Supra*, note 2.

¹⁴ *Universal Mills Corp. v. Bureau of Customs and/or Customs Arrastre Service*, G.R. No. 24005, January 29, 1972; *Fireman's Fund Insurance Co. v. Republic and Bureau of Customs*, G.R. No. 25339, January 29, 1972; *Federal Insurance Co. v. Republic* G.R. No. 26480, June 15, 1972.

¹⁵ G.R. No. 26480, June 15, 1972.

¹⁶ G.R. No. 23139, December 17, 1966, 18 SCRA 1120. (1966)

fact that such non-corporate government entity performs a function which is proprietary in nature does not necessarily result in its being suable. If said non-governmental function is undertaken as an incident to its governmental function, there is no waiver of the sovereign immunity from suit extended to and enjoyed by such government entity.

The Court clarified the position of the Bureau of Customs in the governmental organization. It is part of the Department of Finance¹⁷ with no personality of its own apart from that of the national government. Its primary function is governmental—that of assessing and collecting lawful revenues from imported articles and all other tariff and customs duties, fees, charges, fines and penalties,¹⁸ of which arrastre service is a necessary incident. The waiver of state immunity from suit is strictly construed. Absence of any statutory waiver precludes a suit for acts done as a necessary incident of a governmental function of assessing and collecting customs duties. This is differentiated from acts performed by other government-owned or controlled corporations whose functions come under the category of a private endeavor and are essentially a business. And when the government enters into “commercial business”, it abandons its sovereign capacity and is to be treated like any other corporation.¹⁹

In *Rizal Surety & Insurance Company v. American Steamship Agencies Inc. and/or Bureau of Customs*,²⁰ the Court however noted that the remedy of the claimant lies in the provision of Act 3083 and Commonwealth Act. 327.²¹

BANKING

Regulatory Powers of the Central Bank—Fixing Interest Rates—

Section 109 of the Central Bank Act empowers the Monetary Board to fix the maximum rates of interest which banks may pay on deposits and

¹⁷ *Equitable Insurance and Casualty Co., Inc. v. Smith Bell & Co. (Phil.) Inc.* G.R. No. 24383, August 26, 1967, 20 SCRA 1121 (1967); *Providence Washington Ins. Co. v. R. G.R. No. 26386*, September 30, 1969, SCRA 598 (1969); *Phoenix Assurance Co. v. R. G.R. No. 26351*, October 31, 1969, 30 SCRA 194 (1969); *Hanova Ins. Co. v. U.S. Lines Co. G.R. No. 26919*, November 25, 1969, SCRA 350 (1969); *Fireman's Fund Ins. Co. v. U.S. Lines Co. G.R. No. 26533*, January 30, 1970, 31 SCRA 309 (1970); *Switzerland General Insurance Co. v. R. G.R. No. 27389*, March 30, 1970, 32 SCRA 227 (1970); *Glores Inc. v. Rep. G.R. No. 26811*, July, 1970, 34 SCRA 26 (1970). Sec. 81, Revised Administrative Code.

¹⁸ Sec. 302, Rep. Act 1937 (1957).

¹⁹ *Price Stabilization Corp. v. CIR*, 102 Phil. 515 (1957); *Manila Hotel Employees Association v. Manila Hotel Co.* 73 Phil. 374 (1941); *National Airports Corp v. Teodoro*, 91 Phil. 203 (1952).

²⁰ G.R. No. 26554, May 18, 1972.

²¹ Citing *Domestic Ins. Co. v. Everett Siam Lines* G.R. No. 23878, July 31, 1970, 34 SCRA 80, (1970); *Mobil Phil. Exploration Inc. v. Customs Arrastre Service*, G.R. No. 23139, December 17, 1966, SCRA 1120 (1966).

other obligations. In order to avoid possible evasion of the prescribed maximum interest rates, the Monetary Board, may also fix the maximum rates that banks may pay to or collect from their customers in the form of commissions, discounts, charges, fees or other sorts of payments. In all cases, modifications in the maximum rates permitted for the borrowing or lending operations of the banks apply only to future operations and not to those made prior to the date of effectivity of the modification.²²

The case of *Central Bank v. Cloribel*²³ puts at issue this regulatory power of the Central Bank. Circular 185, later modified by Circular 222 of the Central Bank sought to regulate interest rates on deposit of all banks except rural banks. At the start of operations in July 1964, savings deposits made with the Banco Filipino earned interest at the rate of 4 per cent per annum, "compounded quarterly". Subsequently, the bank changed its policy by compounding and paying the interest in its savings deposits, at the maximum rate fixed by the Monetary Board from the quarterly to the monthly basis. It paid in advance the maximum rate of interest on time deposits. Upon being required by the Monetary Board to comply with Circular No. 222, the bank sought an *ex parte* restraining order which was granted by the respondent judge. Even in the absence of a motion for reconsideration with the Court of First Instance the petition for certiorari before the Supreme Court was given due course on the ground that: (1) the issue raised is one purely of law; (2) public interest is involved; and (3) it is a case of urgency.²⁴

In upholding the power of the Central Bank to issue rules and regulations affecting the monetary system of the country, the Court noted that notice and hearing are not essential to the validity of general rules or regulation promulgated to govern future conduct of a class of persons or enterprises, unless the law so provides.²⁵ Previous notice and hearing, as elements of due process, are constitutionally required for the protection of life or vested property right, and liberty, when its limitation or loss takes place as a consequence of a judicial or quasi-judicial proceeding,

²² Rep. Act 265 (The Central Bank Act) Section 109.

²³ G.R. No. 26971, April 11, 1972.

²⁴ The court cited a number of cases, to wit: *Matutina v. Buslon*, G.R. No. 14637, August 24, 1960; *Luzon Surety v. Marbella*, 109 Phil. 734 (1960); *Socco v. Leary*, G.R. No. 19461, October 31, 1964; *Malayang Manggagawa v. Esso*, G.R. No. 24224, July 30, 1965; *Republic v. Reyes*, G.R. No. 20602, December 24, 1965; *Vivo v. Cloribel*, G.R. No. 23239, November 23, 1966; *Manila Railroad v. Yatco*, G.R. No. 23056, May 27, 1965, citing *Oppenheimer Administrative Law 2*, M. L.R. 185, 204; 73 CJS Public Administrative Bodies and Procedure.

²⁵ Relying mainly on American authorities, the Court cited: *Albert v. Public Service Commission*, 120 F. 2d 346, 350-351 (1956); *Willapoint Oysters Inc. v. Ewing*, 9 Am. 174 F. 2d 676, 338 U.S. 860, 70 S. Ct. 101 (1949); *Fuchs*, Administrative Rule Making, 52 HARV. L. REV. 263; *Spokane Hotel Co. v. Younger*, 113 Wash. 359, 194 P. 595; *Be-Metallic Investment Co. v. Colorado State Bd. of Equalization* 239 U.S. 441, 36 S. Ct. 141 (1915).

generally dependent upon a past act or event which has to be established or ascertained. Unlike in the exercise of judicial or quasi-judicial functions, prior notice and hearing is not essential to the validity of administrative action, where the administrative body acts in the exercise of executive, administrative or legislative functions. Procedural due process is not required in the formulation and issuance of general rules and regulation, as distinguished from promulgation of decision in adjudicatory proceedings. Rule-making is legislation on the administrative level.

