

CREDITORS' RIGHTS AGAINST COMMUNITY PROPERTY AND SEPARATE PROPERTY IN THE PHILIPPINES AND CALIFORNIA: A COMPARATIVE STUDY

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I. INTRODUCTION

The community property laws of the Philippines and those of California have their common origin in the Spanish civil law system. For over three centuries, the Philippines and California (as a Province of Mexico) formed parts "of a far flung Spanish empire which in its heyday included South America and a goodly portion of North America."¹ Laws enacted in Spain were promulgated in the colonies in the name of the Spanish Crown. In this way, the Spanish law of the community of gains and acquests found its way to the Philippines and the Mexican Province of California.²

When sovereignty over the Philippines was ceded by Spain to the United States under the Treaty of Paris of 1898, the Spanish Civil Code of 1889, being a part of the non-political municipal laws of the Philippines, continued in force under the instructions of President McKinley to General Merritt, Commander of the Army of Occupation.³ The Spanish Civil Code of 1889 remained in force in the Philippines after the country gained independence from the United States on July 4, 1946, until the "Civil Code of the Philippines" (hereafter referred to as the "Philippine Civil Code") became effective on August 30, 1950.⁴ The Philippine Civil Code was based substantially on the Spanish Civil Code of 1889, which was revised in order to incorporate modern trends in legislation and

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¹In 1521, the year Magellan discovered the Philippines for Spain, Hernan Cortés conquered Mexico in the name of the Spanish Crown.

²Loewy, *The Spanish Community of Acquests and Gains and Its Adoption and Modification by the State of California*, 1 CAL. L. REV. 32, at 66 (1912).

³GAMBOA, AN INTRODUCTION TO PHILIPPINE LAW 84 (1955).

⁴Lara v. Del Rosario, Jr., 94 Phil. 778 (1954); Raymundo v. Peñas, 96 Phil. 311 (1954).

progressive principles of law "chosen with care from the codes, laws and judicial decisions of other countries."⁵

Even after Mexico separated from Spain and became independent on September 27, 1821,⁶ the Spanish system of the community of gains and acquests continued to be recognized in its territories.⁷ Thus this system of community property was the law of the land when the Mexican Province of California was conquered by the naval and military forces of the United States following the outbreak of war in 1846 between Mexico and the United States, which resulted from the existing boundary disputes between Mexico and Texas.⁸ The Spanish community property system remained in force in California after its annexation to the United States and was even incorporated in its first State Constitution.⁹

As a result of the influence of common law¹⁰ and numerous legislative changes,¹¹ the Spanish-Mexican community system in California has metamorphosed into the modern community property system that it is at present with distinctive features differing materially from those of its parent system. On the other hand, the Philippines has not substantially departed from the Spanish system of community property. A comparative study of the community property systems of California and the Philippines should, therefore, be interesting and fruitful.

There are several types of marital property relations recognized in the Philippines. Future spouses may agree in ante-nuptial contracts upon

⁵Report of the Code Commission (January 25, 1948) on the Proposed Civil Code of the Philippines.

"The Project of Civil Code is based upon the Civil Code of 1889, which is of Spanish and French origin. The proposed Code has been strengthened and enriched with new provisions chosen with care from the codes of other countries as well as from the works of jurists of various nations. Among them are: Spain, the various States of the American Union, especially California and Louisiana, France, Argentina, Germany, Mexico, Switzerland, England, and Italy. x x x" (at 2-3).

⁶SCHOENRICH, *THE CIVIL CODE FOR THE FEDERAL DISTRICT AND TERRITORIES OF MEXICO* v (1950).

⁷Loewy, *supra*, note 2 at 36, citing PANDECTAS HISPANICO, MEJICANAS O SEA CODIGO GENERAL (Mejico, 1840). SCHMIT, *LAW OF SPAIN AND MEXICO*, Art. 40 *et. seq.*

⁸Texas was admitted to the American Union in 1845. The United States inherited the boundary dispute of Texas with Mexico that resulted to the Mexican-American War in 1846. In 1848, by the Treaty of Guadalupe Hidalgo, the boundaries between Mexico and Texas were established, and, in consideration of the payment of FIFTEEN MILLION DOLLARS (\$15 M), Mexico ceded to the United States the Province of California, along with the region which now comprises the states of Arizona, Nevada and Utah and, in part, the states of New Mexico, Colorado and Wyoming (DE FUNIAK & VAUGHN, *PRINCIPLES OF COMMUNITY PROPERTY* 33, 77 & 83 (1971)).

⁹CAL. CONST., art. XI, sec. 14 (1849).

¹⁰McMurray, *The Beginning of the Community Property System in California and the Adoption of the Common Law*, 3 CAL. L. REV. 359 (1915).

¹¹Hemminger, *Prospective Changes in California Community Property Law*, 2 PEPPERDINE L. REV. 101 (1974).

absolute community of property,¹² complete separation of property¹³ or any other regime of property relations.¹⁴ However, the most important system of marital property relations in the Philippines is the relative community of property, or the conjugal partnership which is rooted in the same Spanish law of the community of gains and acquests implanted in California. Not only may future spouses agree in the marriage settlements upon conjugal partnership of gains. "In the absence of marriage settlements or when the same are void, the system of relative community or conjugal partnership of gains, as established in [the Philippine Civil] Code shall govern the property relations between husband and wife."¹⁵ Marriage settlements are very seldom entered into by future spouses. Thus, the conjugal partnership of gains governs most, if not all, marital property relations in the Philippines.

This study is confined to a comparative analysis and evaluation of the system of relative community or conjugal partnership of gains in the Philippines and the modern system of community property in California. Reference, however, will sometimes be made to the developments in the other community property states in the United States.

II. COMPARATIVE EXPOSITION IN PERSPECTIVE

In the Philippines, as in California, future spouses may agree in marriage settlements upon rules different from, or contrary to the legal provisions governing community property, in which case the marriage settlements regulate the marital property relations.¹⁶ The following discussions assume that no such marriage settlements have been executed and that the respective community property laws in the two jurisdiction under study ordinarily apply.

¹²Under the system of absolute community, the community property consists of all the present and future property of the spouses except certain reserved property of each spouse. The patrimony of either spouse existing at the time of the marriage is automatically converted into community property subject to joint ownership and management by the spouses. Upon the dissolution and liquidation of the community, the net assets are divided equally between the husband and the wife or their heirs. (PHIL. CIVIL CODE, arts. 198 to 211).

¹³Under the system of complete separation of property, the interests of each spouse are completely independent of each other, there being a separation not only of assets, but also liabilities. Each spouse has the full ownership, management and control of his or her separate property, whenever and however acquired, the fruits therefrom and the products of his or her work or industry. The spouses contribute for the family expenses in proportion to their property. (PHIL. CIVIL CODE, arts. 212 to 215).

¹⁴PHIL. CIVIL CODE, art. 119.

¹⁵*Ibid.*

¹⁶*Ibid.*; CAL. CIVIL CODE, sec. 5133.

