CIVIL LAW

PARTS II and III

PROPERTY, MODES OF ACQUIRING OWNERSHIP, SPECIAL CONTRACTS AND TORTS AND DAMAGES

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The seventeen cases discussed in this article make up a somewhat sparer harvest than those of previous years. Spare, but not insignificant. As in the past, a number of the decisions have reiterated, redefined, and affirmed existing jurisprudence. Some have clarified and expanded recent rulings. A few have established new doctrines. All things flow; the law is part of the flux of things.

PROPERTY

Good faith in accession

Articles 445-456 of the Civil Code lay down the rules governing building, planting, or sowing by one person on the land of another. These rules are part of the juridical situation known in civil law as *accesión continua.* More specifically, the rules on building, planting, and sowing are collectively referred to as *accesión industrial.* In all kinds of accession, the question of good and bad faith is crucial. As succinctly stated by an authority, "good faith is not punished but bad faith gives rise to dire consequences."[1] The question that arises however is: what precisely makes for good faith? Is it necessary that there be an honest, though mistaken, belief that one is the owner of the property? Can a tenant of lessee ever be in good faith?

This last question was considered in the case of *Bacaling v. Laguda*[2] and was settled in the negative. The facts that gave rise to the case are as follows: Respondent Laguda was the registered owner of a residential lot in La Paz, Iloilo City. Petitioner Bacaling and her late husband constructed, with the respondent's acquiescence, a residential house on a portion of the lot, paying a monthly rental of ₱80. Since the petitioner

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[1] 2 ABAD SANTOS, THE LAW ON PROPERTY, 71 (1969 ed.).

[2] G.R. No. L-26694, December 18, 1973, 54 SCRA 243 (1973).

was unable to pay the rentals for a period of more than two years, an action for ejectment was filed by the respondent against her, in her capacity as judicial administratrix of the estate of her late husband. On 29 July 1964, the parties entered into a compromise agreement by the terms of which: 1) the petitioner agreed to vacate the premises and remove the house before a stipulated date; 2) the petitioner would pay the respondent a monthly rent of ₱80; and 3) upon the petitioner's failure to comply with any provision of the amicable settlement within fifty days, the respondent would be entitled to "immediate execution to restore him in possession of the premises and to recover all unpaid monthly rents from 1 June 1964 until said premises are vacated." The compromise agreement was approved by the court.

The petitioner failed to comply with the compromise agreement, whereupon the respondent moved for execution, which motion was granted by the court. A Special Order of Demolition was issued which, however, the petitioner opposed, contending *inter alia*, that the residential house to be demolished was worth ₱35,000 for which she was entitled to reimbursement as a builder in good faith, in addition to the reasonable expenses that might be incurred in transferring the house to another place.

Rejecting the petitioner's contention, the Supreme Court held that the rule is well-settled that *lessees are not possessors in good faith because they know that their occupancy of the premises continues only during the life of the lease*, and they cannot, as a matter of right, recover the value of their improvements from the lessor, much less retain the premises until they are reimbursed. (Italics Supplied). The early case of *Alburo v. Villanueva,*[3] decided in 1907, had made substantially the same statement of the law, albeit in an *obiter;* it was there observed: "The contention that the defendant is entitled to the benefits of the provisions of Article 361 (now 448) of the Civil Code cannot be maintained because the right to indemnification secured in that article is manifestly intended to apply only to a case where one builds or sows or plants on land in which he believes himself to have a claim of title and not to lands wherein one's only interest is that of tenant under a rental contract; otherwise it would always be in the power of the tenant to improve his landlord out of his property." The *Alburo obiter* was applied in the case of *Angela Estate v. CFI,*[4] but in *Javier v. Javier*[5] and *Bernardo v. Bataclan,*[6] the first dealing with a son who had built a house on his father's land with the latter's consent; and the second, with a tenant, the builders were considered to be in good faith. Thus *Javier* and *Bernardo* are at variance with the *Alburo obiter.*[7]

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[3] 7 Phil. 277 (1907).
[4] G.R. No. L-27084, July 31, 1968, 24 SCRA 500 (1968).
[5] 7 Phil. 261 (1907).
[6] 66 Phil. 598 (1938).
[7] All these cases are cited in 2 ABAD SANTOS, *op. cit.*, at 72-73.

With the ruling enunciated in *Bacaling*, the principle seems to have firmed up that a person who, with knowledge that the land is not his, builds, plants or sows on the land of another, cannot be considered a builder, planter, or sower in good faith for purposes of *accesión industrial*, even though he may have done his building, planting, or sowing with the owner's consent. Otherwise stated, to be in good faith, the person who builds, plants, or sows on another's land must do so under the honest and mistaken notion that he owned the land.[8]

Co-ownership

Article 493 provides:

> Each co owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

By virtue of the above-cited article, each co-owner has absolute ownership of his fractional share in the thing owned in common. Thus, he has the right "to freely sell and dispose of it—that is, his undivided interest,"[9] subject only to the qualification set forth in Article 493.

The co-owner's right to alienate his share in any manner is applied in *Castro v. Atienza*,[10] which involved the following facts: On 24 January 1956, the brothers Tomás and Arsenio de Castro leased a fishpond to the plaintiff. The brothers were co-owners in equal shares of the leased property. The lease was to subsist for five years at ₱5,000 a year, the first year's rentals to be paid on 1 February 1956; the second, on 1 February 1957, and the rentals for the last three years, on 1 February 1958. The rental for the first year was paid on time. In November 1956, the plaintiff and Arsenio agreed to set aside the lease and an agreement was signed by them to that effect, showing that Tomás' widow (Tomás had died in the meantime) was intended to be made a party thereto in her capacity as representative of Tomás heirs. The document of mutual dissent stipulated that Arsenio and Tomás' widow bound themselves to return to the Plaintiff the sum of ₱2,500 each on or before 30 December 1956. As it turned out, Tomás' widow refused to sign the document and Arsenio failed to pay back the amount of ₱2,500. The issue was whether Arsenio could be compelled to pay back the said sum to the plaintiff.

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[8] For a discussion of the rights of a lessee who builds on the land leased with the lessor's consent, see portion on Lease, *infra*.

[9] 2 TOLENTINO, CIVIL CODE OF THE PHILIPPINES 186 (1972 ed.).

[10] G.R. No. L-25014, October 17, 1973, 53 SCRA 264 (1973).

The Supreme Court held: The issue is simply reduced to whether Arsenio as co-owner could validly lease his half-interest to a third party independently of his co-owner, and, in case his co-owner also leased his own half-interest to the same third party, whether Arsenio could cancel his own lease agreement with the said third party. The appellate court correctly resolved the issue thus: Our view of the contract of lease is that each of the Castro brothers leased his undivided one-half interest in the fishpond they owned in common to the plaintiff. Could one of them have validly leased his interest without the other co-owner leasing his own? The answer to this is given by the appellant in his own brief when he said that it would result in a partnership between the lessee and the owner of the other undivided half. If the lease could be entered into partially by one of the co-owners, insofar as his interest is concerned, then the lease can also be cancelled partially as between the plaintiff and the defendant. Therefore, we conclude that the consent of Mrs. Felisa Cruz Vda. de Castro (Tomás' widow) is not essential for the cancellation of the lease of defendant's one-half undivided share in the fishpond.

The Supreme Court concluded that the judgment of the appellate court is fully supported by the Civil Code provisions on the rights and prerogatives of co-owners, and specifically by Article 493.

Reduced to the simplest language, the *Castro* case is authority for the principle that since a co-owner has absolute disposal of his share, he can lease it out on his own and, having leased it, cancel the lease with the lessee's consent. For these things, he does not need the concurrence of the other co-owners.

Prescription in co-ownership

It is elementary law that prescription ordinarily does not run in favor of a co-owner against the other co-owners. The reason for this is that possession by a co-owner in relation to the others is not adverse.[11] The last paragraph of Article 494 explicitly provides that: "No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership."

The decision in *Valdez v. Olorga*,[12] is an application of the principle. That case was an action for partition filed by the living children and grandchildren of the late spouses Federico Valdez, Sr. and Juanita Batul against the heir and widow of Federico Valdez, Jr. Valdez, Sr. died in 1931, and Juanita, in 1939. In 1924 the Valdez spouses bought the property in question from Dolores Gutierrez for ₱500. In 1936, Juanita leased a portion of the property in favor of the Protestant church of Puerto Princesa and, in 1939, leased another portion to one Gregorio

[11] Cordova v. Cordova, 102 Phil. 1182 (1958).
[12] G.R. No. L-22571, May 25, 1973, 51 SCRA 71 (1973).

Quicho. The transfer of the lot in the name of Valdez, Sr. was never made because the owner's copy of the Original Certificate of Title had been lost. In 1948, a deed of sale was executed after an additional amount of ₱2,200 was given to the Gutierrez family. The amount was given by Gregorio Quicho as payment for back rentals and as purchase price of the portion of the property which he was renting and occupying. In the deed of sale, the name of Valdez, Jr. appeared as the sole vendee, pursuant to Quicho's request, so that he could facilitate the execution of the deed of sale between him and the Valdezes, with the understanding, however, that Valdez, Jr. would hold the property in trust for his brother and sisters. Valdez, Jr. never attempted to exclude the plaintiffs from the ownership of the property and the plaintiffs were in open, continuous, and uninterrupted possession of the premises. When Valdez, Jr. died, his widow, Teofila Olorga attempted to eject the plaintiffs, contending that since the property was sold to her husband in 1948 and the Transfer Certificate of Title was issued in 1950, the action had prescribed as it was filed after more than ten years, and that, furthermore, from the date of the sale to Valdez, Jr.'s death in 1960, he had exercised exclusive ownership of the land. In other words, she invoked both acquisitive and extinctive prescription.