The issue of impairment of vested rights was likewise resolved in favor of the Central Bank. The questioned circulars and resolutions were made to operate prospectively and affected deposits made or interests accruing subsequent to their promulgation. This was consistent with Sec. 109 of the Central Bank Act.²⁶ Furthermore, "all contracts are subject to the police power of the state and other conditions which arise from pre-existing and a higher authority of laws of nature, or nations, or the community to which the parties belong. These are presumed to be known and recognized, binding upon all and need not be expressly stipulated." The regulatory authority of the Central Bank may be regarded as a mere extension of the police power of the state. The exercise of such authority is a mere enforcement of one of the conditions deemed imposed in all contracts, and not an impairment of contractual obligations.

The Court refused to interfere with the policy of the Monetary Board, in the absence of proof showing that it acted without or in excess of its jurisdiction or in a manifestly arbitrary or unduly oppressive manner. The reason is that the Board is in a better position to determine such question as the fixing of maximum rates of interest. It must be noted however, that Banco Filipino did not impugn the legality or the wisdom of the rates of interest prescribed. It merely assailed the authority of the Board to fix or regulate the "manner" of compounding and paying said rates of interest.

Sections 14 and 109 of the Central Bank Act²⁷ do not merely authorize the Board to "fix the maximum rates of interest which banks may pay on deposits and or any other obligation." The Board is authorized "in order to avoid possible evasion of maximum interest rates set by the

²⁶ Any modification in the maximum interest rates permitted for the borrowing or lending operations of the banks shall apply only to future operations and not to those made prior to the date on which the modification becomes effective." (Central Bank Act, *supra*, note 22).

²⁷ Sec. 14 — "In order to exercise the authority granted to it under this Act, the Monetary Board shall: (a) Prepare and issue such rules and regulations as it considers necessary of the effective discharge of the responsibilities and exercise the powers assigned to the Monetary Board and to the Central Bank under this Act. Sec. 109, *Supra*, note 22.

Board", to fix also "the maximum rates that banks may pay to or collect from their customers in the form of payments of any sort." The authority to establish maximum rates carries with it, necessarily, the power to determine maximum rates payable as interest for given periods of time. It connotes the right to specify the length of time for which the rates thus fixed shall be computed. Consequently, such authority must include the prerogative to regulate (a) the manner of computing said rates, and (b) the manner or time of payment of interest insofar as these factors affect the amount of interest to be paid. The authority to prescribe the time and manner of payment springs (a) from the implied grant of all power necessary to carry out those expressly conferred, and (b) from the explicit authority of the Monetary Board to avoid possible evasion by likewise fixing maximum the rates that banks may pay to their customer in any other form, and (c) from reasons underlying the grant of authority to fix said maximum rates of interest that banks may pay for deposits and on any other obligations.

The Court took note of practical but deleterious effects of uncontrolled interest rates and payments. A bank has a number of methods to attract deposits. Offering higher rates of interest or deposit is one especially important form of competition. A good number of depositors are influenced by interest payments and respond favorably to offers of higher returns. If uncontrolled, this practice tends to reduce banking profits and encourages the bank to seek increased earnings by making less conservative and more remunerative loans and investments. Offering inordinately high interest rates would lead to overreaching on yields and returns on loans and investments, and lower quality of earning assets which may afford higher nominal yields but are vulnerable to losses and depreciation. Fixing maximum rates of interest establishes uniform ceiling in all banks. This precludes competition that may reach a point where to offset the resulting reduction of profits, a bank might have to resort to risky ventures to increase earnings. This could impair the stability of the banking system.

The material aspect of this power to fix maximum interest rate is the determination of the amount paid as interest within the period for which the rates had been fixed. The manner of computing such rate and determining the manner of payment of interest is merely incidental thereto. In the circulars in question, the Monetary Board did not prohibit the bank from compounding interest at other than quarterly intervals, provided that the aggregate amount of such interest so compounded does not exceed the aggregate amount of interest fixed by the Monetary Board. Whether the benefit is substantial or not, there is a violation, if this amount exceeds the fixed maximum rate. If it is not substantial, the bank thereby

gives a different impression to the public and if the benefit is substantial, the violation of the latter and spirit of the circular would be manifested.²⁸

Compounding of interest implies precisely that the interest for a given period becomes at the end of said period, part of the capital which also earns interest. Compounding at a monthly instead of at a quarterly basis results in a higher rate of interest since in the latter period, the interest does not become part of the capital and accordingly, does not earn interest as part of the capital, until after three months.²⁹

MAINTAINING MONETARY STABILITY

To insure monetary stability is one of the graver tasks of the Central Bank. The Monetary Board must endeavor to control any expansion or contraction in the money supply, as well as maintain the par value of the peso and its convertibility into other freely convertible currencies.³⁰ When the international stability of the peso is threatened, the Monetary Board is authorized to take such remedial measures as are appropriate and within its powers. If its remedial measures fail to check the deterioration of

²⁸ The bank advertised that savings and time deposits therein shall have the following rates of interest:

(1) On savings deposits, 4.5% p.a. 4.58% p.a. up to 6.43% p.a. effective rates. Interest paid monthly.

(2) On time deposits, 5% p.a. 5.26% p.a. up to 5.50% p.a. effective rates. Interest paid in advance.

Circular No. 222 as modified by Circular No. 185 provides as follows:

"2. Savings deposits — x x x the maximum rate of interest on savings deposits shall be 5 3/4% p.a. compounded quarterly.

x x x

"4. No banking or banking institution shall disseminate, advertize, or release any information that it is paying or will pay interest at rates higher than those prescribed herein or indicate the effective rates resulting from a compounding of rates x x x.

x x x interest on time deposits shall not be paid in advance, but only at maturity or upon withdrawal of the deposit.

Central Bank Circular No. 185 provided that:

"x x x the following regulations shall govern the interest rates on deposits of all banks, except rural banks.

(1) Demand deposits — No interest shall be paid on these deposits.

(2) Savings Deposits —

(a) Commercial banks — the maximum rate of interest on savings deposits shall be 4% p.a. compounded quarterly.

(b) Savings and mortgage Banks, Development Banks x x x the maximum rate of interest on savings deposits of these banks shall be 4 1/2% p.a. compounded quarterly.

²⁹ Note: A 5 3/4% p.a. interest paid or compounded monthly exceeds by 0.029% yearly the same rate of interest when compounded quarterly, under which the interest does not become part of the capital, and accordingly does not earn interest as such part of the capital, until after three (3) months. In so doing, the bank actually pay yearly 0.029% higher than the maximum fixed in the circulars and resolutions of the Monetary Board.

³⁰ Sec. 64 and Sec. 67, Central Bank Act, *supra*, note 22.

the reserve position of the Central Bank, the Board may propose to the President the imposition of restrictions on exchange and trade transactions or the sacrifice of the domestic objectives of a high level of production, employment and real income to restore the monetary equilibrium.³¹

The adverse effect on private persons of constantly changing regulation on foreign exchange is portrayed in the case of *Batchelder v. Central Bank*,³² where serious considerations of public interest and welfare override the more proximate needs of the individual.

In the *Batchelder* case, the plaintiff filed a suit to compel the Central Bank to resell to him \$170,210.60 at the preferred rate of exchange of ₱2.00 for \$1.00 (U.S.) or to pay the difference between the peso cost of such amount at the market rate prevailing on the date of satisfaction of the judgment in his favor and the peso cost of \$170,210.60 at the stated preferred rate. The legal question raised was whether pronouncement of a monetary policy by the Central Bank regarding rates of exchange, pursuant to which dollars were surrendered and sold to it, creates a contractual obligation as to warrant reacquiring of the foreign currency under the same pronounced policy.