A. *Classification of Property*

1. *Community Property*

The Philippine Civil Code defines generally marital property relations under the conjugal partnership of gains as follows:

"Art. 142. By means of the conjugal partnership of gains the husband and the wife place in a common fund the fruits of their separate property and the income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage. (132a)"¹⁷

It then specifically enumerates what constitutes conjugal property, to wit:

"(1) That which is acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;

(2) That which is obtained by the industry, or work or as salary of the spouses, or of either of them;

(3) The fruits, rents or interests received or due during the marriage, coming from the common property or from the exclusive property of each spouse (1401)"¹⁸

(4) "That share of the hidden treasure which the law awards to the finder or the proprietor..."¹⁹

(5) "Things acquired by occupation, such as fishing and hunting..."²⁰

(6) "[T]he fruits, pensions and interests due during the marriage" from "any annuity, whether perpetual or for life, and the right of usufruct," including "[t]he usufruct which the spouses have over the property of their children though of another marriage."²¹

(7) "Improvements, whether for utility or adornment, made on the separate property of the spouses through advancements from the partnership or through the industry of either the husband or the wife;"²²

(8) "Buildings constructed, at the expense of the partnership, during the marriage on land belonging to one of the spouses... but the value of the land shall be reimbursed to the spouse who owns the same."²³

In California, community property is not defined with as much prolixity. It is simply defined in terms of what is not included in the definition of the separate property of each spouse. In general, it embraces "all real property situated in this state and all personal property wherever situated acquired during the marriage by a married person while domiciled

¹⁷The number in parenthesis at the end of the provision corresponds to the number of the counterpart article in the Spanish Civil Code of 1889.

¹⁸PHIL. CIVIL CODE, art. 153.

¹⁹*Ibid.*, art. 154.

²⁰*Ibid.*, art. 155.

²¹*Ibid.*, art. 157.

²²*Ibid.*, art. 158.

²³*Ibid.* The land would become conjugal only when the spouse-owner or his/her heirs are reimbursed the value thereof at the liquidation of the community. Only the portion occupied by the building, not the entire lot becomes conjugal (*Padilla v. Paterno*, 93 Phil. 884 [1953]).

in this state" not otherwise defined as separate property of either spouse.²⁴ All real or personal property, wherever situated, acquired by either spouse while domiciled elsewhere which would have been community property had the spouse acquiring the property been domiciled in California at the time of its acquisition, including any property received in exchange of property so acquired, is called "quasi-community property."²⁵ The law intends to have this type of property governed in California, to the extent legally possible, by the same rules relating to actual community property.²⁶

Unless the trust otherwise expressly provides, community property transferred by the husband and wife to a trust is considered community property during the marriage, if the "trust originally or as amended prior or subsequent to such transfer (a) is revocable in whole or in part during their joint lives, (b) provides that the property after transfer to the trust shall remain community property and any withdrawal therefrom shall be their community property, (c) grants the trustee during their joint lives powers no more extensive than those possessed by a husband or wife under Sections 5126 and 5127,²⁷ and is subject to amendment or alteration during their joint lifetime upon their joint consent."²⁸

Damages for Personal Injury

In California, damages recovered from third parties for personal injury to a spouse during the marriage is community property.²⁹ Damages recovered by one spouse for personal injury cause by the other spouse is separate property.³⁰

In the Philippines, there is no express provision dealing with the classification of damages recovered by personal injury to a spouse during the marriage. In a recent case,³¹ its Supreme Court held that actual, exemplary and moral damages arising from breach of contract of air carriage are part of the conjugal property, on the ground, *inter alia*, that such damages do not come under the enumeration of exclusive property of the spouses and "(a)ll property of the marriage is presumed to belong to the conjugal partnership unless it be proved that it pertains exclusively to the husband or to the wife."³² Instead of reversing or modifying prior

²⁴CAL. CIVIL CODE, sec. 5110.

²⁵*Ibid.*, sec. 4804.

²⁶Addison v. Addison, 62 Cal. 2d 558, 43 Cal. Rptr. 97, 399 P. 2d 897 (1965).

²⁷CAL. CIVIL CODE.

²⁸CAL. CIVIL CODE, secs. 5110, 5113.5.

²⁹*Ibid.*, secs. 4800, 5126.

³⁰*Ibid.*, sec. 5109.

³¹Zulueta v. Pan American Airways, Inc., G.R. No. L-28589, February 29, 1973, 43 SCRA 397 (1973); 49 SCRA 1 (Resolution on Petition for Reconsideration).

³²PHIL. CIVIL CODE, art. 160; 49 SCRA at 20-21.

cases³³ holding that "patrimonial and moral damages" for injuries suffered by the wife are her paraphernal or separate property, the Court made a distinction based on the nature of the injury. Prior cases classifying the damages as separate property "refer to damages recovered for *physical* injuries" and were held inapplicable to the case because the plaintiff-spouses were not physically injured. But the spouses suffered physical inconvenience, wounded feelings, mental anguish, racial insult and social humiliation as a result of being arbitrarily and maliciously off-landed at Wake Island on their way to the Philippines by the intemperate captain of defendant's airline who referred to them as "monkeys." The classification of damages for personal injury into separate and community property which is made to depend on whether such injury was physically inflicted or not seems arbitrary. Inconveniences and wounded feelings are in a sense physical suffering, which at times are worse than physically inflicted pain.

Fruits From Separate Property

There is a fundamental difference in the classification of fruits, rents and profits from separate property in the two systems under consideration. The Philippines follows the traditional Spanish rule that fruits and profits of the spouses' separate property are community property.³⁴ This is the law in Idaho,³⁵ Louisiana³⁶ and Texas.³⁷ In California,³⁸ as in Arizona,³⁹ Nevada,⁴⁰ New Mexico,⁴¹ and Washington,⁴² express statutory enactments provide that fruits of separate property of a spouse shall also be the separate property of that spouse.

In California, formerly it was expressly provided by law that "the rents and profits of the separate property of either husband or wife shall be deemed common property."⁴³ This provision was held unconstitutional and void by the California Supreme Court for being contrary to the common law. Thus, the Court said:

³³Lilius & Lilius v. Manila Railroad Co., 62 Phil. 56, at 64-65 (1935); Strebel v. Figueras, 96 Phil. 321 (1954); Araneta v. Arreglado, 104 Phil. 529 (1958); Soberano v. Manila Railroad Co., G.R. No. L-19407, November 23, 1966, 18 SCRA 732 (1966).

³⁴PHIL. CIVIL CODE, art. 153(3).

³⁵IDAHO CODE ANN., sec. 32-906 (1948); Shovlain v. Shovlain, 78 Ida. 399, 305 P. 2d 737 (1956).

³⁶LA. CIVIL CODE, arts. 2386, 2402.