The Supreme Court ruled that there was no prescription and explained: Given the antecedents of the property and the fact that its acquisition by Valdez, Jr. was for the benefit not of himself alone but also of his brother and sisters, although for purposes of convenience he was made to appear as the sole vendee, the juridical relation that arose among them was one of co-ownership, with the plaintiffs-appellees actually in possession of a portion of the property. The Supreme Court then proceeded to cite the last paragraph of Article 494, quoted above, pointing out that as far as the aspect of extinctive prescription was concerned, the provision of the last paragraph of Article 494 was but a restatement of Article 1965 of the Spanish Civil Code.[13] And from the standpoint of acquisitive prescription, the Court continued, numerous decisions, involving fiduciary relations such as those occupied by a trustee with respect to the *cestui que trust,* have held that as a general rule the trustee's possession is not adverse and, therefore, cannot ripen into a title by prescription.[14] Adverse possession in such a case requires the concurrence of the following circumstances: (a) that the trustee has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que*

[13] Article 1965:

> No prescribe, entre coherederos, condueños ó propietarios de fincas colindantes la acción para pedir la partición de la herencia, la división de la cosa común ó el deslinde de las propiedades contiguas.

[14] It will be noted that a co-owner such as Valdez, Jr. is in the position of a trustee.

trust; (b) that such positive acts of repudiation have been made known to the *cestui que trust;* and (c) that the evidence thereon should be clear and convincing.[15] The Court concluded that the said circumstances were not present in the case.

Hence, there being neither acquisitive nor extinctive prescription, the other heirs had the right to demand their respective shares.

Unlawful deprivation and the owner's right to recover

Article 559 has of late been the object of close analysis by the Supreme Court. Two recent cases—*De Garcia v. Court of Appeals*[16] and *Dizon v. Suntay*[17]—have clarified the meaning and application of the said article, 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.

Yet another case, decided in 1973, that of *Pica v. CFI*[18] gave the Court occasion to expatiate on the provisions of the article.

The petitioner in that case, one Eliza Alcantara-Pica—a lieutenant colonel in the AFP Nurse Corps—was the lawful owner of a 1966 Toyota sedan which she purchased on installment basis from the Delta Motor Sales Corporation. The respondent, Anatolio Carigo, claimed ownership of the vehicle by reason of purchase from one Monico Maniquiz, who in turn traced his title by purchase from one Rafael Pica, who held a special power of attorney from the petitioner, authorizing him "to ask, demand, sue for, and receive all sums of money . . . which or now hereafter (sic) shall be or become due, owing, payable, or belonging to me" and "to deposit money and to withdraw the same by check, receipt, draft or otherwise in any bank in my name." The document made no mention of any authority to sell or dispose of any property belonging to the petitioner.

In a suit for interpleader, filed by the Metrocom commanding general, the lower court released the car in favor of the respondent.

On appeal to the Supreme Court, it was held that the petitioner was the lawful owner of the car and was thus entitled to its possession as

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[15] Citing Laguna v. Levantina, 71 Phil. 566 (1941); Bargayo v. Camumot, 40 Phil. 857 (1920); Osorio v. Osorio, 85 Phil. 209 (1949); Sumira v. Vistan, 74 Phil. 138 (1943).

[16] G.R. No. L-20264, January 30, 1971, 37 SCRA 129 (1971); *cf.* 47 Phil. L.J. 234-235, (1972).

[17] G.R. No. L-30817, September 29, 1972, 47 SCRA 160 (1972); *cf.* 48 Phil. L.J. 54-55 (1973).

[18] G.R. No. L-36434, October 27, 1973, 53 SCRA 512 (1973).

against the respondent. Declared the Court: The only issue is the proper application of Article 559, which has been the subject of long-established authoritative precedents holding that the right of the owner of movable property cannot be defeated even by proof of good faith in the acquisition thereof by the possessor. The lower court, therefore, according to the Supreme Court, acted arbitrarily and with grave abuse of discretion in having directed the release of the car to the respondent rather than to the petitioner as the rightful owner who had been unlawfully deprived thereof, in disregard of the express provisions of Article 559 of the Civil Code and of the long established doctrinal jurisprudence as early as 1911[19] that the owner may recover the lost article of which he or she has been unlawfully deprived, without reimbursement of the sum received by the embezzler or wrongdoer from the possessor, even granting that the possessor acquired possession of the thing by purchase or other means in good faith.

Restating the rule in Article 559, the Supreme Court continued: The rule is to the effect that if the owner has lost a thing, or if he has been unlawfully deprived of it, he has a right to recover it, not only from the finder, thief, or robber, but also from third persons who may have acquired it in good faith from such finder, thief, or robber.[20] The only exception provided—which does not apply to the case—is where such third party has acquired in good faith the article at a public sale, in which case, the owner cannot obtain its return without reimbursing the price paid therefor. The Court in *Aznar* pointed out that "the right of the owner to recover personal property acquired in good faith by another is based on his being dispossessed without his consent" and cited the maxim that "no man can transfer to another a better title than he has himself."[21] The petitioner in this case had been unlawfully deprived of her car by her attorney-in-fact, who succeeded in illegally disposing of the same for the obviously inadequate price of ₱6,500, notwithstanding that his special power of attorney on its face and by its express terms to collect and receive sums of money due and owing to the petitioner did not authorize him to sell any property of the petitioner but merely to collect and receive sums of money due and owing to the petitioner and to deposit and withdraw the same from the bank.

SUCCESSION

Requirement of 3 witnesses for attested wills

The formal requisites of attested wills are set forth in Articles 805 and 806, which provide:

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[19] Citing Arenas v. Raymundo, 19 Phil. 47 (1911).

[20] Citing Aznar v. Yapdiangco, G.R. No. L-18536, March 31, 1965, 13 SCRA 486 (1965).

[21] Citing Cruz v. Pahati, 98 Phil. 788 (1956); U.S. v. Sotelo, 28 Phil. 147 (1914); Dizon v. Suntay, *supra*, note 17.

> Art. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.
>
> The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last; on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.
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> The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.
>
> If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.
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> Art. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.

It will be seen that at least three witnesses must attest and subscribe the will and that it must be acknowledged by these witnesses before a notary public. The question that arises at this juncture is this: Can the notary public himself be one of the three witnesses?

The issue was discussed and settled in *Cruz v. Villasor*,[22] which was a petition to review the judgment of the CFI of Cebu allowing the probate of the last will and testament of one Valente Z. Cruz. The only question raised was whether the will was executed in accordance with Articles 805 and 806. Of the three instrumental witnesses to the will, one, namely, Angel Teves, was at the same time the notary public before whom the will was acknowledged. The petitioner argued that the result was that only two witnesses appeared before the notary public to acknowledge the will. On the other hand, the respondent maintained that there had been substantial compliance.

The Supreme Court, speaking through Mr. Justice Esguerra, declared that the will was not executed in accordance with law. In explanation, the Court pointed out that the notary public before whom the will was acknowledged could not be considered as the third instrumental witness since he could not have acknowledged before himself his having signed the will. To acknowledge means to avow;[23] to own as genuine, to assent, to admit; and "before" means in front or preceding in space or

[22] G.R. No. L-32213, November 26, 1973, 54 SCRA 31 (1973).

[23] Citing Javellana v. Ledesma, 97 Phil. 258 (1955); Castro v. Castro, 100 Phil. 239 (1956).

ahead of. Consequently, if the third witness were the notary public himself, he would have to avow, assent, or admit in front of himself his having signed the will. This, according to the Court, cannot be done, because the notary public cannot split his personality into two so that one will appear before the other to acknowledge his participation in the making of the will. To permit such a situation to obtain would be sanctioning a sheer absurdity.

Furthermore, continued the Court, the function of a notary public is, among others, to guard against any illegal or immoral arrangements.[24] That function would be defeated if the notary public were one of the attesting or instrumental witnesses. For then he would be interested in sustaining the validity of the will as it directly involves himself and the validity of his own act. It would place him in an inconsistent position and the very purpose of the acknowledgment, which is to minimize fraud,[25] would be thwarted.

To allow, then, the notary public to act as a third witness, or one of the attesting and acknowledging witness, would have the effect of having only two attesting witnesses to the will, which would for that reason be in contravention of the provisions of Article 805, requiring at least three credible witnesses and of Article 806, which requires that the testator and the required number of witnesses must appear before the notary public to acknowledge the will.

As a comment on the *Cruz* case, it may be ventured that, although the notary public himself acts as an attesting witnesses, if, aside from him, there are three *other* attesting witnesses, the will would not be defective as far as the three-witness requirement is concerned. For in such a situation, the acknowledgment and attestation of the notary public as an instrumental witness could simply be disregarded and the provisions of article 805 would still be satisfied. Such a situation, however, did not obtain in *Cruz*, where there were only two witnesses, excluding the notary public.

CONTRACTS

Purchase by a lawyer of the thing in litigation—absolutely void under Article 1409

Article 1409 enumerates what contracts are absobutely void.

> Art. 1409. The following contracts are inexistent and void from the beginning:
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> (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
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> (2) Those which are absolutely simulated or fictitious;

[24] Citing Balinon v. de Leon, Adm. Case No. 194, January 28, 1954, 50 O.G. 583 (Jan., 1954), 94 Phil. 277 (1954).

[25] Citing REPORT OF THE CODE COMMISSION, 106-107 (1948).