The controversy arose from certain monetary policies of the Government. The Central Bank in 1949 issued Circular No. 20 imposing exchange controls. Circular No. 44 of 1953 was of similar nature. In 1959, the policy of decontrol was adopted by Republic Act No. 2609. Then the Central Bank issued Circular No. 105³³ in 1960, providing for the gradual lifting of restrictions on transactions involving gold and foreign exchange. Circular No. 106 governed the sale of foreign exchange in the free market by agent banks. Later Circular No. 133 of 1962 authorized agent banks to sell foreign exchange for import purposes at the prevailing free market rate to any applicant without need of prior license from the Central Bank. Monetary Board Resolution No. 857, dated June 17, 1960, authorized Filipino and resident American Contractors undertaking construction projects in U.S. military bases in the Philippines, to utilize 90% of the proceeds of their contracts for the payment of imports and the purchase of construction equipment, spare parts and other supplies, regardless of commodity classification, to be used in projects inside the U.S. military bases in the Philippines. Pursuant to Resolutions 857 and 695,³⁴

³¹ Sec. 70, *ibid.*

³² G.R. No. 25071, March 29, 1972.

³³ Circular No. 105 was amended by Circular No. 111 and Circular No. 117 which was later amended by Circular No. 133.

³⁴ Under Monetary Board Res. No. 857 for imports against proceeds of contracts entered prior to April 25, 1960, the preferred buying rate governs, regardless of the present commodity classifications. Resolution No. 695 (1961) modified this by specifying that the agent bank should, upon compliance of its terms,

plaintiff surrendered to the Central Bank his dollar earnings. He also applied for license to utilize 90% of his surrendered earnings, but was allowed only 21.41% of the amount applied for. After full decontrol was established plaintiff was allowed to utilize the balance of his 90% but only at the free market rate instead of the preferred rate of exchange which is ₱2.00 per US \$1.00, causing him considerable loss.

Batchelder in this case stressed the contractual obligation of the Central Bank to allow him the ₱2.00 per U.S. \$1.00 preferred rate in getting the surrendered earning, instead of the free market rate. The Supreme Court, however, held that although the Central Bank as a public corporation could enter into contracts, it is also authorized to do all things that may be necessary or proper to carry out the purposes of the Central Bank Act. The questioned circulars, were issued in the exercise of its regulatory powers to implement statutory provisions. It did not enter into a contract.

The Central Bank was established to attain basic objectives in the field of currency and finance. No contractual obligation could arise from the performance of this function. Perfection of a consensual contract commences from the moment the parties come to an agreement on a definite subject matter and valid consideration. Resolutions 857 and 695 simply laid down a mere policy without in any way giving rise to a valid or binding agreement to which the law should give effect. The Central Bank merely issued circulars and resolutions in pursuance of its rule-making power. Upholding the plaintiff's contract theory would have produced difficult results. This would curtail the rule-making power of the Central Bank. It would not be able to timely react to changes in the financial world since any change of policy would make it liable to private persons for its previous acts.

The Court's ruling may create undue hardship on the public and financial sector of the country, if the policies of the Central Bank are so unstable and unpredictable. On the other hand, the contract theory advocated by the plaintiff in this case is quite difficult to justify. Regulations are general in character, addressed not to a specific person but to the public or to a particular class. There is no way to determine whether there was meeting of the minds between the Central Bank and a particular person covered by the regulation. No doubt would arise if the Central Bank utilizing its power to contract did enter into a contract with plaintiff specifically. Otherwise, it could not be maintained that by the exercise of its regulatory power a contract as understood in law was thereby

credit the contractor's accounts in pesos at a buying rate to be governed by the appropriate rules and regulations.

created. Possibly plaintiff could have relied on the vested right theory. However, Circular 857 did not prescribe a set rate of exchange although it authorized utilization to the extent of 90% of the contract proceeds. Moreover, Monetary Board Resolution No. 695 specified that the buying rate was to be governed by the appropriate rules and regulation. While the right to utilize 90% of the contract proceeds subsisted in favor of the plaintiff, there was no vested right to any specific buying rate.

CORPORATION LAW—

Dissolution of Corporations

The Corporation Law provides that every corporation whose existence is terminated may continue to operate as a body corporate for three years after the time of its dissolution, for the purpose of prosecuting and defending suits by or against it and enabling it gradually to settle and close its affairs but not for the purpose of continuing the business for which it was established.³⁵ At any time during said three years, the corporation may convey all of its property to trustees for the benefit of members, stockholders, creditors, and other interested parties. After such conveyance to a trustee, all interest of the corporation in the property terminates and the legal interest vests in the trustees, while the beneficial interest vests in the members, stockholders, creditors, or other persons in interest.³⁶ These specific provisions were subject of interpretation in *Republic v. Marsman Development Co.*³⁷

The case involved the matter of extinction of juridical personality vis-a-vis the right of creditors after corporate dissolution. The government was the creditor for deficiency taxes assessed on company income in 1947. The first assessment³⁸ was made before dissolution.³⁹ The last two,⁴⁰ were made six months after dissolution. The question arose as to the right of the government to recover on the Company's indebtedness for unpaid taxes. The Supreme Court noted that when the corporation was extrajudicially dissolved, and a liquidator⁴¹ was appointed to settle the corporate affairs, the liquidator became a trustee of all assets of the corporation for the benefit of members, stockholders, creditors and others interested.⁴² Since the government was a creditor for unpaid taxes, its rights

³⁵ Corporation Law, Act No. 1459, Section 77.

³⁶ *Ibid.*, section 78.

³⁷ G.R. No. 18956, April 27, 1972.

³⁸ October 15, 1954

³⁹ April 23, 1954.

⁴⁰ September 13, 1954; November 8, 1954.

⁴¹ F. H. Burgess (named as a defendant in his capacity as liquidator of Marsman Development Co.)

⁴² *Supra*, note 36.

cannot be prejudiced. Dissolution cannot affect the rights of any creditor having a claim against the corporation.⁴³

The problem however lies in the procedure. Section 77 of the Corporation Law allows the corporation to settle and close its affairs three years after the time of dissolution. After dissolution, a corporation can no longer continue its business, and its juridical personality ceases except merely for the purpose of winding up its affairs.⁴⁴ The liquidation may be accomplished through (1) the board of directors, but this must be made within three years, or (2) the trustee who must be designated within the three-year period. If the corporation initially used the first method, and the board of directors should subsequently find that the liquidation cannot be finished within the three-year period of limitation, then all its assets may be conveyed to a trustee who can take over the process of liquidation.⁴⁵ In the case of judicial dissolution, a receiver may be appointed who may continue to wind up the corporate affairs beyond the three-year period.⁴⁶ Where the first method is employed the corporation may sue and be sued, and upon the expiration of three years after dissolution, all pending actions by or against the dissolved corporation abate.⁴⁷

What happens then to pending suits that must abate after the three year period of extended corporate existence? Section 78 of the Corporation Law authorizes the transfer of corporate assets to trustees for the benefit of interested parties, including creditors. This second method enables the trustees to prosecute and defend suits by or against the corporation begun before the expiration of the three year period. The conveyance to the trustees must, however, be made within the three years period. By the terms of the statute, the effect of conveyance is to make the trustee the legal owner of the property conveyed, subject to the beneficial interest of creditors and stockholders.⁴⁸ The practice therefore is for dissolved corporations to create a Board of Liquidators or appoint a trustee or liquidator to continue the management of pending matters.