³⁷TEX. CONST. (1876), art. 16, sec. 15; TEX. FAMILY CODE (1969), secs. 5.01, 5.61; Fannie v. France, 120 Tex. 61, 36 S.W. 2d 152, 73 A.L.R. 1512 (1931).

³⁸CAL. CIVIL CODE, secs. 5107, 5108.

³⁹ARIZ. REV. STAT., sec. 25-213 (1956).

⁴⁰NEV. REV. STATS., sec. 123, 130 (1956).

⁴¹N. M. STAT., secs. 57-3-4, 57-3-5 (1953).

⁴²WASH. REV. CODE (1961), secs. 26.16.010, 26.16.020.

⁴³STATS., ch. 103, sec. 9, p. 254 (1850).

"We think the legislature has not the constitutional power to say that the fruits of the property of the wife shall be taken from her and given to the husband or his creditor. This term 'separate property' has a fixed meaning in the common law, and had in the minds of those who framed the Constitution, the large majority of whom were familiar with, and had lived under that system... It is not perceived that property can be in one, in fixed and separate ownership, with a right in another to control and enjoy all its benefits."⁴⁴

However, rents, issues, and profits of the separate property brought about by the efforts, management, skill or labor of either spouse are generally regarded as partly community property and partly separate property in proportion to the spouse's personal efforts and to the yield to capital investment, respectively.⁴⁵

Quasi-community property

Unlike California, the Philippines makes no distinction based on the domicile of the spouses and the location of the property at the time of its acquisition. For the purpose of this study, the distinction in California between community and quasi-community property will not make much difference, except insofar as may be affected by conflicts rules,⁴⁶ because quasi-community property, once brought within the jurisdiction of California, is governed by the same law applicable to actual community property.⁴⁷

It may be mentioned that the Philippines recognizes a system of quasi-conjugal partnership, which is entirely different from the concept of quasi-community property in California. It refers to property relations between a man and a woman with capacity to marry who live together as husband and wife, or under a void marriage, regardless of the bad faith or good faith on the part of both or either party in contracting such marriage." "[T]he property acquired by either of them or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership."⁴⁸

⁴⁴George v. Ransom, 15 C. 322.

⁴⁵10 CAL. JUR. 2d, sec. 22 at 133, citing Pereira v. Pereira, 156 Cal. 1, 103 P. 488 (1909); *In re Gold's Estate*, 170 Cal. 621, 151 P. 12 (1915); Logan v. Forster, 114 CA 2d 587, 250 P. 2d 730 (1952); Brown v. Harper, 253 P. 2d 95 (1953).

⁴⁶De Funiak, *supra*, note 8 at sec. 92, 224-231.

⁴⁷*Supra*, note 26.

⁴⁸Art. 144; 1 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE PHIL. CIVIL CODE, 360 (1953).

It is noted, however, that in California, unlike in the Philippines, community property laws are applied in a void marriage entered into in good faith just as they are in the case of a valid marriage (De Funiak, *supra*, note 8 at 100).

2. *Separate Property*

The Philippine Civil Code enumerates what constitutes the exclusive property of each spouse.⁴⁹

In California, the separate property of each spouse consists of all property owned by him or her before the marriage, "and that acquired afterwards by gift, bequest, devise or descent, with the rents, issues and profits thereof."⁵⁰ Damages for personal injury recovered by one spouse from the other is his or her separate property.⁵¹

Both systems treat as separate property of the husband or the wife all the property owned by either before the marriage and property acquired by either during marriage by lucrative or gratuitous title, such as by gift devise, legacy or inheritance, and property purchased with the proceeds of separate property.

The principal difference in the two systems relates to the treatment of the rents, issues, profits and natural increments of separate property. These are classified *sans* qualification as conjugal partnership property in the Philippines while California treats them as separate property except as to such portion which is attributable to the personal efforts of either spouse. The Philippines carries the concept too far by distinguishing the pension and the right to usufruct,⁵² which is an estate similar to dower or curtesy, from their proceeds and benefits. While the pension or usufructuary right is classified as separate property, the proceeds or benefits accruing therefrom are considered community property, practically nullifying their separate character. This result follows from the concept adopted in the Philippines that all the fruits, rents and profits from separate property are community property.

No comparable provision exists in the Philippines with respect to the classification of damages for personal injury recovered by one spouse

⁴⁹"Art. 148. The following shall be the exclusive property of each spouse:

- (1) That which is brought to the marriage as his or her own;
- (2) That which each acquires, during the marriage, by lucrative title;
- (3) That which is acquired by right of redemption or by exchange with other property belonging to only one of the spouses;
- (4) That which is purchased with exclusive money of the wife or of the husband. (1396)"

"Art. 157. The right to an annuity, whether perpetual or for life, and the right of usufruct, belonging to one of the spouses shall form a part of his or her separate property, but the fruits, pensions and interests due during the marriage shall belong to the partnership.

The usufruct which the spouses have over the property of their children, though of another marriage, shall be included in this provision. (1403a)"

⁵⁰CAL. CIVIL CODE, secs. 5107, 5108.

⁵¹*Ibid.*, sec. 5109.

⁵²"Art. 562. Usufruct gives a right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides. (467)"

from the other. From Philippine cases, it would seem that such damages are separate property of the injured spouse, especially if physical injuries were involved.⁵³

3. *Presumption of Community Character*

There is a presumption both in the Philippines and in California that property acquired after the marriage is community property.⁵⁴ There is, however, an opposite presumption in California, not found in the Philippines, that "whenever any real or personal property, or any interest therein or incumbrance thereon, is acquired prior to January 1, 1975 by married woman by an instrument in writing, the presumption is that the same is her separate property, and if so acquired by such married woman and any other person the presumption is that she takes the part acquired by her, as tenant in common, unless a different intention is expressed in the instrument."⁵⁵ In the Philippines, the presumption is that all property acquired after marriage is conjugal property "whether the acquisition be for the partnership, or for only one of the spouses."⁵⁶ It is only necessary to prove that the property in controversy was acquired during the marriage to invoke the presumption.⁵⁷ The other presumption favoring community in California concerns property acquired by husband and wife by an instrument in which they are described as husband and wife and single family residence acquired by husband and wife during the marriage as co-tenants.⁵⁸ This follows the broad presumption of community character in the Philippines.

Another important difference between the two systems lies in the nature of the presumptions. In the Philippines, the presumption is always rebuttable, in the absence of estoppel. In California, the presumptions "are conclusive in favor of any person dealing in good faith and for a valuable consideration with such married woman or her legal representatives or successors in interest, and regardless of any change in her marital status after acquisition of said property."⁵⁹

B. *Management and Control of Community Property*

There is a radical difference between the two systems with respect to the management, control and disposition of community property. The Philippines still follows the traditional Spanish rule vesting principally

⁵³*Supra*, note 33.

⁵⁴PHIL. CIVIL CODE, art. 160; CAL. CIVIL CODE, sec. 5110.

⁵⁵CAL. CIVIL CODE, sec. 5110.