(3) Those whose cause or object did not exist at the time of the transaction;

(4) Those whose object is outside the commerce of men;

(5) Those which contemplate an impossible service;

(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;

(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

The article is a new one, that is to say, it has no exact counterpart provision in the old Civil Code[26] As a matter of fact, under the old Civil Code there was no clear distinction drawn among the various kinds of defective contracts, as a result of which a good deal of confusion existed.[27] One of the innovations introduced by the Code Commission was to classify the defective contracts into four—rescissible, voidable, unenforceable, and void—and set forth the effects and consequences of each kind of nullity.

In Title VI, Book IV of the new Civil Code—the Title that governs sales—there is an article (1491) which prohibits certain persons from acquiring by purchase certain kinds of property. The said article, however, does not explicitly state what status a contract will have when such contract is entered into in contravention of Article 1491. For instance, if a lawyer were to purchase property which is the subject matter of a case, handled by him, the transaction would indubitably violate the fifth paragraph of Article 1491. What is the effect of this violation? In other words, what is the status of the contract?

A very early case,[28] decided in 1911 and therefore under the old Civil Code, held that such a contract referred to in the preceding paragraph "is not void but voidable at the election of the vendor. This being so, its voidability can not be asserted by one not a party to the transaction, or his representative." However, in the later case of *Director of Lands v. Abagat*,[29] decided in 1929, and therefore under the old Civil Code also, the Supreme Court upheld a CFI decision that such a contract was "in-

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[26] The old Civil Code, however, has a cognate provision, namely Article 1300, which provides:

> "Los contratos en que concurren los requisitos que expresa el art. 1261 (Note: Art. 1261 of the old Civil Code set forth the essential elements of a contract) pueden ser anulados, aunque no haya lesión para los contratantes, siempre que adolezcan de algunos de los vicios que los invalidan con arreglo á la ley."

Article 1300, however, does not precisely define the status of the defective contract and would in fact cover some of those contracts that are now referred to in the new Civil Code as void contracts and all of those that are now denominated voidable.

[27] REPORT OF THE CODE COMMISSION, 138-140 (1948).

[28] Wolfson v. Estate of Martinez, 20 Phil. 340 (1911).

[29] 53 Phil. 147 (1929).

valid by virtue of the provisions of article 1459 of the Civil Code, which prohibits lawyers and solicitors from purchasing property or rights involved in any litigation in which they may take part by virtue of their profession."

With the enactment of the new Civil Code and its Article 1409, the problem of correlation arises. How does Article 1491 relate to Article 1409? Would contracts entered into in contravention of 1491 fall under 1409 and thus be absolutely void? The answer is furnished in a case decided in this survey year, *Rubias v. Batiller*,[30] which case arose from the following facts: On 31 August 1964, plaintiff Rubias, a lawyer, filed suit to recover from defendant Batiller ownership and possession of a parcel of land which he purchased from his father-in-law, Francisco Militante, in 1956. It was alleged that Batiller entered upon the possession of the land on two occasions. Antecedently, before the Second World War, Militante had filed an application with the CFI for the registration of title to the land. The application was dismissed and the case was elevated to the Court of Appeals. On 18 June 1956, while the appeal was pending, Militante sold the land to the plaintiff. In 1958, the Court of Appeals upheld the CFI decision. In 1960, however, the plaintiff filed a suit for forcible entry and detainer against the defendant, in which a judgment, affirmed by the CFI in 1961, was rendered in the defendant's favor. Thus, this case—instituted in 1964—was part of a series of litigations between the two parties.

On 17 August 1965, counsel for the defendant manifested that he would file a motion to dismiss—which he eventually did—alleging that the plaintiff did not have a cause of action inasmuch as the property in question was the subject matter of a suit filed by Militante before the war, in which suit the plaintiff was the counsel of record. The defendant invoked Article 1409 in relation to Article 1491, paragraph 5, and contended that the sale by Militante to the plaintiff was null and void. The plaintiff, for his part, cited Article 1421, which provides that: "The defense of illegality of contracts is not available to third persons whose interests are not directly affected." The CFI dismissed the complaint.

Affirming the lower court's holding that the contract in question is violative of Article 1491 (5) *and is, therefore, absolutely void*, the Supreme Court, in an exhaustive disquisition penned by Mr. Justice Teehankee, declared that the contract was indeed inexistent and could produce no legal effect, by virtue of Article 1409 (7). It pointed out that the case of *Wolfson v. Martinez*,[31] holding such sales to be voidable merely "has been superseded by *Director of Lands v. Abagat*."[32] In *Abagat*, the purchase was declared invalid under Article 1459 of the old (Spanish)

[30] G.R. No. L-35702, May 29, 1973, 51 SCRA 120 (1973).
[31] *Supra*, note 28.
[32] *Supra*, note 29.

Civil Code[33] upon challenge thereof not by the vendor-client but by the adverse parties against whom the lawyer was seeking to enforce his rights as vendee thus acquired. Adverting to Manresa's opinion on the matter, the Court explained that the reason given by the eminent commentator in considering such prohibited acquisition under Article 1459 of the Spanish Civil Code as merely voidable at the instance and option of the vendor, and not void; *viz:* "that the Code does *not* recognize such nullity *de pleno derecho*", is no longer true and applicable to the Philippine Civil Code which *does* recognize the absolute nullity of contracts "whose cause, object, or purpose is contrary to law, morals, good customs, *public order or public policy*" or which are "*expressly prohibited or declared void by law*"[34] and declares such contracts "*inexistent and void from the beginning.*" In fact, continued the Court, the Supreme Court of Spain and modern authors have veered from Manresa's view of the Spanish codal provision itself. In its *Sentencia* of 11 June 1966, the Spanish Supreme Court ruled: "*. . . la prohibición que el articulo 1459 del Código Civil establece respecto á los administradores y apoderados, la cual tiene conforme á la doctrina de esta Sala . . . un fundamento de orden moral, dando lugar la violación de esta regla á la nulidad de pleno derecho del acto ó negocio celebrado, . . . y porque al realizarse el acto jurídico en contravención con una prohibición legal, afectante al orden público, no cabe con efecto alguno la aludida ratificación . . .*" The criterion of nullity of such prohibited contracts under Article 1459 of the Spanish

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[33] Article 1459 provides:

Art. 1459. No podrán adquirir por compra, aunque sea en subasta pública ó judicial, por sí ni por persona alguna intermedia:

1.º El tutor ó protutor, los bienes de la persona ó personas que estén bajo su tutela.

2.º Los mandatarios, los bienes de cuya administración ó enajenación estuviesen encargados.

3.º Los albaceas, los bienes confiados á su cargo.

4.º Los empleados públicos, los bienes del Estado, de los Municipios, de los pueblos y de los establecimientos también públicos, de cuya administración estuviesen encargados.

Esta disposición regirá para los Jueces y peritos que de cualquier modo intervinieren en la venta.

5.º Los Magistrados, Jueces, individuos del Ministerio fiscal, Secretarios de Tribunales y Juzgados y Oficiales de justicia, los bienes y derechos que estuviesen en litigio ante el Tribunal, en cuya jurisdicción ó territorio ejercieran sus respectivas funciones, extendiéndose esta prohibición al acto de adquirir por cesión.

Se exceptuará de esta regla el caso en que se trate de acciones hereditarias entre coherederos, ó de cesión en pago de créditos, ó de garantía de los bienes que posean.

La prohibición contenida en este núm. 5.º comprenderá á los Abogados y Procuradores respecto á los bienes y derechos que fueran objeto de un litigio en que intervengan por su profesión y oficio.

[34] Art. 1409, (1) & (7).

Civil Code as a matter of public order and policy as applied by the Supreme Court of Spain to administrators and agents in its above-cited decision should certainly apply with greater reason to judges, judicial officers, fiscals, and lawyers under paragraph 5 of the codal article.

Citing the same decision of the Supreme Court of Spain, Gullón Ballesteros in his "*Curso de Derecho Civil*" (Madrid, 1968, p. 18) affirms that, with respect to Article 1459: "*Por supuesto no cabe duda de que en el caso del (art.) 1459, 4° y 5°, la nulidad es absoluta por que el motivo de la prohibición es de orden público.*"

Pérez Gonzales concurs in such view, stating that:" *Dado el carácter prohibitivo del precepto la consecuencia de la infracción es la nulidad radical y ex lege.*"[35]

Castan observes: "*Puede considararse en nuestro derecho inexistente ó radicalmente nulo el contrato en los siguientes casos . . . b) cuando el contrato se ha celebrado en violación de una prescripción o prohibición legal, fundada sobre motivos de orden público.*"[36]

Concluding, the Court stated: "Indeed the nullity of such prohibited contracts is definite and permanent and cannot be cured by ratification. The public interest and public policy remain paramount and do not permit of compromise or ratification. In this aspect, the permanent disqualification of public and judicial officers and lawyers grounded on *public policy* differs from the first three cases of guardians, agents and administrators, ... as to whose transactions, it has been opined that they may be 'ratified' by means of and in 'the form of a *new contract,* in which case its validity shall be determined only by the circumstances at the time of execution of such new contract.'"[37]

ESTOPPEL

Estoppel by inaction—laches

Estoppel is defined in Article 1431 as "an admission or representation [that is] rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." Estoppel under Article 1433 may be *in pais* or by deed. Estoppel *in pais* is a term applied to a situation where, because of something which he has done or omitted to do, a party is denied the right to plead or prove an otherwise important fact.[38] One of the classes of estoppel *in pais* is laches, which is defined as the "failure or neglect, for an unreasonable or unexplained length of time, to do that which, by exercising due diligence, could or