What happens to actions or claims filed only after the expiration of three years? In other words, is it necessary for a creditor or claimant to file his action within the three year period in order that the claim can prosper against the liquidator or trustee? The Court in the case of *Repub-*

⁴³ *Supra*, note 35, Section 62.

⁴⁴ *Ibid.*

⁴⁵ CAMPOS, NOTES AND SELECTED CASES ON CORPORATION LAW 951-952 (1970).

⁴⁶ Rule 104, Sec. 3; Rule 59, Sec. 1(a) RULES OF COURT (1964).

⁴⁷ *National Abaca Corp. v. Pore* G.R. No. 16779, August 16, 1961.

⁴⁸ *Ibid.*, citing FISHER, PHILIPPINE LAW ON STOCK CORPORATION, 389-390 (1929 ed.) noting *Sumera v. Valencia*, 67 Phil. 721, 726-727 (1939).

*lic of the Philippines v. Marsman Development Company*⁴⁹ states no period of limitation. The action to collect the deficiency taxes of the defendant Company was filed by the government only after the expiration of three years from dissolution of the corporation.

The dissolved company and the liquidator were named its defendants, and the government recovered the unpaid taxes. It would seem however, that it is indispensable to show that the right of the creditor was established within the three year period. It was a material fact that the tax was assessed before the expiration of three years. By so doing the government was considered a creditor of the corporation for whom the liquidator is supposed to hold the assets of the corporation. The government could therefore pursue its claim against the liquidator.

If reliance is made on Section 77 alone, it seems that all suits or claims against a dissolved corporation should be brought within three years, and at the earliest possible time, otherwise, such claims if pending after three years, will have to abate. Then, the government's action to collect taxes filed after three years from dissolution will be barred. It is Section 78 that provides an extension of period by allowing pursuit of claims against the trustee, liquidator or receiver who must be expressly made a party to the action.

The case of *Sumera v. Valencia*,⁵⁰ decided in 1939, settled the rule that when a corporation is dissolved and the liquidation of its assets is placed in the hands of a receiver or assignee, the period of three years prescribed by Section 77 is not applicable. The assignee may institute all actions leading to the liquidation of the assets of the corporation even after the expiration of three years. But this is a view from the corporation's side. The other side, however, was not as established. The 1972 case of *Republic of the Philippines v. Marsman Development Company and F. H. Burgess* which allowed an action of a creditor filed after three years against a liquidator, balances the rule between the corporation and the creditor.

The case of *Banzon et al v. Hon. Cruz and Associated Insurance and Surety Co. Inc.*⁵¹ also touched on the matter of corporate dissolution. In this case, the respondent surety company was judicially dissolved and liquidated. The Court appointed the Insurance Commissioner as liquidator. The latter thereby became the representative of the surety company. Under Sec. 175-C par. 3 of the Insurance Act, the Insurance Commissioner as liquidator was vested with the title to all of the property, contracts and

⁴⁹ *Supra*, note 37.

⁵⁰ 67 Phil. 721 (1939).

⁵¹ G.R. No. 61789, June 29, 1972.

rights of action of the company as of the date of the judicial order of liquidation. Any sale or disposition of Associated's properties or rights without the knowledge and consent of the Insurance Commissioner as liquidator, and without the approval of the liquidation court is contrary to law, therefore, null and void.

The Insurance Commissioner was likewise an indispensable party. Any litigation where the Insurance Commissioner as liquidator was not impleaded cannot be finally adjudicated. Rule 3, Section 7 of the Rules of Court requires that indispensable parties must always be joined either as plaintiffs or defendants, for the Court cannot proceed without them. Thus, all judgments and proceedings held after the liquidation and dissolution order against the surety company were void for lack of an indispensable party in the person of the Insurance Commissioner. The Insurance Commissioner as liquidator, was an indispensable party with an interest in the controversies affecting the judgment for Associated Insurance and Surety Co. Inc. and against it. A final decree would necessarily affect the company's rights as administered by the Commissioner in the public interest and for the public's protection. The courts therefore could not proceed without the Commissioner-liquidator's official presence.

ALIEN'S RIGHTS IN PHILIPPINE CORPORATIONS—

A case of considerable importance in both constitutional law and commercial law relates to the employment of non-American aliens and the violation of the Public Service Act⁵² and the Anti-Dummy Law.⁵³ In the case of *Luzon Stevedoring Corp. v. Anti-Dummy Board*,⁵⁴ the pivotal issue was whether the prohibition against the employment of non-American aliens in public utility corporations refers only to a business, right, franchise or privilege which is completely nationalized.⁵⁵

Section 2-A of the Anti-Dummy Law penalizes any person, corporation or association having in its name or under its control a right, franchise, privilege, property or business, the exercise or enjoyment of which is expressly reserved by the Constitution or the laws, to the citizens of the Philippines or of any other specific country, or to corporations or association at least 60 per centum of which is owned by such citizens, if such person, corporation or association "in any manner permits or allows any person" not possessing the qualifications required by the Constitution or

⁵² Com. Act 146 (1936), sec. 16(a).

⁵³ Com. Act 108 (1936), as amended by Rep. Act 134 (1947), sec. 2-A.

⁵⁴ G.R. No. 26094, August 18, 1972.

⁵⁵ As explained by the Court, the term "nationalized" should be understood as "Filipinization" or "Filipinized" not "state-ownership or state-owned", because the Constitution and the Public Service Law provide that only Filipino citizens or corporations at least 60 per centum of whose capital stock is owned by Filipino citizens can own or operate public utilities.

existing laws to acquire, use, exploit or enjoy such reserved right, franchise, privilege, property in business "to intervene in the management, operation, administration or control thereof, whether as an officer, employee, or laborer therein with or without remuneration except technical personnel whose employment may be specifically authorized by the President of the Philippines" upon recommendation of the proper department head.⁵⁶

The purpose of this clause is to plug all loopholes that may be utilized by designing foreigners to circumvent the nationalization laws of the country, regardless of whether such laws provide for complete or only partial nationalization of the right, franchise, privilege, property or business covered. To justify and emphasize this broad coverage the Court noted how alien control of public utilities can cause national economic ruin. This control can easily be achieved even if aliens should hold minority stockholdings in a Philippine corporation. Aside from employing dummies, stockholders who own 40% of the capital stock of a public utility may effectively control its operations by employing aliens to implement their plan to subvert the territorial integrity and economic stability.⁵⁷

The Supreme Court gave the Anti-Dummy law such as a broad operational effect in commercial law. Firstly, it is said to cover all enterprises that had been Filipinized, whether partially or totally, like retail trade. Secondly, in the nationalized field of economic activity, like public utilities, the Anti-Dummy Law is said to modify certain provisions of the Corporation Law of 1906.⁵⁸ Generally, under the Corporation Law, aliens may be employed in domestic corporations and alien stockholders therein can vote to elect alien directors, for the simple reason that the Corporation Law does not prohibit the same. But the Corporation Law with respect to the operation of public utilities or other Filipinized fields of economic activity must be subject to and conditioned by the Anti-Dummy Law which was enacted subsequent to the Corporation Law of 1906. *Consequently, the alien stockholder who owns 40% of the capital stock of a public*

⁵⁶ Clause 3 of Section 2-A, as inserted by Rep. Act 134 (1947) to amend Com. Act 108 (1936) as amended by Com. Act 421 (1939). (underscoring supplied)

⁵⁷ E.g. "Alien control of inter-island navigation means economic control and political domination of the country by alien hands. Interest of Filipino stockholders may be nullified by the employment of hostile aliens who actually own or operate the ships. In times of peace, such vessels may be utilized for smuggling not only of prohibited or dutiable goods but also of hostile human cargo as well as for gun-running. In times of war, the perils to the state is greater because the officers and employees manning the ships or directing their operation may be enemy aliens. And even if they are nationals of a neutral country they may operate the ships in violation of laws of war to embarrass our government and alienate the sympathy or support of other nations and thus weaken our position vis-a-vis the enemy."