⁵⁶PHIL. CIVIL CODE, art. 153(1).

⁵⁷*Ponce de Leon v. RFC*, G.R. No. L-24571, December 18, 1970, 36 SCRA 289 (1970).

⁵⁸CAL. CIVIL CODE, sec. 5110.

⁵⁹*Ibid.*

in the husband the power of management, control and disposition of community property.⁶⁰ On the other hand, following a strong trend in judicial and public opinion and a pending constitutional amendment in favor of meaningful equality for women, California provides for equal management and control of community property by husband and wife.⁶¹ Except Louisiana,⁶² all other community property states, namely: Arizona,⁶³ Idaho,⁶⁴ Nevada,⁶⁵ New Mexico,⁶⁶ Texas,⁶⁷ and Washington⁶⁸ have followed this trend.

In the Philippines, "The husband is the administrator of the conjugal partnership."⁶⁹ This provision assumes that "he is better able to handle the administration" because of his "supposed superiority in this regard."⁷⁰ "Manresa [an eminent Spanish commentator] says that in the nature of things only one of the spouses should manage the conjugal partnership. The law designates the husband as administrator because he is stronger than the wife, more energetic, more in contact with society and the external world and less tied to family cares and domestic duties. The rights of the spouses are not equal. The wife occupies a passive and secondary role. In relation to third persons, the husband and the conjugal partnership are usually regarded as one personality."⁷¹ Accordingly, the husband is empowered to bind community property for all debts and obligations incurred for the benefit of the community. Although he ordinarily "cannot alienate or encumber any real property of the conjugal partnership without the wife's consent," he can do so even without such consent for purposes of meeting the direct charges upon and obligations of the conjugal partnership.⁷² Moreover, as manager of the partnership, he may embark the partnership in an ordinary commercial enterprise for gain and even if the wife objects to his business venture the obligation contracted by the husband in connection with the venture are conjugal obligations.⁷³

On the other hand, the wife cannot bind the community property without the husband's consent, except in the instances where she is authorized by

⁶⁰PHIL. CIVIL CODE, arts. 165, 171.

⁶¹CAL. CIVIL CODE, secs. 5105, 5116.

⁶²LA. CIVIL CODE, art. 2399 *et seq.*

⁶³ARIZ. REV. STAT., sec. 25-211 *et. seq.*

⁶⁴IDAHO CODE, sec. 32-901 *et. seq.*

⁶⁵NEV. REV. STAT., sec. 123.010 *et. seq.*

⁶⁶N. M. STAT., sec. 57-4A-1.

⁶⁷TEX. FAM. CODE, sec. 5.01 *et. seq.*

⁶⁸WASH. REV. CODE, sec. 26.10.010 *et. seq.*

⁶⁹*Supra*, note 60.

⁷⁰*Peyer v. Martinez*, 88 Phil. 72 (1951).

⁷¹AQUINO, CIVIL CODE OF THE PHILIPPINES 351 (1958).

⁷²PHIL. CIVIL CODE, art. 171; see 1 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE PHIL. CIVIL CODE 420 (1953).

⁷³*Abella de Diaz v. Erlanger & Galinger, Inc.*, 59 Phil. 326 (1933).

law to bind the community,⁷⁴ such as in the cases of purchases of things necessary for the support of the family, money borrowed "for this purpose if the husband fails to deliver the proper sum,"⁷⁵ and moderate donations to charity.⁷⁶

In case of abuse of powers of management by the husband, or when he is incapable of competent management, the court, on petition of the wife, may transfer the powers of management of the conjugal partnership property to the wife.⁷⁷ As explained by the Philippine Supreme Court, "The husband's management of the conjugal estate is not a natural right like his right to do as he pleases with his private affairs. It is a mere privilege or preference given him by the law on the assumption that he is better able to handle the administration. It results that when his supposed superiority over the woman in this regard, or his ability to manage the conjugal partnership disappears, the *raison d'etre* of the privilege vanishes, and it is only just and proper that his partner takes over the control."⁷⁸

The court may likewise decree transfer of management of community property to the wife: "(1) When she becomes the guardian of her husband; (2) When she asks for the declaration of his absence; (3) In case of civil interdiction of the husband. The courts may also confer the administration to the wife with such limitations as they may deem advisable, if the husband should become a fugitive from justice, or be in hiding as a defendant in a criminal case, or if, being absolutely unable to administer, he should have failed to provide for administration."⁷⁹ The court may likewise transfer to the wife the management of community property "[i]f the husband has abandoned the wife without just cause for at least one year",⁸⁰ and in case of insolvency of the husband.⁸¹ Even without court intervention, "the wife may, by express authority of the husband embodied in a public instrument, administer the conjugal partnership property."⁸² When the powers of administration of community property have been transferred to the wife, she possesses the same powers and responsibility in the management, control and disposition of community property exercisable by the husband if he is the administrator of the community property, subject to the limitations that the courts may impose in certain instances.⁸³

⁷⁴PHIL. CIVIL CODE, arts. 161(1), 172.

⁷⁵PHIL. CIVIL CODE, art. 115.

⁷⁶*Ibid.*, art. 174.

⁷⁷*Ibid.*, art. 167.

⁷⁸*Supra*, note 70.

⁷⁹PHIL. CIVIL CODE, art. 196.

⁸⁰*Ibid.*, art. 178(3).

⁸¹*Ibid.*, art. 2238.

⁸²PHIL. CIVIL CODE, art. 168.

⁸³*Supra*, note 79.

Section 5125 of the California Civil Code provides that, except as to community property under a trust, or unless either or both of the spouses are incompetent, "either spouse has the management and control of community personal property . . . with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse."⁸⁴ However, either spouse "may not make a gift of community personal property or dispose of community personal property without a valuable consideration."⁸⁵ Neither may a spouse "sell, convey or encumber the furniture, furnishings or fittings of the home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse."⁸⁶ Similarly, "either spouse has the management and control of the community real property" with the limitation that both spouses must join in any instrument by which community real property is transferred or encumbered.⁸⁷ There is a significant exception to the general policy of equal management and control of community property in California. "A spouse who is operating or managing a business or an interest in a business which is community personal property has the sole management and control of the business or interest."⁸⁸ Hence, a married sole proprietor or general partner may operate or manage the community personal property business or an interest therein free from the intervention of the other spouse.⁸⁹

What is the nature of equal management and control of community property in California? Does it require a unanimous or joint consent of both husband and wife to bind community property? From the language of the law, it is reasonable to conclude that "either spouse" acting alone can bind the community property except in the case of community realty which requires joint act of the spouses.

In the event of conflict of decisions between husband and wife regarding management or disposition of community property under their equal management and control, how will the conflict be resolved to preserve harmony within the family? The answer is not statutorily provided, and the problem may have to be judicially resolved.

The only similarity between the Philippines and California in the management and control of community property is the requirement of joint participation of husband and wife in the alienation of community

⁸⁴CAL. CIVIL CODE, sec. 5125, par. (a).