[35] 2 DERECHO CIVIL, 26.
[36] 3 DERECHO CIVIL, 437.
[37] Citing 4 TOLENTINO, 595.
[38] 4 TOLENTINO, *op. cit.*, at 623.

should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned declined to assert it."[39]

During this survey year two cases on laches were decided by the Supreme Court. The first was the case of *G. A. Machineries v. Januto*,[40] where the Court, speaking through Mr. Justice Fernando, refused to set aside the proceedings in the lower court despite the defendant's claim, on appeal, that there was a denial of due process. The contention put forth by the defendant was that the lower court judgment sought to be executed was the result of a trial of which no notice has been personally served on him. The Supreme Court declared: It is understandable why the lower court decided as it did, for such an omission was not to be visited with fatal consequences, there being proof of his being represented by counsel. What is more, the judge was equally on solid ground when, as he pointed out, such defense came rather late, as no such objection was interposed to a writ of execution previously issued on the same decision, one moreover partially satisfied, resulting in his personal property having been levied upon and sold at public auction. The judgment which the appellant would assail as having been rendered without his having been given his day in court was promulgated by the Manila CFI as early as 1958. There was no effort on the appellant's part to raise this particular question even after a writ of execution had been issued, with his personal property thereafter levied upon and sold at public auction. It was much too late, then, to search for possible defects in the previous judgment thus rendered in the case tried in his sala. That was a matter that should have been earlier ventilated so that it could have been passed upon. This, appellant, for reasons known only to himself, failed to do. He was not without remedy, but he neglected to resort to it. If he were not even minded to take care of his own interest when the law gave him the opportunity to do so, he ought not to labor under a sense of grievance if it is now too late to raise such an issue. This is another manifestation of that well-known maxim in equity, *vigilantibus non dormientibus equitas subvenit*.

The second case involving laches, *Cadano v. Cadano*,[41] started as an action instituted in the CFI of Leyte by Conchita and Gerardo Cadano against their father, Juan Cadano, Sr. for the liquidation and partition of the properties of the conjugal partnership, in view of their mother's death. In 1955, the court rendered judgment on the basis of the agreement of the parties, by virtue of which judgment some properties were adjudicated to the plaintiff and some, to the defendant. A copy of the

[39] 4 TOLENTINO, *op. cit.*, at 620.

[40] G.R. No. L-27958, March 31, 1973, 50 SCRA 1 (1973).

[41] G.R. No. L-34998, January 11, 1973, 49 SCRA 33 (1973).

judgment was personally received by the counsel for the defendant. No motion was filed by the defendant challenging the validity of the agreement or the judgment rendered thereon. In 1963—eight years later—due to the defendant's failure to deliver the produce of properties adjudicated to them, the plaintiffs filed another case to compel the defendant to deliver their share of the produce or its value. Among his affirmative defenses, the defendant alleged that he or his counsel did not sign any agreement whatever with the plaintiffs and that if any decision was ever rendered in the previous case, based on any agreement, it was without the knowledge of the defendant. From the lower court decision holding for the plaintiffs, the defendant elevated the case to the Supreme Court and, in his appeal, laid emphasis on the absence of his or his counsel's signature in the partition agreement. The defendant's theory was that, since the supposed agreement was not signed by him, it was made without his knowledge and consent and, therefore, ineffective and not binding on him.

The Supreme Court found, in the first place, that the defendant's consent was shown by the fact that the partition agreement was submitted by the parties to the court. Moreover, the defendant's inaction for nearly eight years after becoming aware of the partition agreement and of the judgment based thereon, amounted to a *ratification* of the agreement since laches, according to the Court, may operate to validate an agreement otherwise invalid at its inception as when the party, on becoming aware of the compromise, fails to repudiate it promptly.[42]

TRUSTS

A trust is defined as the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter.[43] A trust is essentially a fiduciary relationship. Thus a lessor-lessee relationship, since it does not essentially involve this fiduciary element, cannot be considered a trust under the law. To this effect was the ruling in *Ereñeta v. Bezore*.[44] The facts are simple: one Emilio Camon was the lessee of the Hacienda Rosario in Pontevedra, Negros Occidental. The lease commenced in the crop year 1940-41. One of the issues tendered for resolution was whether, notwithstanding the absence of a written contract of lease for the crop years 1952-53 to 1960-61, Camon's continued cultivation of the hacienda created an express trust

[42] Citing Rivero v. Rivero, 59 Phil. 15 (1933); Salazar v. Jarabe, 91 Phil. 596 (1952).

[43] 4 TOLENTINO, *op. cit.* at 627, citing 54 AM. JUR. 21 (1948).

[44] G.R. No L-29746, November 26, 1973, 54 SCRA 13 (1973).

in favor of the owner-lessor. Settling the issue in the negative, the Supreme Court pointed out that there was no change in the juridical relationship between the hacienda owners and Camon when, after the expiration of their written contract of lease, the latter continued cultivating the hacienda during the crop years 1952-53 to 1960-61. The continuance in the cultivation, with the acquiescence of the owners, did not convert the original relationship into an express trust. There was nothing that evidenced the creation of a fiduciary relationship between the lessors and the lessee after the expiration of their written contract of lease, which fiduciary relationship is an essential characteristic of trust.[45] Moreover, the Court noted that no written instrument had been pointed to as establishing an express trust, which writing is required in express trusts over immovables.[46]

SALES

Effect of lack of agreement on time and manner of down payment and installment payments.

Consensual contracts like sales are perfected upon the concurrence of consent, subject matter, and cause. The "meeting of the offer and acceptance upon the thing and the cause which are to constitute the contract"[47] marks the perfection of the contract. As a general rule, only the subject matter and the cause need be agreed upon by the parties for the contract to arise; any other conditions, such as time and place of performance, are non-essential and have no bearing on the perfection of the contract. This precise question, namely, the requirements for the perfection of a contract, was considered in *Velasco v. Court of Appeals,*[48] which involved an agreement of purchase and sale.

A suit for specific performance was instituted by one Lorenzo Velasco against the Magdalena Estate. It was alleged by Velasco that on 29 November 1962, he and the respondent Estate entered into a contract of sale by virtue of which the respondent offered to sell to him and he agreed to buy a parcel of land for ₱100,000. Velasco further contended that, according to the terms of agreement, he was to give a down-payment of ₱10,000, to be followed by ₱20,000 and the balance of ₱70,000 was to be paid in installments, the equal monthly amortization of which was to be determined as soon as the ₱30,000 down-payment had been completed. The ₱10,000 was paid on 29 November 1962, but when

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[45] Citing 1 SCOTT ON TRUSTS, 33 (1956 2d ed.); 4 TOLENTINO, *op. cit.*, at 608.

[46] Citing Article 1443, which provides:

> No express trusts concerning an immovable or any interest therein may be proved by parol evidence.

[47] Article 1319.

[48] G.R. No. L-31018, June 29, 1973, 51 SCRA 439 (1973).

Velasco, on 8 January 1964 tendered to the respondent the payment of the additional ₱20,000, the respondent allegedly refused to accept and to execute a formal deed of sale.

The questions involved in the case were mainly procedural but the substantive issue was whether the agreement between the parties sufficed to perfect a contract of sale. The perspicacity with which the Supreme Court, speaking through Mr. Justice Castro, analyzed the points in controversy, is not uncharacteristic. It declared: The material averments in the petitioners' complaint themselves disclose a lack of complete agreement in regard to the manner of payment of the lot in question. The petitioners themselves admit that they and the respondent still had to meet and agree on how and when the down-payment and the installment payments were to be paid. Such being the situation, it cannot, therefore, be said that a definite and firm sales agreement between the parties had been perfected over the lot. It has already been ruled that a definite agreement on the manner of payment of the purchase price is an essential element in the formation of a binding and enforceable contract of sale.[49] The fact therefore, that the petitioners delivered to the respondent the sum of ₱10,000 as part of the down-payment that they had to pay cannot be considered as sufficient proof of the perfection of any purchase and sale agreement between the parties under Article 1482, as the petitioners themselves admit that some essential matter—the terms of payment—still had to be mutually covenanted.

Observation on the Velasco ruling:

Under the peculiar circumstances of the case, especially on the basis of the admissions that the Court held the petitioners to have made, the ruling in *Velasco* is beyond criticism. Some observations, however, are pertinent. Is a "definite agreement on the manner of payment" an essential element for the perfection of the contract? It would seem that it is not, *unless it can be inferred from the circumstances of a specific case that the parties intended such a stipulation to be essential.* Ordinarily, however, the manner of payment is not an essential part of the contract. Article 1475 provides that:

> The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.
>
> From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

It is clear from the article—which is merely a more specific restatement of Article 1319, paragraph 1—that the only essential elements in a con-

[49] Citing Navarro v. Sugar Producers Cooperative Marketing Association, G.R. No. L-12888, April 29, 1961, 1 SCRA 1180 (1961).

tract of sale are the object and the price. Manresa, commenting upon Article 1450 of the Spanish Civil Code, which is the counterpart of our Article 1475 and from which it was derived, explains: "*Trátase aquí (i.e. Art. 1450) de fijar el momento de la perfección del contrato, y siendo la compra y venta consensual, éste no puede ser otro que aquel en que se presta el consentimiento acerca de los objetos sobra que recae, esto es,* **la cosa y el precio.** *Desde este momento el contrato es obligatorio para las dos partes . . . Desde que se consiente, y* **sin necesidad de ninguna otra circunstancia,** *el contrato, repetimos, está perfecto y nacen las obligaciones . . .*"[50]

What happens, when in an agreement of purchase and sale, the manner of payment has not been agreed upon? The answer, it seems to this writer, is to be found in the provisions of Article 1197, which authorizes the courts to fix the period or periods of payment.[51] Lack of agreement as to term or manner of payment does not prevent a contract from arising if there has been a meeting of minds as to object and cause. Sánchez Román explains the matter thus: "*Que al lado del plazo expreso, estipulado en la obligación, admite el Código, por su artículo 1128,*[52] *la doctrina de un* **plazo tácito no señalado en aquélla,** *pero deducido de la naturaleza y circunstancias de la misma por presunción de que se ha querido conceder al deudor, en cuyo supuesto corresponde á los Tribunales fijar la duración de aquél, lo mismo que en el caso de que el plazo haya quedado á voluntad del deudor.*"[53]

In fact, Scaevola goes even further and, treating of an obligation which contemplates several installments but which specifies neither the amounts nor the dates of the installment payments, says: "*Nosotros podemos, por último, dar testimonio especial de cierta estipulación celebrada sobre la base de que el deudor pagaría el precio de la cosa 'poco á poco.' ¿ Cómo se entendería aquí el plazo? A primera vista parece haber quedado á la voluntad del deudor, procediendo por consecuencia la determinación por los Tribunales, de que trata el segundo párrafo del artículo 1128. Pero el asunto ofrece alguno dificultad mayor, en cuanto la fórmula adop-*

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[50] 10 MANRESA, COMENTARIOS AL CODIGO CIVIL ESPAÑOL, 77 (1950 ed.).