⁵⁸ *Supra*, note 35.

futility corporation or association cannot elect an alien director, much less demand the employment of aliens in the management, operation, administration or control of the corporation or business whether as officers, employees or laborers, with or without compensation. If the Corporation Law can be invoked to justify the employment of non-American aliens in public utilities (and other nationalized activities) the Anti-Dummy Law would be a useless attempt to penalize violators of the nationalization laws and the constitutional provisions which reserve the operation of public utilities to Filipino citizens or Filipino-dominated corporations or associations.

The pronouncement of the Supreme Court on points in Philippine Corporation Law is broad and sweeping and may produce substantial economic changes. One will consider that a substantial number of industrial or business undertakings are made through the corporate vehicle. A substantial Filipino stock ownership is needed, 70 per cent under Republic Act 5455 and 60 per cent under Republic Act 5186.⁵⁹ There are even instances where 100 per cent Filipino capital is required, as in retail trade. On the other hand, the need for foreign capital and investment is recognized. For this reason it is a declared policy of the state to encourage joint ventures between aliens and Filipinos.⁶⁰ But how could aliens be encouraged without giving them the corresponding corporate rights?

As an investment incentive, employment of foreign nationals is allowed only in supervisory, technical or advisory positions, not in excess of 5 per centum of its total personnel for a period of five years.⁶¹ However, under Section 2-A, Clause 3 of the Anti-Dummy Law, only technical personnel whose employment is specifically authorized by the President of the Philippines is allowed. Intervention in the management, operation, administration or control of enterprises Filipinized by law or the Constitution is prohibited. Judicial interpretation in the *Luzon Stevedoring* case has extended this so as to prohibit also the election of an alien director to the Board of a corporation. This pronouncement virtually withdraws an important prerogative of a stockholder of a Philippine corporation, the right to elect and be elected as director or officer of a corporation.

While directorship is a prestigious office it does not automatically vest substantial control of the enterprise in the absence of support or con-

⁵⁹ Rep. Act 5455 (1968), Sec. 2, Rep. Act 5186 (1967), Sec. 3(f).

⁶⁰ Rep. Act 5186 (1967), Sec. 2.

"x x x It is further declared to be the policy of the state to welcome and encourage foreign capital to establish pioneer enterprises that are capital intensive and would utilize a substantial amount of domestic raw materials, in joint venture with substantial Filipino capital, whenever available." (underscoring supplied)

⁶¹ Rep. Act 5186 (1967), Sec. 7(g).

certed action of others in the Board. The Anti-Dummy law need not amend basic corporate law and practice in the Philippines. The letter and spirit of the Anti-Dummy Law seem to relate only to employment of aliens in such manner or position as vests effective control of the enterprise in them. It would not refer to a position where the alien is merely a part or member of the Board and can act or determine policies only with the concurrence of others. The statements in the opinion relating to the right of the alien to be elected as director, thereby modifying Philippine Corporation Law, not being a matter directly at issue in the *Luzteveco* case, should at most be considered *obiter dicta*.

It is not amiss to note that the Investment Incentives Act in defining "Philippine National" does not preclude the election of an alien director although it prescribes the same 60-40 constitutional stockholding prescription. It provides for a situation where one-third of the members of the Board consists of alien directors.⁶² Moreover, under the 1973 Constitution, the National Assembly may allow those persons or entities qualified to develop the natural resources to enter into service contracts for financial, technical, management, or other forms of assistance with any foreign person or entity for the exploration, development, exploitation or utilization of any of the natural resources. Existing valid and binding services contracts for financial, technical, management, or other forms of assistance are also recognized as such.⁶³ It will be noted however, that no similar provision is found with regard to public utilities. But the participation of foreign investors in the governing body of any public utility enterprise is allowed to the extent of their proportionate share in the capital thereof.⁶⁴

The changes in more recent laws and the 1973 Constitution would not mean an overriding of policy embodied in the Anti-Dummy Law. The essential consideration in Filipinization is to vest control in the hands of Filipinos. Circumventing this objective is the act penalized.

The Anti-Dummy Law is a penal statute. Proof of wrongful intent, i.e., intent to violate or evade the constitutional or legal policy to place the control of Filipinized enterprises in Filipino hands should be essential. In the absence of any wrongful intent, as when an alien investor should merely want to participate in determinations regarding the profitable use of

⁶² Rep. Act 5186 (1967), Sec. 7(f).

"x x x Provided, that stock in a registered enterprise, at least sixty percent of the capital stock outstanding and entitled to vote of both corporations must be owned and held by the citizens of the Philippines, and at least sixty per cent of the Members of the Board of Directors of both corporations must be citizens of the Philippines in order that the corporation shall be considered a Philippine National. (noting alien membership "*a contrario*"; 40% is allowed.)

⁶³ 1973 CONST. Art. XIV, Section 9.

⁶⁴ *Ibid.*, Section 5.

his investments, should not be a violation of the Anti-Dummy Law. Legitimate economic concessions in favor of the investor should be acknowledged in the same light as government policy has noted the need and importance of foreign investments by allowing 40 per centum alien participation even in Filipinized enterprises.

The exercise by an alien stockholder of his right to elect himself as a director with his 40 per cent equity in a corporation engaged in a partially nationalized industry is simply an exercise of a statutory right, not an act "of evasion of the laws on nationalization of certain rights, franchise or privilege" sought to be remedied by the Anti-Dummy Law. It is perhaps on this basis that the Department of Justice in 1963, expressed the opinion that alien stockholders are exempted from the prohibition continued in Section 2-A of the Anti-Dummy Law to the extent that they are permitted to participate in corporations or associations engaged in a nationalized [mining] industry and therefore, they are qualified to be elected to the directorate of such corporation. It was noted thus:⁶⁵

x x x

"This conclusion follows from the fact that when the Constitution or the law, nationalizing certain industries, allows aliens to own shares of stock in corporations or associations engaged in such enterprise, it may be deemed to include in such grant, the privilege of exercising the rights that flow from ownership of such shares of stock in accordance with the Corporation Law unless the contrary is provided.

This opinion however limited itself to the right to be elected director of a corporation. Employment in any other capacity not being a right of a stockholder was not deemed included.

INSURANCE

Accidental Death Determined—

The problem of whether death occurred on account of an accident is mainly one of fact which is not too easily resolved when the more subjective factor of intent comes into play. The case of *Emilia Biagtan et al. v. the Insular Life Assurance Co.*⁶⁶ resolves the issue on whether wounds received were inflicted by robbers intentionally, as to preclude indemnity under a life insurance policy with an "Accidental Death Benefit Clause". Under the policy, recovery was allowed if the death of the insured resulted directly from bodily injury effected solely through external and violent means sustained in an accident and independently of all other causes. In

⁶⁵ Opinion of the Secretary of Justice, Op. No. 36, S. 1963.