⁸⁵*Ibid.*, par. (b).

⁸⁶*Ibid.*, par. (c).

⁸⁷*Ibid.*, sec. 5127.

⁸⁸*Ibid.*, sec. 5215, par. (d).

⁸⁹See Pedlar, *The Implication of the New Community Property Laws for Creditors' Remedies and Bankruptcy*, note 81 thereof, 66 CAL. L. REV. 1510, 1622 (1975).

realty. However, in the Philippines the husband may dispose of or bind the conjugal partnership property, including real property, without the other spouse's consent, to discharge obligations contracted for the benefit of the community.⁹⁰ In California, husband and wife must join in any instrument by which community realty is transferred or incumbered for whatever purpose. Unlike in the Philippines, community debts or obligations are not recognized in California.⁹¹ Either spouse may dispose of community property, except realty, for any purpose "with like absolute power of disposition, as the spouse has of the separate property of the spouse,"⁹² and "[t]he property of the community is liable for the contracts of either spouse,"⁹³ without regard to whether such contracts were made for the benefit of the community or not.

C. Nature of the interest of each Spouse in the Community Property

In the Philippines, "[a]ll property of the conjugal partnership of gains is owned in common by the husband and wife."⁹⁴ The spouses have equal rights to the conjugal property except with respect to the power of management and qualified disposition which the law vests in the husband.⁹⁵ "Each one has a right to one-half of these properties and each one occupies the same position as to its ownership."⁹⁶ However, such right prior to dissolution and liquidation of the community, "is an interest inchoate, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into title until there appears that there are assets in the community as a result of the liquidation and settlement."⁹⁷

The husband or the wife may dispose by will of his or her undivided one-half interest in the conjugal partnership, subject to the outcome of dissolution and liquidation.⁹⁸ The will may dispose only of whatever may

⁹⁰*Supra*, note 72.

⁹¹*Street v. Bertolome*, 193 Cal. 751, 221 P. 912, 913 (1923); *Grolemund v. Cafferata*, 17 Cal. 2d 679, 111 P. 2d 641 (1941). Although the distinction has been adopted in regard to tort liabilities (CAL. CIVIL CODE, sec. 5122, par. [b]), no similar distinction is made with respect to contractual debts (*Ibid.*, sec. 5116).

⁹²CAL. CIVIL CODE, sec. 5125(b).

⁹³*Ibid.*, sec. 5116.

⁹⁴PHIL. CIVIL CODE, art. 143.

⁹⁵*Gibbs v. Government of the Philippine Islands*, 59 Phil. 293 (1933).

⁹⁶*Reynoso v. Tolentino*, 68 Phil. 213, 215 (1939).

⁹⁷*Nable Jose v. Nable Jose*, 41 Phil. 713 (1916); *Manuel v. Losano*, 41 Phil. 855 (1918); *Madrigal v. Rafferty*, 38 Phil. 414 (1913); *Obliosca v. Obliosca*, CA-G.R. No. 2410-R, June 27, 1949, 47 O.G. 4267 (August, 1951); *Quintos de Ansaldo & Ansaldo v. Sheriff of Manila*, 64 Phil. 115 (1937).

⁹⁸PHIL. CIVIL CODE, art. 170.

pertain to the testator as his or her share in the net assets of the partnership; it cannot bequeath property of the conjugal partnership.⁹⁹

In California, "[t]he respective interests of the husband and wife in community property during the continuance of the marriage relation are present, existing and equal interests."¹⁰⁰ Correlatively, "[t]he property of the community is liable for the contracts of each spouse."¹⁰¹

D. *Management and Control of Separate Property*

Both in the Philippines and in California, separate property, real and personal, is exclusively under the sole management, control and disposition of its owner.¹⁰² In the Philippines, although "the fruits of the paraphernal property form part of the assets of the conjugal partnership", such fruits are under the management of the wife until she delivers them to the husband. Since the fruits answer for the necessary and indispensable expenses incurred in the administration and preservation of the paraphernal property, the husband cannot claim them for the conjugal partnership until after there has been a liquidation. It is only the net income that the wife is obligated to deliver to him.¹⁰³

E. *Right of Wife to exercise Profession or engage in business*

The Philippine Civil Code provides that a married woman who is twenty one years or over is qualified to perform all acts of civil life,

⁹⁹"x x x The will, insofar as the testator alone made therein a partition of the conjugal properties by assigning to himself those which he liked and to the wife those which she did not like, is illegal. The conjugal property is one between husband and wife wherein each one, except as to the administration thereof, has equal rights. Each one has a right to one-half of these properties and each one occupies the same position as to its ownership. It is an encroachment upon these rights of each of the spouses if one of them could designate which and how much of these properties should correspond to him. Any of the spouses is entitled to be heard in the partition of the conjugal properties in order to defend his or her equal share." (Reynoso v. Tolentino, *supra*, note 96).

¹⁰⁰CAL. CIVIL CODE, sec. 5105.

¹⁰¹*Ibid.*, sec. 5116.

¹⁰²*Ibid.*, secs. 5107, 5108; PHIL. CIVIL CODE, art. 140.

¹⁰³Peoples Bank & Trust Co. v. Register of Deeds of Mla., 60 Phil. 167 (1934); Agapito v. Molo, 50 Phil. 779 (1927).

except in cases specified by law.¹⁰⁴ She may exercise any profession or occupation or engage in business without the previous consent of her husband. However, the husband may object, provided that (a) his income is sufficient for the family according to its social standing and (b) his opposition is founded on serious and valid grounds. In case of disagreement, the parents and grandparents as well as the family council,¹⁰⁵ if any, shall be consulted, and if the matter still remains unresolved, it may be taken to court which will decide whatever is proper and in the best interest of the family.¹⁰⁶

In California, the right of the wife to engage in business herself is implicit in the provision empowering her, as much as her husband, to enter into any transaction respecting property which she might if unmarried.¹⁰⁷ This right is expressly recognized under the new amendment which provides that either spouse who operates and manages a business which is community personal property will have the exclusive right of management and control of the business.¹⁰⁸

Under the Philippine law, regardless of whether the capital invested is conjugal or separate property, the income from the wife's business forms part of the conjugal property subject to the general power of management and control of the husband.¹⁰⁹ Thus, the latter may legally interfere with her business. On the other hand, in California, the wife enjoys the exclusive control, free from the intervention of the husband, of the busi-

¹⁰⁴PHIL. CIVIL CODE, art. 39, 2nd par.

The exceptions do not substantially curtail the wife's capacity to act, such as the rule on joinder of husband in suits by or against the wife (Art. 113) and the prohibitions against acceptance of gift from strangers (Art. 114) and renunciation of inheritance (Art. 200), without the consent of the other spouse. She cannot give donation *inter vivos* to the husband during the marriage except moderate gifts on the occasion of any family rejoicing (Art. 133), and she cannot sell property to the husband during the existence of the partnership even if there is valuable consideration and no creditor is defrauded (Art. 1490). The reason for these prohibitions against such donations and sale, which equally apply to the husband, is to prevent the exercise of undue influence of one spouse over the other. (4 PADILLA, CIVIL LAW, CIVIL CODE ANNOTATED, 216-217 (1974), citing 9 MANRESA, 274 (3rd ed.).)