[51] Article 1197 provides:

> If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.
>
> The courts shall also fix the duration of the period when it depends upon the will of the debtor.
>
> In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.

[52] Article 1197 of our Code.

[53] 4 SANCHEZ ROMAN, ESTUDIOS DE DERECHO CIVIL, 133-134 (1899).

tada por los contratantes implica, no uno, sino varios plazos. Sin embargo, la dificultad queda reducda á que los Tribunales deberán en caso semejante, señalar al deudor, no un plazo, como dicho artículo 1128, indica, sino varios plazos . . ."[54]

Our own Supreme Court, in *Levy Hermanos v. Paterno,*[55] reached a conclusion similar to that of Scaevola. That case involved a document worded thus: "*Vale* for the sum of ₱6,177.35 in favor of Messrs. Levy Brothers, as the balance of my account with them to date, payable in partial payments."[56] The Supreme Court there ruled: "The obligation being manifestly defective with regard to the duration of the period granted to the debtor, that is, to the defendant, that defect must be cured by the courts through judicial decision which shall determine the said duration, under the power expressly granted them for such purpose by the legal provisions just above transcribed. The trial court, therefore, acted in accordance with the law in exercising the said power in the present case, by fixing the duration of the period on the basis that the payment of the debt should be made at the rate of ₱200 a month; and we see no abuse of judicial discretion in fixing such a rate . . ."

The case of *Navarro v. Sugar Producers Cooperative*[57] did say that the manner of payment of the purchase price is a "most essential element," but, even prescinding from the intrinsic validity of such a statement, we will readily observe that the import of that declaration is considerably watered down by the fact that the main issue in that case was the binding force of an accepted unilateral promise to sell under Article 1479, paragraph 2, which question has, at any rate, been clarified in *Sanchez v. Rigos.*[58]

It is in the light of the foregoing observations that this writer sees the *Velasco* ruling. To recapitulate, therefore: A consensual contract is perfected from the moment there is a meeting of minds on the object and the cause. A contract of sale, being consensual, is therefore perfected the moment the parties agree on the thing and the price. It is not necessary that there be an agreement as to the manner of payment, except only where the parties themselves explicitly or implicitly stipulate that the manner of payment is essential to the contract, in which case the contract cannot be deemed perfected without an agreement as to manner of payment. In the majority of cases, where a stipulation on the manner of payment is not essential, the period or periods of payment should be determined in accordance with Article 1197.

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[54] 19 SCAEVOLA, CODIGO CIVIL, 699 (1902).

[55] 18 Phil. 353 (1911).

[56] It is not clear in the report of the case how the account came to be incurred.

[57] *Supra,* note 49.

[58] G.R. No. L-25494, June 14, 1972, 45 SCRA 368; 48 PHIL. L.J. 63-64 (1973).

Conventional Redemption

Effect of court decision holding the contract to be one of loan with equitable mortgage, and not of sale with pacto de retro.

If a disputed contract is held to be a loan with equitable mortgage and not a sale with the right of repurchase, the supposed vendor would in fact not be a vendor but a creditor. What then would his rights be? Within what time must those rights be exercised? These questions were answered in *Arches v. Diaz.*[59] On 6 July 1966, the plaintiffs, heirs of Jose Arches, lodged a complaint against the defendant, Maria Diaz, on the claim that on 21 January 1954, the defendant executed in favor of Arches a deed of sale with *pacto de retro* over a parcel of land for ₱12,500. The period for repurchase was stipulated to be one year from the date of the execution of the deed. On 20 November 1958, Arches filed a petition with the CFI to consolidate ownership over the lot; the petition was opposed by the defendant, alleging, *inter alia,* that the deed of sale with *pacto de retro* did not express the true intention of the parties, which was merely to constitute a mortgage on the property as security for a loan. The lower court denied the petition, holding in effect that the contract was an equitable mortgage. The Court of Appeals affirmed and, on *certiorari,* the Supreme Court dismissed Arches' petition. Arches died in 1965. On 31 May 1966, the plaintiffs demanded from the defendant the sum of ₱12,500 (which was the amount of the loan) but the defendant refused to pay, instead moving for dismissal on the ground of prescription. The lower court overruled the plea of prescription, stating that the ten-year prescriptive period began on the date the Supreme Court resolution dismissing Arches' petition for *certiorari* became final and executory, and not from 21 January 1955, the date the one-year period of repurchase expired. However, on 8 September 1966, the lower court set aside its previous order and dismissed the complaint, stating that Arches had two remedies: 1) to consolidate title and ownership, or 2) to foreclose in the event the deed of sale *a retro* be declared one of equitable mortgage. Arches, according to the lower court, elected to consolidate without alternatively opting to foreclose and, hence, he was barred from pursuing the second alternative of foreclosure and collection. On appeal, the Supreme Court held: The decision of the cadastral court, holding in effect that the sale with *pacto de retro* was an equitable mortgage and dismissing the petition to consolidate ownership, did not constitute an adjudication of the right to foreclose or collect. In *Correa v. Mateo,*[60] wherein an unrecorded *pacto de retro* was construed as an equitable mortgage, it was ruled that the plaintiff had the right "within sixty days after final judgment, for a failure to pay the amount due and owing to him, to foreclose his

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[59] G.R. No. L-27136, April 30, 1973, 50 SCRA 440 (1973).

[60] 55 Phil. 79 (1930).

mortgage in a proper proceeding..." In effect, continued the Court, the Supreme Court in *Correa* recognized the plaintiff's right to enforce his lien in a separate proceeding notwithstanding the fact that he had failed to obtain judgment declaring him the sole and absolute owner of the parcels in question. The law abhors injustice. It would be unjust to allow the defendant to escape payment of her debt and, worse still, to rationalize such a result by her very claim that she is a debtor, not a vendor. Where the vendee's petition in a *pacto de retro* sale is for a judicial order pursuant to Article 1607, so that the consolidation of ownership by virtue of a failure to redeem may be recorded, the right of action to foreclose or collect arises from the judgment declaring the contract as an equitable mortgage. Although an alternative prayer to that effect may be made in the petition, the same cannot but be conditional, that is, only in the event such a declaration is made, contrary to the plaintiff's claim and the principal relief he seeks. His failure to make that alternative prayer, or the failure of the court to grant it in the judgment dismissing the petition, should not be considered as a bar to collecting the indebtedness in a proper action for that purpose.

From the *Arches* case, therefore, the following can be gleaned: if a contract appearing to be one of sale with right of repurchase becomes the subject matter of litigation—either upon the instance of the vendor or of the vendee—and the nature of the contract is placed in issue and it is held to be one of loan with mortgage, the supposed vendee (in reality the creditor) has the right to recover the amount loaned, the period of prescription of his right to be counted from the time of the court declaration as to the true nature of the contract.

LEASE

Implied extension of the lease

In *Ereñeta v. Bezore,*[61] where, with the lessor's acquiescence, the lessee of an agricultural land continued cultivating the property even after the expiration of the written lease contract, it was held that the lessee's continued possession implied a new lease over the property, with the same terms and conditions provided in the original contract, except as to the period of the lease, in accordance with Article 1670.

It is important to note, as it was noted by the Court in *Ereñeta,* that the period of the new lease will be governed, not by the original contract, but by Article 1682, if the land is rural, and by Article 1687, if it is urban. What precisely happens is that an implied new lease[62] takes place, provided the requisites of Article 1670 are complied with.

[61] *Supra,* note 44.

[62] *Tácita reconducción.*

"But an implied new lease can take place *only once*, upon the expiration of the original express contract. If, after the term of the implied new lease, the lessee continues to enjoy the property with the acquiescence of the lessor, then it is a case of successive renewals under either Article 1682 or 1687 and the 15-day holdover requirement will no longer apply."[63]

Lessee's right regarding constructions made by him on leased property

The lessee in *Bacaling v. Laguda*[64] who constructed, with the lessor's acquiescence, a residential house on the lot subject matter of the lease, was held to be entitled to the right granted in Article 1678, which allows the reimbursement of lessees up to one-half of the value of their improvements, if the lessor elects to make reimbursement.[65]

COMPROMISE

No particular form required for compromise

Explaining the requirements for a valid contract of compromise,[66] the Supreme Court in *Cadano v. Cadano*[67] held that "the only elements necessary to a valid contract of compromise are the reality of the claim made and the *bona fides* of the compromise.[68] The general rule is that in the absence of statutory requirement, no particular form of agreement is essential to the validity of a compromise.[69] If a binding oral compromise agreement has been entered into, the mere fact that a written agreement is subsequently drawn to evidence the oral agreement does not detract from the validity of the oral agreement, though the written evidence thereof is not signed."[70]

MORTGAGE

Pactum commissorium

Article 2088 prohibits what is known as *pactum commissorium*. The article provides:

> The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

[63] 2 ABAD SANTOS, *op. cit.*, at 413.