⁶⁶ G.R. No. 25579, March 29, 1972.

construing the provision, the Court ruled that the act itself of inflicting the injuries was intentional whether the robbers had the intent to kill, or merely intended to scare the victim or to ward off any defense he might offer. Purpose—whether homicidal or not—of a third party in causing the injuries is immaterial. Only the fact that such injuries have been “intentionally” inflicted, as distinguished from injuries which although received at the hands of a third party, are purely accidental need to be determined. The basic order expressed in the clause was that bodily injury be sustained in an accident. Thus, a gang of robbers who enter a house, and coming face to face with the owner even if unexpectedly, stab him repeatedly, cannot reasonably or logically be said to have inflicted wounds unintentionally. “Intentional” as used in an accident policy excepting intentional injuries inflicted by the insured or any other person, etc. “implies the exercise of the reasoning faculties, consciousness, and volition.”⁶⁷ It is the intention of the person inflicting the injury that is controlling.⁶⁸ If the injuries suffered by the insured clearly resulted from the intentional act of a third person, the insurer is relieved from liability.⁶⁹

A dissenting opinion by Justice Teehankee however, notes the fact that there was no evidence to show that the robbers intended to inflict injuries upon the person of the insured or any other person or that the thrust of the sharp-pointed instrument was merely to scare away any person so as to ward off any resistance or obstacle that might be offered. The dissent relied heavily on the case of *Calanoc v. Court of Appeals*.⁷⁰ In said case, the shot was intended merely to scare away the people around for the robber’s own protection and not necessarily to kill or hit the victim. The Supreme Court held that while the act may not exempt the triggerman from liability for the damage done, the fact remains that the happening was a pure accident on the part of the victim. The insured died because of an accident which happened on the occasion of the robbery being committed in his house. Where the killing does not amount to murder, it must be held to be a “pure accident” on the part of the victim which is compensable even though the malefactor is criminally liable for this act. Death in this instance is “accidental” which happens by chance or fortuitously, without intention or design. The majority opinion in the *Biagtan* case however, adheres to a stricter rule.

⁶⁷ *Berger v. Pacific Mutual Life Insurance Co.* 88 F. 241, 242 (1898).

⁶⁸ Citing *Travelers’ Protective Ass’n of America v. Fawcett*, 50 Ind. App. 111, 704 N. E. 991.

⁶⁹ Citing *Continental Casualty Co. v. Klinge* 144 N.E. 246 82 Ind. App. 277 (1924); *Washington v. Union Casualty Surety Co.* 115 Mo. App. 627, 91 S.W. 988 (1906); *National Casualty & Accident Ins. Co. v. de Lopez* (Tax Cir. App.) 207, S.W. 160 (1918).

⁷⁰ G.R., No. 8151, December 16, 1955.

GSIS Insurance

The issue of whether the insurance policy under the GSIS has ever been in force where not a single premium was paid thereon was resolved in the case of *Landicho v. Government Service Insurance System*.⁷¹ In deciding in favor of the insured and the beneficiaries, the Supreme Court considered a statement in the application which authorized the collecting officer of the bureau in which the insured was employed to deduct the monthly premium from his salary. It was also noted that government employees who obtain an optional additional life insurance policy are likely to believe that failure to deduct the monthly premiums from the salary does not make the policy lapse,⁷² since premium accounts are merely indebtedness to be paid or deducted later. This so-called "payments of premiums" is nothing but a "paper" or accounting process whereby funds are merely transferred not physically, but constructively from one office of the government to another. The ambiguity in the language of the insurance policy was resolved in favor of the insured and/or beneficiaries following Article 1377⁷³ of the Civil Code. "Terms" in an insurance policy, which are ambiguous, equivocal or uncertain are to be construed strictly and most strongly against the insurer and liberally in favor of the insured so as to effect the dominant purpose of the indemnifying the insured, especially when a forfeiture is involved. The reason for this rule is that the insured usually has no voice in the selection and in arrangement of the words employed by those acting exclusively in the interest of the insurance company. Adhesion contracts are construed in favor of parties at a disadvantageous position.

Equitable and ethical considerations supported this view, firstly, because the application served as an authority to the collecting officer of the office to deduct from the applicant salary. Failure to pay the premium was due to the failure of the GSIS to make the deduction. Secondly, the GSIS was said to have impliedly induced the insured to believe that the policy was in force by transmitting dividends corresponding to said policy.

The ruling enunciated in this case affirms the legal policy towards contracts of adhesion. This is equitable considering that the insured under the GSIS system usually does not have a full view of the salary deduction processes in the payment of insurance premiums. Moreover, what is involved is merely a "paper" or "accounting" transfer of funds from one government entity to another.

⁷¹ G.R. No. 28866, March 17, 1972.

⁷² Par. 7(d) of the Policy.

⁷³ The interpretation of obscure words or stipulation in a contract shall not favor the party who caused the ambiguity.

PUBLIC UTILITIES

Civil Aeronautics Board—Power to Fix Rates

The Civil Aeronautics Board is vested by law with the power to regulate the economic aspect of air transportation, with general supervision, regulation, and jurisdiction and control over air carriers.⁷⁴ Its special powers include the fixing of rates, charges or fares which an air carrier may demand for the service in connection with air commerce.⁷⁵ This grant of power seemed clear enough were it not for a similar grant to the Public Service Commission, which has power and control over other public utilities.

The problem of whether the authority to fix air carriers' rates is vested in the Civil Aeronautics Board (CAB) or in the Public Service Commission (PSC) was brought into focus in the case of *Dechoco v. Civil Aeronautics Board et al.*⁷⁶ In resolving this issue express reference was made to the various laws relating to the fixing of air carriers' rates. Public Law No. 3996 of 1932, vested in the Public Service Commission the power to approve the changes of rates of air carriers. Then Sec. 13 of Commonwealth Act 146 of 1936, gave the PSC the power of control or supervision over aircraft, except with regard to the fixing of *maximum* rate for passengers and freight. Executive Order No. 94 of 1947, and later Republic Act No. 776 of 1952, vested the Civil Aeronautics Board with the power to regulate the economic aspect of air transportation, as well as the power to fix and determine reasonable charges or fares which an air carrier may demand. Section 14 of Republic Act 2677 of 1966 removed from the Public Service Commission jurisdiction, control and supervision over airships within the Philippines. But it did have the authority to fix the *maximum* rates for freight and passengers. Republic Act No. 4147 of 1964 which granted an air transportation franchise to the Filipinas Orient Airways, and Republic Act No. 4501 of 1965 which granted a similar franchise to Air Manila, Inc., provided that the franchise grantee shall fix just, reasonable and uniform rates for the transportation of passengers and freight subject to the regulations and approval of the Civil Aeronautics Board.

In reconciling these different provisions the Court held that the power of the CAB is to "fix or determine reasonable individual, joint or special rates, charges or fares" for air carriers⁷⁷ but subject to the maximum rates on freight and passengers⁷⁸ that may be set by the Public Service Com-

⁷⁴ Rep. Act 776 (1952), sec. 10 (s).

⁷⁵ *Ibid.*, Sec. 10 (C)(2).

⁷⁶ G.R. Nos. 32979-81, February 29, 1972.

⁷⁷ *Supra*, note 74.

⁷⁸ Rep. Act 2677 (1966).

mission. Thus, the rates, charges or fares allowed or fixed by the Civil Aeronautics Board may in no case exceed the maximum prescribed by the Public Service Commission.