Unlike in the Philippines, husband and wife in California may sell property to each other subject to the general rules which control the actions of persons occupying confidential relations with each other. Moreover, they are not prohibited from giving gifts to each other. (CAL. CIVIL CODE, sec. 5103).

¹⁰⁵Art. 252. The Court of First Instance may, upon application of any member of the family, a relative, or a friend, appoint a family council, whose duty it shall be to advise the court, the spouses, the parents, guardians and the family on important family questions.

Art. 253. The family council shall be composed of five members, who shall be relatives of the parties concerned. But the court may appoint one or two friends of the family.

Art. 254. The family council shall elect its chairman, and shall meet at the call of the latter or upon order of the court." (PHIL. CIVIL CODE).

¹⁰⁶PHIL. CIVIL CODE, art. 117.

¹⁰⁷CAL. CIVIL CODE, sec. 5103.

¹⁰⁸*Ibid.*, sec. 5125(d).

¹⁰⁹PHIL. CIVIL CODE, art. 153(2), (3).

ness which is personal community property that she operates and manages. Moreover, if the wife carries out for business under the Sole Trader Act of 1852, the profits belong exclusively to her and are exempt from the obligations of her husband.¹¹⁰ To enjoy the rights under the Sole Trader's Act,¹¹¹ a married woman in California may file an application for a judgment to become a sole trader from a superior court of the county in which she has resided for six months preceding the application. Once her application is granted, upon compliance with the formal requirements, she "is entitled to carry on the business specified, in her own name. All property, revenues, moneys, and credits invested by her and the profits thereof belong exclusively to her. These are not liable for any debts of her husband. She has all the privileges of, and is liable to all legal processes provided for debtors and creditors. She may sue and be sued alone, without being joined with her husband."¹¹²

III. RIGHTS OF CREDITORS

A. Creditors of the Husband

1. Pre-marital Debts

In the Philippines, debts contracted by the husband before the marriage are chargeable against his separate property. If he has no separate property, or it is insufficient, his pre-marital debts may be enforced against the partnership assets after the community obligations and responsibilities have been covered. Upon liquidation of the partnership, the amount paid for the husband's pre-marital debts is charged to his net share in the partnership assets.¹¹³ In California, the pre-marital debts of the husband are enforceable against his separate property and the community property except the earnings of the wife.¹¹⁴

¹¹⁰CAL. CIVIL CODE, sec. 1819.

The Sole Trader Act of 1852 insofar as it gives the wife's earnings exclusively to the wife and exempts them from the obligation of her husband is open to challenge under the recent legislative changes in the California community property laws. It is inconsistent with the policy of equal interest in, and equal management of, community property and the doctrine, underlying any community property system, that the product of personal efforts of the spouses is community property.

¹¹¹*Ibid.*, sec. 1811, *et. seq.*

¹¹²*Supra*, note 110.

¹¹³PHIL. CIVIL CODE, art. 163.

¹¹⁴CAL. CIVIL CODE, secs. 5120, 5122.

2. *Post-marital debts*

The Philippines, like Washington,¹¹⁵ and Arizona,¹¹⁶ distinguishes between personal debts and community debts and treats them differently. Community debts are those contracted by the husband (or by the wife in the cases where she may legally bind the partnership) for the benefit of the conjugal partnership. All other debts or obligations contracted by the husband or the wife are his or her personal liabilities. The distinction is very important because before liquidation of the conjugal partnership, personal debts or liabilities are enforceable only against the exclusive property of the debtor,¹¹⁷ while community debts are enforceable against community property as well.¹¹⁸

The husband or his creditors have the burden of proof to show that the obligations were contracted for the benefit of the conjugal partnership to hold the conjugal assets liable therefor. The crucial question then is: What, precisely, is the nature and extent of such proof? Stated differently, what is the benefit contemplated by law necessary to bring the obligations contracted by the husband under the category of community debts for which the community assets are answerable?¹¹⁹

The question came squarely before the Supreme Court of the Philippines in *Luzon Surety Co., Inc. v. De Garcia*.¹²⁰ The issue involved was "whether or not a conjugal partnership, in the absence of any showing of benefits received, could be held liable on an indemnity agreement executed by the husband to accommodate a third party in favor of a

¹¹⁵WASH. REV. CODE, secs. 26.20.010 & 26.16.020 (1956); Jones, Rosquit, Killen Co. v. Nelson, 98 Wash. 539, 167 P. 1130 (1917); Beyers v. Moore, 45 Wash. 2d 68, 272 P. 2d 626 (1954); Rizzard & Getty v. Damson, 63 Wash. 2d 526, 387 P. 2d 964 (1964).

¹¹⁶ARIZ. REV. STAT., sec. 25-215 (1956); Mortensen v. Knight, 81 Ariz. 325, at 329, 305 P. 2d 463, at 466 (1956); Donato v. Fishburn, 90 Ariz. 210, 367 P. 2d 245 (1961); Rodgers v. Bryan, 82 Ariz. 143, 309 P. 2d 773 (1957); Garret v. Shannon, 13 Ariz. App. 332, 476 P. 2d 538 (1970).

¹¹⁷Quintos de Ansaldo & Ansaldo v. Sheriff of Manila, *supra*, note 97.

¹¹⁸PHIL. CIVIL CODE, art. 138, 2nd par.

¹¹⁹The concept of community debts is one of the most important changes introduced in the Philippine Civil Code. Under the Spanish Civil Code, in relations to third persons, the husband and the conjugal partnership were considered as identical; hence, all obligations of the husband were binding on the partnership, whether they were contracted for its benefit or not, except that the fruits of the paraphernal property, though forming part of the conjugal assets, could not be made to answer for the obligations of the husband "unless it be proved that they redounded to the benefit of the family." (Art. 1386, Spanish Civil Code). The Code Commission considered the law "unjust to the wife" and revised it in such a way that "only those obligations contracted by the husband for the benefit of the family may be enforced against the conjugal partnership." (*Supra*, note 5, at 11).

Old cases dealing with characterization of conjugal debts involved in the provision of the Spanish Civil Code making the wife's earnings liable only for the husband's debts which redounded to the benefit of the family. (Javier v. Osmeña, 34 Phil. 336 [1916]; Laperal Jr. v. Katigbak, 104 Phil. 999 [1958]).