[64] *Supra*, note 2.

[65] Citing Racaza v. Susana Realty, G.R. No. L-20330, December 22, 1966, 18 SCRA 1172 (1966); Lopez v. Philippine and Eastern Trading, 98 Phil. 348 (1956).

[66] Article 2028 defines compromise thus:

> "A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced."

[67] *Supra*, note 41.

[68] Citing Chaffee v. Chaffee, 197 Mich. 133, 163 N.W. 879 (1917); Grandin v. Grandin, 49 N.J.L. 508, 9 A. 756, 60 Am. Rep. 642 (1887).

[69] Citing National Surety v. Willys Overland, 103. Fla. 378, 138 So. 24 (1931).

[70] Citing Nolte v. Southern California Home Bldg. Co., Cal. Ap. 2d 532, 82 P. 2d 946 (1938).

"*Pactum commissorium* presupposes that the agreement is to the effect that mere failure to pay or breach of the condition ***automatically*** vests ownership of the security upon the creditor."[71]

The essence of *pactum commissorium* was explained by the Supreme Court in *Northern Motors v. Herrera.*[72] The petitioner in that case filed a complaint against the respondent, alleging, *inter alia*, that the respondent had executed in favor of the petitioner a promissory note binding himself to pay the petitioner the sum of P18,623.75, payable in monthly installments. As security, the respondent executed a chattel mortgage over a car—under the terms of which it appeared in effect that the said car had been purchased by the respondent from the petitioner on an installment basis. The mortgage agreement stipulated that, upon default in the payment of any installment or interest due, the total principal sum outstanding, with interest, would become due and the car should, on demand, be delivered to the mortgagee; otherwise, the mortgagee was authorized to take possession of the car and have it brought to Manila at the mortgagor's expense and the mortgagee would have the option of: 1) selling the car; 2) cancelling the contract of sale; 3) extrajudicially foreclosing the mortgage; 4) judicially foreclosing the mortgage; or 5) exacting the fulfillment of the mortgage obligation. The respondent defaulted in 13 installments, as a result of which the petitioner elected to avail itself of the option of extrajudicial foreclosure. The petitioner demanded the delivery of the vehicle but the respondent refused. The lower court denied the prayer for a writ of replevin on the ground that, as appeared from the affidavit of replevin, the petitioner was not the owner of the vehicle and therefore was not entitled to its possession merely because the mortgagor had failed to pay the account guaranteed by the mortgage. The lower court also held that the complaint sought "that plaintiff (petitioner) be adjudged to have rightful possession" of the chattel without any qualification whatsoever, which, in a practical sense, would revest ownership in it of the repossessed chattel in contravention of Article 2088.

Reversing the lower court on both counts, the Supreme Court held that: 1) the replevin was proper, inasmuch as persons having a special right of property in the goods the recovery of which is sought, such as a chattel mortgagee, may maintain an action for replevin therefor; and 2) there was no support for the assertion that the petitioner sought to appropriate the property mortgaged in a manner violative of Article 2088. Elaborating, the Supreme Court stated: The essence of *pacto comisorio*, which is prohibited by Article 2088, is that ownership of the security will pass to the creditor by mere default of the debtor.[73] In the present

[71] 6 REYES & PUNO, AN OUTLINE OF PHILIPPINE CIVIL LAW, 98 (1958).
[72] G.R. No. L-32674, February 22. 1974. 49 SCRA 392 (1974).
[73] Citing Guerrero v. Yñigo, 96 Phil. 37 (1954); Puig v. Sellner, 45 Phil. 286 (1923).

case, the petitioner, exercising one of the options open to it under the terms of the chattel mortgage, elected to foreclose the mortgage extrajudicially, and, as a preliminary step, sought possession of the car, or, in the alternative, payment of the indebtedness. No automatic revesting of title on the creditor was ever contemplated, for the exercise of the remedies granted to the creditor of foreclosing the mortgage or exacting fulfillment through court action is by its nature anathema to the concept of *pacto comisorio.*

We notice in this case that the option elected by the petitioner was that of extrajudicial foreclosure. Supposing, however, that it had instead elected the first option, *i.e.*, that of selling the car in question, would it have been a case of *pactum commissorium?*

Mortgage answers only for the amount covered by the loan for which mortgage was constituted.

A mortgage is an accessory contract; as such it secures only the principal obligation for which it was constituted. Article 2126 necessarily implies this rule when it provides:

> The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted.

Authority for the principle above stated is *Arangco v. Baloso*,[74] which arose from the following facts: On 28 May 1964, Vicente Abaño mortgaged to defendant Baloso for ₱960 a parcel of land owned conjugally by Vicente and his wife, Soledad. On 24 July 1964, another mortgage was executed by Vicente in which the consideration was raised to ₱1,200. On 17 November 1964, still another mortgage was executed, this time by Laurente Abaño, a child of the couple, for ₱1,800. On 16 June 1966, Vicente having died in the meantime, his widow and children brought action to redeem the land from the defendant and consigned the amount in court. It should be mentioned that on various dates subsequent to 17 November 1964, Vicente's minor children, through their guardian, obtained several additional sums from the defendant, aggregating ₱800. The defendant thus resisted the action for redemption on the ground that the total indebtedness was ₱2,600. Ruling in favor of the plaintiffs, the Supreme Court adverted to the case of *Nolan v. Majinay*,[75] where it was made clear that the recovery of the amount loaned and secured by the mortgage could alone be the subject of a foreclosure proceeding, the inference being that the payment of such sum necessarily would suffice to release the mortgage. The doctrine was reiterated in *Lim Julian v.*

[74] G.R. No. L-28617, January 31, 1973, 49 SCRA 296 (1973).
[75] 12 Phil. 559 (1909).

Lutero[76] thus: "The rule, of course, is well settled that an action to foreclose a mortgage must be limited to the amount mentioned in the mortgage." It is true, clarified the Supreme Court, that, as set forth in that case, the exact amount for which the mortgage is given need not be specially named, future advancements being likewise covered. Such a contention on the part of the parties must, however, be evident from a reading of the mortgage "from its four corners."[77] In the present case, there was nothing in the mortgage to indicate that the additional amount of ₱800 was included. The Supreme Court suggested, instead, that the defendant prosecute her claim against the minors in the guardianship proceedings.

QUASI-DELICTS & DAMAGES

Independent civil action

The problem of when and under what conditions a party may institute an independent civil action if the act complained of also constitutes a felony has been a troublesome one. The difficulty revolves around the question of reservation of the right to file the civil action. The problem is both procedural and substantive—and, because substantive, properly belongs to this survey. During this survey year, the case of *Garcia v. Florido*[78] tackles the issue once more.

The petitioners in that case hired and boarded a PU car owned by the respondent Marcelino Inesin and driven by the respondent Ricardo Vayson, for a round-trip from Oroquieta City to Zamboanga City. On the way, the car collided with an oncoming passenger bus owned and operated by the Mactan Transit Co. and driven by the defendant Pedro Tumala. As a result of the collision, the petitioners sustained various physical injuries which necessitated their medical treatment and hospitalization. Alleging that both drivers were negligent, the petitioners filed an action for damages against the respective owners and drivers of the car and the bus. The respondents Mactan Transit and Tumala filed a motion to dismiss, contending that twenty days before the filing of the action, Tumala had been charged with the crime of physical injuries and that, with the filing of the criminal case, no civil action could be filed subsequent thereto until the criminal case was finally adjudicated, pursuant to Rule 111, Section 3 of the Rules of Court, and that, therefore, the filing of the civil action was premature because the employer's liability is merely subsidiary and does not arise until after final judgment is rendered finding the employee guilty of negligence. The respondents further

[76] 49 Phil. 703 (1926).

[77] The rule was reiterated in Tady-y v. PNB, G.R. No. L-18817, September 28, 1964, 12 SCRA 19 (1964).

[78] G.R. No. L-35095, August 31, 1973, 52 SCRA 420 (1973).

claimed that Article 33 of the Civil Code was not applicable because the said article applies only to crimes of physical injuries or homicide, not to negligent or imprudent acts. The petitioners filed an opposition, alleging that the action for damages was instituted not to enforce the respondents' civil liability under Article 100 of the Penal Code but for the civil liability on quasi-delicts pursuant to Articles 2176-2194, as, according to them, the same negligent act causing damages may produce civil liability arising from a crime under the Penal Code or create an action for quasi-delict or *culpa extra-contractual* under the Civil Code and the party seeking recovery is free to choose which remedy to enforce.