Franchise Parity Provisions—

Although the case of *Davao Light & Power Co. Inc. v. Commissioner of Customs*,⁷⁹ directly involves an issue on tax exemptions it also poses questions relating to parity rights granted to competing public utilities. The petitioner claimed exemption on the basis that its legislative franchise to conduct, maintain and operate an electric light heat and power system was specifically made subject to Section 17 of Act No. 3636,⁸⁰ which provided, that any favorable terms granted to any "competing individual association of persons or corporation" shall *ipso facto* become part of a franchise issued earlier. In claiming exemption from taxes and customs duties, it thereby claimed parity with the National Power Corporation which was granted tax exemption privileges under Republic Act 987.

The Supreme Court overruled the petitioners contention by stating that the policy behind Section 17 of Act No. 3636 in allowing automatic incorporation in the franchise, of favorable terms granted to competing public utilities, is to place competing groups or entities on equal footing. The intention is not to give one an advantage over the other. This principle of fair play, however, does not operate—in the case of the National Power Corporation (NPC).

The franchise holder's objective in establishing and operating an electric plant and power station is to engage in a business or profit-making venture. On the other hand, the NPC was created to undertake the development of hydraulic power throughout the country, and the production of power from other sources for the use of the government and the general public.⁸¹ In operating and maintaining a power plant, power stations and transmission lines in the city, the NPC cannot be considered as posing competition to petitioner's business. In fact, the NPC did not sell electric power directly to the general public, instead it sold power for resale to customers. It did not compete but aided the petitioner by being a source

⁷⁹ G.R. Nos. 28739 and 28902, March 29, 1972.

⁸⁰ "In the event of any competing individual association of persons or corporation receiving either a franchise or permission from the government of the Philippine Island, or from any province, city or municipality thereof, to conduct a similar business and all or any substantial portion of the territory covered by this franchise to that of the grantee in which franchise or permission there shall be any term or terms more favorable than those therein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto* become part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual association of persons or corporations.

⁸¹ Com. Act, 120 (1936), Sec. 1.

of its merchandise. An isolated sale of electric power to one government-owned plant would not be enough to classify the NPC as an enterprise competing with petitioner. The petitioner caters to the general public with which the NPC has no dealings.

The tax exemption granted to the NPC was intended to benefit the NPC to enable it to pay its indebtedness;⁸² and consequently release the government from its obligation as principal obligor, in certain transactions entered into by the President on behalf of NPC.⁸³ This condition was peculiar only to the NPC. There is, therefore, an absolute lack of basis for awarding equal privileges to the NPC and the petitioner.

From the outset, it will be noted that the NPC is a government-owned and controlled corporation intended to perform a broader, more important function undertaken by the government. It is not a business enterprise. Clearly, it does not stand at par with ordinary business enterprises established as public utilities under a franchise. Hence the question of parity and competition between these entities does not appear proper or relevant. Besides, tax exemptions are to be construed strictly and must be granted expressly. It cannot merely rest on vague implications.

Common Carriers

Common carriers serve a public need. For this reason they are charged by law with extraordinary diligence in the transportation of passengers. Correspondingly, passengers has a right of action for damages against the common carrier for breach of this obligation.

An airline is a common carrier charged with perhaps an even more delicate task, which have justified the Court's award of considerable amounts for breach of duty of, not only of extraordinary diligence, but also for failure to exercise the proper care and courtesy to its passengers. Thus, a very high award was allowed in the cases of *Northwest Airlines Inc. v. Cuenca et al*⁸⁴ in *Lopez et al v. Pan-Am World Airways*,⁸⁵ and in *Air France v. Carrascoso*.⁸⁶ In a similar suit decided in 1972, Pan-American World Airways, Inc. again became a defendant, and was held liable for moral damages.

⁸² Rep. Act 358, Sec. 2, (1949), as amended by R.A. 987 (1954). To facilitate payment of its indebtedness, the National Power Corporation shall be exempt from all taxes, duties, fees, imports, charges and restrictions of the Republic of the Philippines its provinces, cities and municipalities.

⁸³ Sec. 3 of Rep. Act 357 (1949) authorized the President of the Philippines to negotiate and contract loans from time to time from the World Bank, on behalf of the NPC and to guarantee absolutely and unconditionally, as primary obligor and not merely as surety, the payment of loans thereof contracted.

⁸⁴ G.R. No. 22425, August 31, 1965.

⁸⁵ G.R. No. 22415, March 30, 1966.

⁸⁶ G.R. No. 21438, September 28, 1966.

In *Zulueta et al v. Pan American (PANAM) World Airways Inc.*⁸⁷ the substantial award of moral damages resulting from insulting and discourteous treatment was allowed. The Court noted the peculiar and special relation, obligations and duties that exist between carrier and passenger, which are said to differ in kind and degree from those of almost every other legal or contractual relation. Relying on American authorities,⁸⁸ the Supreme Court described this relationship as follows:

"On account of the peculiar situation of the parties the law implies a promise and imposes upon the carrier the corresponding duty of protection and courteous treatment. Therefore, the carrier is under the absolute duty of protecting his passengers from assault or insults by himself or his servant."

With particular reference to air-carriers the court referred to a Philippine precedent of *Air France v. Carrascoso*.⁸⁹ Air carriers sustain a special relation to the public. They invite people to avail themselves of the comforts and advantages they offer. The contract of air carriage, therefore, generates a relation attended with a public duty. Neglect or malfeasance of the carrier's employees, naturally could give ground for an action for damages. The Court quoted:

"Passengers do not contract merely for transportation. They have a right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is that any rude or discourteous conduct on the part of employee towards a passenger gives the latter an action for damages against the carrier."⁹⁰

Among the factors taken into account in assessing moral damages are the professional, social, political and financial standing of the offended parties on one hand, and the business and financial position of the offender on the other. In the *Zulueta* case the award of the trial court was reduced by 50 per cent after the Court considered the fact that plaintiff had contributed to the gravity of the situation because of his extremely belligerent reactions during the occasion. Things would not have turned out as badly 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.

⁸⁷ G.R. No. 25589, February 29, 1972.

⁸⁸ *Lipman v. Atlantic Coast Line*, R Co. 4 93 S.E. 714, R.C. L-1174, 1175 (1917).

⁸⁹ *Supra*, note 86.

⁹⁰ *Supra*, note 86. See also 15 A.L.R. 2d 136 133 (1951) Sec. 14 cited in 14 *AM. Jur.* 2d 481; *Cave v. Seaboard Airline Ry Co.* 77 S.E. 1017, (1913); *Louisville N.O. & T. Ry Co. v. Patterson*, 13 So. 697. (1891)

TRADE MARKS

The case of *Sy Ching v. Gaw Liu*⁹¹ reiterates a basic tenet on the finality of administrative findings of fact. This case arose when the petitioner sought cancellation of a certificate of registration of a trademark, "LION TIGER", in favor of respondent on the basis of alleged prior use of the trademark on dyestuff and goods similar to those manufactured or sold by the petitioner. In view of the "chain of circumstances" favorable to Sy Ching namely, his "use of the trademark in commerce, and a systematic preservation of the records to support his claim of continuous use, such as, the making of design, the printing of the design or labels, the actual use on the goods, advertising in calendars, and other acts of dominion, such as, the filing of this petition for cancellation", the Director of Patents granted the petition and the Certificate of Registration of the trademark in favor of respondent was ordered cancelled.