¹²⁰G.R. No. L-25659, October 31, 1969, 30 SCRA 111 (1969).

surety company."¹²¹ The court rejected as "too remote and fanciful" the alleged benefit to the conjugal partnership of an indemnity agreement executed by a husband, who, "by acting as guarantor and making good his guaranty, [allegedly] acquires the capacity of being trusted, adds to his reputation and esteem, enhances his standing as a citizen in the community in which he lives, and earns the confidence of the business community. He can thus secure money with which to carry on the purposes of their conjugal partnership."¹²² The majority opinion held that a showing "of some advantage which clearly accrued to the welfare of the spouses" is necessary.¹²³ "[A] debt contracted by the husband to bind a conjugal partnership must redound to its benefit."¹²⁴ Mr. Justice J.B.L. Reyes, concurring in the result reach by the Court, stated:

"[I]n my opinion, the words 'all debts and obligations contracted by the husband for the benefit of the conjugal partnership' used in Article 161 of the of the Philippines in describing the charges and obligations for which the conjugal partnership is liable, do not require that actual profit or benefit must accrue to the conjugal partnership from the husband's transactions; but that it suffices that the transaction should be one that *normally* would produce such benefit for the partnership. This is the *ratio* behind our ruling in *Javier vs. Osmeña*, 34 Phil. 336, that obligations incurred by the husband in the practice of his profession are collectible from the conjugal partnership."¹²⁵

What is the prevailing rule for determining the community character of an obligation? Does it mean that in all cases a showing of "some advantage which clearly accrued to the welfare of the spouses" is necessary to bind the partnership, as the broad language of the majority opinion seems to suggest? The view expressed in the concurring opinion of Mr. Justice J.B.L. Reyes to the effect that transactions that would *normally* produce benefit to the partnership, such as the practice of a profession, are sufficient to bind the conjugal assets even without showing of actual profit or benefit clearly accruing to the partnership is still good case law. The majority opinion, in spite of its sweeping language does not actually divert from, but in fact gives full accord to, the view stated in the concurring opinion because it quoted with approval the following portion of the affirmed decision of the Court of Appeals:

"It is true that the husband is the administrator of the conjugal property pursuant to the provisions of Art. 163 of the new Civil Code. However, as such administrator the only obligations incurred by the husband that are

¹²¹*Ibid.*, at 113.

¹²²*Ibid.*, at 116.

¹²³*Ibid.*

¹²⁴*Ibid.*, at 117.

¹²⁵*Ibid.*, at 118.

chargeable against the conjugal property are those incurred in the legitimate pursuit of his career, profession or business with the honest belief that he is doing right for the benefit of the family. This is not true in the case at bar for we believe that the husband in acting as guarantor or surety for another in an indemnity agreement as that involved in this case did not act for the benefit of the conjugal partnership. Such inference is more emphatic in this case, when no proof is presented that Vicente Garcia in acting as surety or guarantor received consideration therefor, which may redound to the benefit of the conjugal partnership."¹²⁶

The broad and sweeping statement of the majority opinion requiring "some advantage which clearly accrued to the welfare of the spouses" must be narrowly confined within the context of the particular factual situation involved in the case, i.e., only to gratuitous surety contract, or other transactions of the husband, which by their nature would not normally produce benefit to the family. For even in personal obligations of the husband, the conjugal partnership will be liable to the extent of the benefits that it has derived therefrom, if any, under the equitable principle that no one shall be unjustly benefited at the expense of another.¹²⁷

If personal debts of the husband, such as gambling debts¹²⁸ and obligation under a gratuitous indemnity agreement, are enforceable only against his separate property, can the creditors not attach or levy on his one-half (½) interest in the community property? This question was resolved in the negative by the Supreme Court of the Philippines in *Quintos de Ansaldo and Ansaldo v. Sheriff of Manila*.¹²⁹ A surety company obtained a judgment against Angel A. Ansaldo for his obligation under an indemnity agreement and caused the Sheriff of the City of Manila to levy on the joint savings and current accounts of Ansaldo and his wife with the Bank of the Philippine Islands. The spouses filed a third party claim asserting that the money on which the sheriff levied execution was the property of the conjugal partnership existing between them and not liable for the payment of personal obligations of the husband. The creditor claimed that as the money was property of the conjugal partnership, at least one-half thereof was properly levied on execution, as the share of the husband. Brushing aside this contention as "without merit", the high Court held:

"x x x The right of the husband to one-half of the property of the conjugal partnership does not vest until the dissolution of the marriage, when the conjugal partnership is also dissolved."¹³⁰

¹²⁶*Ibid.*

¹²⁷PHIL. CIVIL CODE, arts. 21, 22; see also 1 TOLENTINO, *op. cit.*, *supra*, note 48 at 71.

¹²⁸PHIL. CIVIL CODE, art. 164.

¹²⁹*Supra*, note 97.

¹³⁰*Ibid.*, at 118.

For the first time, this case applied equally to the husband the doctrine established in prior cases that the interest of the wife in the conjugal partnership is merely inchoate and expectant before the liquidation of the partnership.¹³¹ Recently, in *Lacson v. Diaz*,¹³² the Supreme Court sustained the citation of "the ruling of this Court that the right of the husband to one-half of the assets of the conjugal partnership does not vest until the dissolution of the marriage (*Ansaldo v. Sheriff of Manila*, 64 Phil. 115)" as one of the grounds in support of the appellant's proposition that "since his salaries form part of the conjugal assets, the same cannot be garnished to satisfy his personal obligations."¹³³

On the other hand, California, like Texas,¹³⁴ Idaho,¹³⁵ Nevada,¹³⁶ New Mexico¹³⁷ and Louisiana,¹³⁸ does not recognize the doctrine of community debts. Under Section 5116 of the California Civil Code, "The property of the community is liable for the contracts of either spouse which are made after marriage..."

Before the recent legislative changes granting the wife equal management and control of community property, the California Supreme Court had handed down the following ruling:

"But in California there is no like concept of 'community debts,' though occasionally the courts in this state refer to such, overlooking the fact that the phrase is not appropriate to the California system. A complete reading of all our code sections on community property clearly demonstrates that our community system is based on the principle that all debts which are not specifically made the obligation of the wife are grouped together as the obligations of the husband and the community property..."¹³⁹

What is the impact of the recent legislative changes on the above ruling of the Court? Section 5116 of the California Civil Code, as amended, does not indicate any intent to distinguish between separate debts and community debts, and it appears that its effect is limited to making the community property equally liable for the contracts of the wife. It seems

¹³¹*Supra*, note 97.

¹³²G.R. No. L-1936, May 31, 1965, 14 SCRA 183 (1965).

¹³³*Ibid.*, at 185.

¹³⁴TEX. FAMILY CODE, secs. 5.61 & 5.62; *Lovejoy v. Cockerel*, 63 S.W. 2d 1009 (Comm. App. 1933); *Alamo Candy Co. v. Zacharias*, 408 S.W. 2d 517 (Civ. App. 1966).

¹³⁵IDAHO CODE, sec. 32-9; *Holt v. Empey*, 32 Idaho 106, 178 P. 703 (1919); *Gustin v. Byam*, 41 Idaho 538, 240 P. 600 (1925).