The lower court dismissed the action, declaring that whether or not "the action of damages is based on criminal negligence or civil negligence known as *culpa aquiliana* in the Civil Code [there] should be a showing that the offended party expressly waived the civil action or reserved his right to institute it separately" and that "the allegations of the complaint in *culpa aquiliana* must not be tainted by any assertion of violation of law or traffic rules or regulations" and because of the prayer in the complaint asking the court to declare the defendants jointly and severally liable for moral, compensatory, and exemplary damages, the lower court was of the opinion that the action was not based on *culpa aquiliana* or quasi-delict. The case was elevated to the Supreme Court, which, through Mr. Justice Antonio, held: "There is no question that from a careful consideration of the allegations in the complaint . . . the essential averments for a quasi-delictual action under Articles 2176-2194 of the Civil Code are present, namely: a) act or omission of the private respondents; b) presence of fault or negligence or the lack of due care . . .; c) physical injuries and other damages sustained by petitioners as a result of the collision; d) existence of direct causal connection between the damage or prejudice and the fault or negligence of the respondents; and e) the absence of pre-existing contractual relations between the parties. The circumstance that the complaint alleged that respondents violated traffic rules in that the driver drove the vehicle 'at a fast clip in a reckless, grossly negligent and imprudent manner in violation of traffic rules and without due regard to the safety of the passengers aboard the PU car' does not detract from the nature and character of the action, as one based on *culpa aquiliana.* The violation of traffic rules is merely descriptive of the failure of said driver to observe for the protection of the interests of others, that degree of care, precaution and vigilance which the circumstances justly demand, which failure resulted in injury on petitioners. Certainly excessive speed in violation of traffic rules is a clear indication of negligence . . . It should be emphasized that the same negligent act causing damages may produce a civil liability arising from a crime under Article 100 of the Revised Penal Code or create an action for quasi-delict or

culpa extra-contractual under Articles 2176-2194 of the New Civil Code. This distincton has been amply explained in *Barredo v. Garcia et al.*[79]

"It is true that under Section 2 in relation to Section 1 of Rule 111 of the Revised Rules of Court . . ., in the cases provided for by Articles 31, 33, 39, (sic) and 2177 of the Civil Code, an independent civil action entirely separate and distinct from the civil[80] (sic) action, may be instituted by the injured party during the pendency of the criminal case, provided said party has reserved his right to institute it separately, but it should be noted, however, that neither Section 1 nor Section 2 of Rule 111 fixes a time limit when such reservation shall be made. In *Tactaquin v. Palileo,*[81] where the reservation was made after the tort-feasor had already pleaded guilty and after the private prosecutor had entered his appearance jointly with the prosecuting attorney in the course of the criminal proceedings, and the tort-feasor was convicted and sentenced to pay damages to the offended party by final judgment in the said criminal case, We ruled that such reservation was legally ineffective because the offended party cannot recover twice for the same act or omission of the defendant.[82] . . .

"In the case at bar, there is no question that petitioners never intervened in the criminal action . . ., much less has the said criminal action been terminated either by conviction or acquittal of said accused.

"It is, therefore, evident that by the institution of the present civil action for damages, petitioners have in effect abandoned their right to press recovery for damages in the criminal case, and have opted instead to recover them in the present civil case. As a result of this action of petitioners, the civil liability of private respondents to the former has ceased to be involved in the criminal action. Undoubtedly an offended party loses his right to intervene in the prosecution of a criminal case, not only when he has waived the civil action or expressly reserved his right to institute, but also when he has actually instituted the civil action. For by either of such actions his interest in the criminal case has disappeared.

". . . the same negligent act causing damages may produce a civil liability arising from crime or create an action for quasi-delict or culpa extra-contractual. The former is a violation of the criminal law, while the latter is a distinct and independent negligence, having always had its own foundation and individuality. Some legal writers are of the view that in accordance with Article 31, the civil action based upon quasi-delict may proceed independently of the criminal proceeding for criminal negligence and regardless of the result of the latter. Hence, 'the *proviso* in

[79] 73 Phil. 607 (1942).
[80] The word should be: "criminal".
[81] G.R. No. L-20865, September 29, 1967, 21 SCRA 346 (1967).
[82] In this connection *cf.* Manio v. Gaddi, G.R. No. L-30860, March 29, 1972, 44 SCRA 198 (1972), 48 Phil. L.J. 73-74 (1973).

Section 2 of Rule 111 with reference to . . . Articles 32, 33, and 34 of the Civil Code is contrary to the letter and spirit of the said articles, for these articles were drafted [as] . . . and are intended to constitute exceptions to the general rule stated in what is now Section 1 of Rule 111. The *proviso,* which is procedural, may also be regarded as an unauthorized amendment of substantive law, Articles 32, 33, and 34 of the Civil Code, which do not provide for the reservation required in the *proviso.*[83] But in whatever way We view the institution of the civil action for recovery of damages under quasi-delict by petitioners, whether as one that should be governed by the provisions of Section 2 of Rule 111 of the Rules which require reservation by the injured party, considering that by the institution of the civil action even before the commencement of the trial of the criminal case, petitioners have thereby foreclosed their right to intervene therein, or one where reservation to file the civil action need not be made, for the reason that the law itself[84] . . . already makes the reservation and the failure of the offended party to do so does not bar him from bringing the action, under the peculiar circumstances of the case, we find no legal justification for the respondent court's order of dismissal."

Mr. Justice Barredo, in a concurring opinion, expresses the view that Section 2 of Rule 111 of the Rules of Court is void. As explained by him: Articles 2176 and 2177 "definitely create a civil liability distinct and different from the civil action arising from the offense of negligence under the Revised Penal Code. Since [this case] is predicated on the above civil code articles[85] and not on the civil liability imposed by the Revised Penal Code, I cannot see why a reservation had to be made in the criminal case. As to the specific mention of Article 2177 in Section 2 of Rule 111, it is my considered view that the latter provision is inoperative, it being substantive in character and is not within the power of the Supreme Court to promulgate, and even if it were not substantive but adjective, it cannot stand because of its inconsistency with Article 2177, an enactment of the legislature superseding the Rules of 1940."

It appears, therefore, that the majority opinion in *Garcia* does two things: First, it throws open the question whether Section 2 of Rule 111 of the Rules of Court is operative, in the face of the provisions of Articles 31, 32, 33, 34, and 2177 of the Civil Code, and, second, it allows the actual institution of the separate civil action even after the institution of the criminal case to take the place and produce the effect of express reservation when no such express reservation has been made.

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[83] Footnote of Justice Capistrano in Corpus v. Paje, G.R. No. L-26737, July 31, 1969, SCRA 1062 (1969); citing also 1 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE, 142 1968 ed.).

[84] Art. 33.

[85] Arts. 2176 & 2177.

Proximate cause

As a basis of liability, a tort-feasor's negligence must be the proximate cause of the injury sustained by the aggrieved party. Proximate cause has been defined thus: "the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom."[86]

If there has been a violation of a safety ordinance and injuries were caused which would have been prevented had the ordinance been complied with by the defendant, is there such a causal connection between the injuries and the defendant's conduct as would give rise to a liability in damages? This question was considered and resolved in *Teague v. Fernandez.*[87] The facts of the case were: The Realistic Institute, owned and operated by defendant Teague, was situated on the second floor of the Gil-Armi Building, a two-storey, semi-concrete edifice located at the corner of Quezon Boulevard and Soler. The second floor was unpartitioned, had a total area of about 400 square metres, and, although it had only one stairway, of about 1.50 metres in width, it had eight windows, each of which was provided with two fire-escape ladders and the presence of each of the fire exits was indicated on the wall. At about 4:00 p.m. of 24 October 1955, a fire broke out in a store for surplus materials about ten metres from the building. Soler Street lay between that store and the Institute. Upon seeing the fire, some of the students in the institute shouted "Fire! Fire!" and thereafter, a panic ensued. The members of the teaching staff and the registrar tried to calm down the students—about 180 in number—and tried to stop the students from rushing and pushing their way to the stairs. But the panic could not be subdued. As it turned out, no part of the building actually caught fire, but after the stampede was over, four students, including one Lourdes Fernandez, sister of plaintiffs, were found dead. Plaintiffs filed suit for damages. On an appeal from an order of dismissal in the Court of First Instance, the Court of Appeals made a finding of negligence based primarily on the fact that the provision of Section 491 of the Revised Ordinance of Manila had not been complied with in connection with the construction and use of the Gil-Armi Building. The alleged violation of the ordinance con-

[86] Bataclan v. Medina, G.R. No. L-10126, October 22, 1957, 54 O.G. 1805, (March, 1958), 102 Phil. 181 (1957), citing 38 AM. JUR. 695-696 (1941).
[87] G.R. No. L-29745, June 4, 1973, 51 SCRA 181 (1973).

sisted in the fact that the second storey of the building had only one stairway, 1.5 metres wide, instead of two of at least 1.2 metres each, although, at the time of the fire, the owner of the building had a second stairway under construction.

The petition to the Supreme Court raised three issues:

1) The ordinance had reference to public buildings and did not apply to Gil-Armi Building, which was of private ownership.

Disposing of this contention, the Supreme Court stated: It will be noted from the text (of the ordinance) that it is not ownership which determines the character of buildings subject to its requirements, but rather the use or purpose for which a particular building is utilized. Thus the same may be privately owned, but if it is devoted to any one of the purposes mentioned in the ordinance—for instance, as a school, which the Realistic Institute precisely was—then the building is within the coverage of the ordinance. Indeed the requirement that such a building should have two separate stairways instead of only one has no relevance or reasonable relation to the fact of ownership, but does have such relation to the use or purpose to which the building is devoted.

2) The obligation to comply with the ordinance devolved upon the owners of the building and it is they—not the defendant, who is a mere lessee—who should be liable for the violation.

In refusing to entertain this argument, the Court pointed out that such contention ignored the fact that it was the use of the building for school purposes which brought it within the coverage of the ordinance, and it was the defendant, and not the owners, who was responsible for such use.

3) The violation of the ordinance was only a remote cause, if at all, and cannot be the basis of liability since there intervened a number of independent causes which produced the injury complained of. The events of fire, panic, and stampede were independent causes without any causal connection at all with the violation of the ordinance.