The Supreme Court, taking note of a long line of precedents, stated that the errors assigned to respondent involved questions of fact. It is a controlling principle of law set forth in *Chua Che v. Phil. Patent Office*⁹² that only questions of law should be raised. The only exception to this rule is when such findings are not supported by substantial evidence.⁹³ In the absence of grave abuse of discretion, the findings of fact of the Director are binding on the Court.⁹⁴ Such findings of fact are conclusive on the Supreme Court provided they are supported by substantial evidence.⁹⁵ In this case, the failure of the respondent to present competent evidence to show alteration of important documents, or to dispute the truth of petitioner's version in a proper pleading in the lower court, precludes further consideration of the questions raised in the Supreme Court.

Some Constitutional Issues—Revisited

The case of *Republic v. Quasha*⁹⁶ while it involves principally constitutional issues, has strong implications in the field of commercial law. In a nutshell, the Supreme Court upheld the view, first, that the "Parity Amendment" was intended to secure parity for United States citizens and corporations owned or controlled by these citizens only in two matters: (1) The exploitation, development and utilization of public lands, and other natural resources of the Philippines,⁹⁷ and (2) the operation of

⁹¹ G.R. No. 29123, March 29, 1972.

⁹² G.R. No. 18337, January 30, 1965, 13 SCRA 67 (1965).

⁹³ REV. RULES OF CT. Rule 44, Sec. 2.

⁹⁴ *Lim Kiat v. Kaynee Co.* 248 G.R. No. 2480, October 14, 1968, 25 SCRA 485 (1968).

⁹⁵ *Chung Te v. Ng Kian Giab*, G.R. No. 23791, November 23, 1966, 18 SCRA 747. (1966)

⁹⁶ G.R. No. 30299. August 17, 1972.

⁹⁷ 1935 CONST. Art. XIII, Sec. 1, See also Art. XIV Sec. 8, 1973 CONST.

public utilities.⁹⁸ Second, that while it is conceded that Filipinos and United States citizens or corporations had equal civil rights, this parity vanished with the advent of the Philippine Republic on July 4, 1946. This situation lasted until the "Parity Amendment" was ratified in November, 1946, wherein the operation of public utilities and exploitation of natural resources and lands of the public domain exclusively but *not* the acquisition or exploitation of private agricultural lands were reopened to US citizens and corporations.⁹⁹ Thirdly, that the exceptional rights conferred upon the United States citizens and business entities owned or controlled by them under the Parity Amendment, are subject to one and the same resolatory term or period. They are to last "during the effectivity of the Executive Agreement entered into, or from July 4, 1946 but not to extend beyond July 3, 1974. The Constitution as modified by the amendment only authorizes either of two things: (a) alienation or transfer of rights less than ownership or (b) a resolvable ownership that will be extinguished not later than the specified period. Lastly, that it is apparent that American business enterprises are more favored than Philippine organizations during the period of parity in that: (a) they need not be owned by American citizens up to 60% of their capital. All that is required is that they be controlled by United States citizens, a control that is attained by ownership of any 51% of the capital stock, and (b) that the control by United States citizens may be direct or indirect, which indirect control is not allowed in the case of Philippine nationals.¹⁰⁰

The Quasha decision gives the impression that during the interregnum, i.e., from July 4, 1946 (establishment of the Philippine Republic) to November, 1946 (ratification of the Parity Amendment), United States citizens and corporations had no civil rights whatsoever. It cites Section 17 of the Ordinance, which refers to the same "civil rights of citizens" as afforded to United States citizens and corporations during the Commonwealth of the Philippines, and Section 127 of the Public Land Act which refers to the same rights granted to citizens and corporations of the Philippines "to be enjoyed also by corporations and citizens of the United States during the existence and continuance of the Commonwealth and before the Republic of the Philippines is established", as clear evidence that equal rights of citizens and corporations of the United States vanished with the advent of the Philippine Republic, and which explains the need for introducing the Parity Amendment of 1946.

⁹⁸ *Ibid.*, Art. XIV, Sec. 8; See also *ibid* Sec. 5.

⁹⁹ Citing Sec. 17, Ordinance Appended to the 1935 Constitution and Sec. 127 of the Public Land Act (1936) and Com. Act 141 (1936).

¹⁰⁰ Devices of indirect control may be in the form of voting trust or pyramiding, etc.

One will note however, that absence of parity rights places American at par with other foreign nationals. This means that United States citizens and corporations can engage in business or other economic activities not otherwise restricted by the Constitution or special laws to Filipino enterprise.¹⁰¹ In other words, the restriction against alien land holding of private agricultural lands, lies not in the absence of equal civil rights per se, but because of a restrictive provision in the Constitution of 1935 (Section 5) which was not covered by the Parity Amendment as strictly construed by the Supreme Court. Thus in areas of economic activity where the law does not discriminate against aliens, Americans as well as other aliens must be a welcomed investor or operator. The operational rule is for the grant of civil rights in the absence of express constitutional or statutory restrictions.

This distinction however loses much of its significance when we consider more recent laws regulating foreign investment and enterprise in the Philippines. Republic Act No. 5455 sets a 70-30,¹⁰² Filipino-alien capital stock participation. The same is true of Republic Act 5186, in its definitions of registered and pioneer enterprises and of Philippine nationals.¹⁰³ These proportions of Filipinos-alien investments apply to a much broader field of economic activity, with the underlying policy of placing economic control effectively in Filipino hands.¹⁰⁴ But these laws have assumed greater flexibility through administrative discretion¹⁰⁵ not possible in constitutional provisions relating to the development, and exploitation of natural resources and operation of public utilities, which after all, are the main focus of alien investments all over the world. In this sense therefore, it becomes obvious why Americans and aliens in general should work for extension of parity rights not only in the field of natural resources and public utilities but in all other areas of economic activity now subject of statutory citizenship restrictions.¹⁰⁶

¹⁰¹ Under the Retail Trade Law, Rural Bank Act etc. aliens are excluded. And even in the 1973 Constitution titles to private lands granted acquired by such persons before such date are valid as against other private persons only.

¹⁰² Rep. Act 5455 (1968), Sec. 1.

¹⁰³ Rep. Act 5186 (1967), Sec. 3.

¹⁰⁴ The Corporation Law in several sections required 2/3 vote of stockholders for important corporate decisions, e.g. Sec. 17, 17½, 18, 28. The 60-40 proportions in the Constitution (1935) and other special laws does not accomplish the policy of placing corporate control in Filipino hands. The 70% Filipino ownership is believed to remedy this difficulty. But one should take note of devices of corporate control, other than majority stock ownership, available to minority groups under the Corporation Law and adhered to in the Philippines.

¹⁰⁵ Rep. Act 5186 (1967), Sec. 17. See also functions of the Board of Investments.

¹⁰⁶ See Treaties of Friendship, Commerce and Navigation and their "most favored nation clauses" and/or national treatment clauses." I-IV Phil. Treaty Series.

Under the liberalized treatment of foreign investment and enterprise, however, special parity arrangements like that embodied in the 1935 Constitution and Laurel-Langley do not seem imperative. In fact, the 1973 Constitution has made definite pronouncements on this point, affirming termination of parity rights on July 3, 1974.¹⁰⁷ The Philippines may yet become a competitive market for investors of any nationality. As in more developed countries, treaties of friendship, commerce and navigation, or trade treaties which do not give parity treatment to particular nationalities but merely most-favored nation treatment may be satisfactory to the alien in the Philippines.

¹⁰⁷ 1973 CONST. Art. XVII, Sec. 11.