Refuting this argument, the Supreme Court declared: "The weakness in the argument springs from a faulty juxtaposition of the events which formed a chain and resulted in the injury. It is true that the petitioner's non-compliance with the ordinance in question was ahead of and prior to the other events in point of time, in the sense that it was coetaneous with its occupancy of the building. But the violation was a continuing one, since the ordinance was a measure of safety designed to prevent a specific situation which would pose a danger to the occupants of the building. That situation was undue overcrowding in case it should become necessary to evacuate the building, which, it could be reasonably foreseen, was bound to happen under emergency conditions if there was only one stairway available. It is true that in this particular case there would have been no overcrowding in the single stairway if there had not

been a fire in the neighborhood which caused the students to panic and rush headlong for the stairs in order to go down. But it was precisely such contingencies or events that the authors of the ordinance had in mind, for under normal conditions one stairway would be adequate for the occupants of the building . . . 'The general principle is that the violation of a statute or ordinance is not rendered remote as the cause of an injury by the intervention of another agency if the occurrence of the accident, in the manner in which it happened, was the very thing which the statute or ordinance was intended to prevent.'[88] To consider the violation of the ordinance as the proximate cause of the injury does not portray the situation in its true perspective; it would be more accurate to say that the overcrowding at the stairway was the proximate cause and that it was precisely what the ordinance intended to prevent by requiring that there be two stairways instead of only one. Under the doctrine of the cases cited by the respondents, the principle of proximate cause applies to such violation."

It may be asked, however, in connection with the *Teague* ruling: In the light of the fact that the defendant's agents did their best to prevent or minimize the injury, were the victims not themselves guilty of contributory negligence, entitling the defendant to a mitigation of the damages?

Damages

The case of *Zulueta v. Pan-American World Airways*[89] is a twice-told tale.[90] This survey year, the Supreme Court handed down a decision on the defendant's motion for reconsideration where the said defendant assailed, *inter alia:* 1) the amount of damages awarded as excessive; 2) the plaintiff's right to recover either moral or exemplary damages; and 3) the plaintiff's right to recover attorney's fees.

The Supreme Court, ruling on the defendant's arguments, made the following pronouncements:

1) In support of its contention (as to the excessiveness of the award of damages), the defendant cites previous cases awarding damages to airline passengers.[91] None of these cases is, however, in point. The said cases referred to passengers who were merely constrained to take a tourist class accomodation, despite the fact that they had first class tickets. In the case at bar, the plaintiff was off-loaded at Wake for having dared to retort to defendant's agent in a tone and manner matching, if not

[88] Citing 38 AM. JUR. 841 (1941).

[89] G.R. No. L-28589, January 8, 1973, 49 SCRA 1 (1973).

[90] It was first promulgated in 1972 as G.R. No. L-28589, February 29, 1973, 43 SCRA 397 (1973). *Cf.* 48 Phil. L.J., 74-76 (1973).

[91] Northwest Airlines v. Cuenca, G.R. No. L-22425, August 31, 1965, 14 SCRA 1063 (1965); Lopez v. Pan-Am, G.R. No. L-22415, March 30, 1966, 16 SCRA 431 (1966); Air France v. Carrascoso, G.R. No. L-21438, September 28, 1966, 18 SCRA 155 (1966).

befitting, his intemperate language and arrogant attitude. Moreover, in the presence of the other passengers and the crew, defendant's agent had referred to the plaintiffs as "monkeys," a racial insult not made openly and publicly in the above-mentioned previous cases against airlines.

2) It is urged by the defendant that exemplary damages are not recoverable in quasi-delicts, pursuant to Article 2231, except when the defendant acted with gross negligence, and that there is no specific finding that it so acted. It is obvious, however, that in offloading the plaintiff at Wake, defendant's agents acted with malice aforethought and evident bad faith. If gross negligence warrants the award of exemplary damages, with more reason is its imposition justified when the act performed is deliberate, malicious, and tainted with bad faith. "The rationale behind exemplary or corrective damages is, as the name implies, to provide an example or correction for the public good. Defendant having breached its contracts in bad faith, the court, as stated earlier, may award exemplary damages in addition to moral damages. (Articles 2229 and 2232, New Civil Code)[92]

3) The defendant impugns the award of attorney's fees on the ground that no penalty should be imposed upon the right to litigate; that, by law, attorney's fees may be awarded only in exceptional cases; that the claim for attorney's fees has not been proven; and that the defendant was justified in resisting plaintiff's claim "because it was patently exorbitant." Nothing however, could be farther from the truth. Indeed, apart from plaintiffs' claim for actual damages, the amount of which is not contested, plaintiffs did not ask any specific sum by way of exemplary and moral damages, as well as attorney's fees, and left the amount thereof to the sound discretion of the trial court. Moreover, Article 2208 expressly authorizes the award of attorney's fees "when exemplary damages are awarded" as well as "in any other case where the court deems it just and equitable that attorney's fees . . . be recovered," and We so deem it just and equitable in the present case, considering the "exceptional" circumstances obtaining therein, particularly the bad faith with which defendant's agent had acted, the place where and the conditions under which Rafael Zulueta was left at Wake Island, the absolute refusal of defendant's manager in Manila to take any step whatsoever to alleviate Mr. Zulueta's predicament at Wake and have him brought to Manila—which, under their contract of carriage, was defendant's obligation to discharge with "extraordinary" or "utmost" diligence—and the "racial" factor that had likewise, tainted the decision of defendant's agent, Capt. Zentner, to off-

[92] Citing Lopez v. Pan-Am, *supra*, note 91. The quotation of the Court from the Lopez case refers, by the very terms of the citation, to exemplary damages for *contractual* breach. The issue raised by the defendant in Zulueta, however, is the recoverability of exemplary damages in quasi-delicts. This point should have been clarified.

load him at Wake. As regards the evidence necessary to justify the sum of ₱75,000 as attorney's fees in this case, suffice it to say that the quantity and quality of the services rendered by plaintiff's counsel appearing on record, apart from the nature of the case and the amount involved therein, as well as his prestige as one of the most distinguished members of the legal profession in the Philippines, of which judicial cognizance may be taken, amply justify said award, which is a little over 10% of the damages collectible by plaintiffs.

The tragic plane crash in Mindoro, in 1960, of a PAL plane, resulting in the death of all its passengers and crew, gave rise to the case of *Davila v. PAL.*[93] One of the victims in the tragedy was Pedro Davila, Jr. whose parents instituted an action for damages. The lower court rendered judgment for the plaintiffs and ordered the defendant to pay a total amount of ₱101,000, broken down as follows: 1) for the victim's death—₱6,000; 2) for the loss of the victim's earning capacity at the rate of ₱12,000 *per annum* for five years—₱60,000; 3) for moral damages—₱10,000; 4) for exemplary damages—₱10,000; 5) for actual damages consisting of the loss of the following items: a Rolex watch—₱600, a pistol—₱300, burial expenses—₱600, lot and mausoleum—₱3,500; 6) for attorney's fees—₱10,000.

The lower court's decision was elevated on appeal to the Supreme Court, the plaintiffs, on the one hand, seeking an increase in the amounts, and the defendant, on the other, exoneration.

Discussing the award of damages item by item, the Supreme Court, through Mr. Justice Makalintal, made the following pronouncements:

1) Pursuant to current jurisprudence on the point, the indemnity for death should be increased from ₱6,000 to ₱12,000.[94]

2) As to loss of earning capacity—The deceased was employed as manager of a radio station, from which he was earning ₱8,400 a year. As a lawyer and junior partner of his father in the law office, he had an annual income of ₱3,600. From farming he was getting an average of ₱3,000 annually. All in all, therefore, the deceased had gross earnings of ₱15,000 a year. Article 2206, paragraph 1,[95] in correlation with Article

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[93] G.R. No. L-28512, February 28, 1973, 49 SCRA 497 (1973).

[94] Citing People v. Pantoja, G.R. No. L-18793, October 11, 1968, 25 SCRA 468 (1968); People v. Empeño, G.R. No. L-27610, May 28, 1970, 33 SCRA 40 (1970).

[95] Art. 2206.

> The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;
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> x x x x x

1764,[96] is applicable. The deceased was single and thirty years old when he died. At that age one's normal life expectancy is 33 1/3 years, according to the formula adopted by the Supreme Court in *Villa Rey Transit v. Court of Appeals*[97] on the basis of the American Expectancy Table of Mortality. However, although the deceased was in relatively good health, his medical history showed that he had complained of and been treated for such ailments as back aches, chest pains, and occasional feelings of tiredness. It is reasonable to make an allowance for these circumstances and consider a reduction of his life expectancy to 25 years. Earning capacity is necessarily his net earning capacity or his capacity to acquire money, less the necessary expenses for his own living. Only net earnings, not gross earnings, are to be considered.[98] ₱195,000 is the amount that should be awarded to the plaintiffs in this respect.

3) As to actual damages—The lower court was sustained as to the amount.

4) As to moral damages—Under Article 2206, in relation to Article 1764, the parents of the deceased are entitled to moral damages for their mental anguish, and the award of ₱10,000 is fair, considering the long period (26 days) of uncertainty and suffering the plaintiffs underwent from the date of the crash to the date of notification.

5) As to exemplary damages—This should be eliminated. According to Article 2232 in contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. The defendant's failure to exercise extraordinary diligence does not amount to any one of the circumstances contemplated in the said provision.

6) As to attorney's fees—The amount was found to be reasonable.

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[96] Art. 1764.

> Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

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

[98] Citing Villa Rey, *supra*, note 97.