¹³⁶NEV. REV. STATS., sec. 123.230; *Randono v. Turk*, 86 NEV. 123, 466 P. 2d 218 (1970).

¹³⁷N. M. STAT., sec. 56-3-6 (1953); *Malcolm v. Malcolm*, 75 N.M. 566, 408 P. 2d 143 (1967); *Denton v. Fireman's Ins. Fund*, 357 F. 2d 747 (10 Cir. 1966).

¹³⁸LA. CIVIL CODE, art. 2304; *Washington v. Palmer*, 213 La. 79, 28 So. 2d 509 (1946), 34 So. 2d 382 (1948); *Jefferson Lake Sulphur Co. v. Walet*, 104 F. Supp. 20 (1952), affirmed, 202 F. 2d 433, cert. den. 346 U.S. 820, 74 S.Ct. 35.

¹³⁹*Grolemund v. Cafferata*, *supra*, note 91.

that "community debts" and "separate debts" remain unrecognized because community property is indiscriminately liable for all post-marital contracts of either spouse, regardless of whether they were intended for the benefit of the community or for his or her exclusive personal benefit.

It is significant to note that under the recent legislative changes, a distinction is made with respect to tort liabilities. Torts committed while performing an activity for the benefit of the marital community must be satisfied first from the community property and then from the separate property of the spouse who committed the tort. In torts committed under other circumstances, the separate property of the tort-feasor must first be exhausted before the community property becomes liable.¹⁴⁰ There appears no rational basis for a difference in treatment between torts and contracts in this regard. On the contrary, the principle seems more appropriate with regard to contractual liabilities because it will be far easier to determine whether a contract confers benefit upon the community or upon the contracting spouse separately since contracts generally result from a more planned and deliberate transaction. Moreover, it is only fair and equitable that whichever estate was benefited should be held principally liable.¹⁴¹

The foregoing argument seems convincing and meritorious, but whether it will be adopted by the courts cannot be reliably predicted. As early as 1896, the State Supreme Court referred to California's community property system as "a creature of the statute."¹⁴² Common-law courts are reluctant to use statutes as bases of reasoning by analogy. As stated by Chief Justice Harlan Stone: "They have long recognized the supremacy of statutes over judge-made law, but it has been the supremacy of a command to be obeyed according to its letter, to be treated as otherwise of little consequence."¹⁴³ In the light of Section 2116 of the California Civil Code, which renders the community property liable for post-marital contracts of either spouse in general, without the benefit-based distinction made applicable to tort liabilities, it is not unlikely for the California court to continue the long established view that in California, the concepts of "community debts" and "separate debts" are not recognized because contractual debts are either those of the husband or of the wife for which the community property is liable, as the language of Section 2116 literally imports. Under a established rule of construction, where the applicable law does not distinguish, distinctions should not be made.¹⁴⁴

¹⁴⁰CAL. CIVIL CODE, sec. 5122.

¹⁴¹*Supra*, note 89 at 29.

¹⁴²*In re Burdick's Estate*, 112 Cal. 387, at 393, 44 P. 734, at 735 (1896).

¹⁴³Stone, *The Common Law in the United States*, 50 HARV. L. REV. 4, 12 (1936).

¹⁴⁴*Robles v. Zambales Chromite Mining Co.*, 104 Phil. 688 (1958).

B. Creditors of the Wife

1. Pre-marital debts

Pre-marital debts of the wife under the Philippine law are governed by exactly the same rule applicable to the pre-marital debts of the husband. Such debts are enforceable principally against her separate property and subsidiarily against the conjugal assets after the obligations of the community have been covered. Any amount advanced by the partnership for the payment of her pre-marital debts is then chargeable to her net share in the community property upon liquidation.¹⁴⁵

In California, the pre-marital debts of the wife under the new law is now governed by the same rule applicable to the husband. They are enforceable against her separate property and community property except the earning of the husband.¹⁴⁶

2. Post-marital debts

In the Philippines, only the separate property of the wife is generally liable for her contractual obligations. Community property is not liable for her contracts without the husband's consent except in the few instances where the law authorizes her to bind the community, such as when she borrows money for necessary support of the family for which the husband fails to provide adequately¹⁴⁷ or when she gives moderate donations to charity.¹⁴⁸

In *Garcia v. Cruz*,¹⁴⁹ the Supreme Court of the Philippines quoted with approval the ruling of the Court of Appeals that the husband's failure to place his wife under guardianship despite his awareness of her "habit of incurring obligations without his consent... constitute[s] negligence on his part for which he should be held liable if his wife enters into contract with unsuspecting victims."¹⁵⁰ It seems that the husband was deemed to have given his consent by negligence even when the spouses were living separately albeit without the benefit of judicial decree for legal separation. It is believed that it is not necessary for the court to establish tacit consent of the husband in light of the finding that the obligations were incurred for the support of the family, for which the wife, without the husband's consent, can bind the conjugal partnership.¹⁵¹ The Court noted:

¹⁴⁵*Supra*, note 113.

¹⁴⁶CAL. CIVIL CODE, sec. 5120.

¹⁴⁷*Supra*, notes 74 & 75.

¹⁴⁸*Supra*, note 76.

¹⁴⁹G.R. No. L-25790, September 27, 1968, 25 SCRA 224 (1968).

¹⁵⁰*Ibid.*, at 228.

¹⁵¹PHIL. CIVIL CODE, art. 115.

"x x x (T)he award should be understood as a debt of the conjugal partnership of the defendant spouses. *Support of the family being one of the obligations of the community* (Civil Code of the Philippines, Article 161, paragraph No. 5) and the separation *de facto* of the consorts being without effect upon the partnership (Art. 178, Civil Code)."¹⁵²

Litigation Expenses

Litigation expenses and attorney's fees incurred by the wife in litigations between her and husband are chargeable to the community property, unless her claim or defense is unjust or without merit, on the ground that such expenses are as necessary for the existence of the wife as the expenses for her support. For example, in *Seva v. Nolan*¹⁵³ the Supreme Court of the Philippines said:

"x x x This court is of the opinion that the defendant's defense of herself in a criminal action for the alleged crime of adultery brought by her husband against her, was as necessary as a claim for support, inasmuch as the right to a good name and reputation and the right to personal liberty are, at least, as vital and deserving of protection as the right to existence which is, in the last analysis, the meaning of the right to support."

Obligations Arising From Business, Profession or Occupation

The wife has the right to exercise a profession or occupation or engage in business without the previous consent of her husband.¹⁵⁴ When the wife does so, the community property is liable for her obligations incurred in the pursuit of her business, profession or occupation.¹⁵⁵ It is only fair that the community be made liable for the obligation incurred by the wife in connection with her business or profession since the community is entitled to all the profits accruing therefrom.

Management By the Wife

When the management of the community property has been transferred to the wife under any of the instances specified by law,¹⁵⁶ she

¹⁵²25 SCRA 228.

¹⁵³64 Phil. 364, at 381 (1937).

¹⁵⁴*Supra*, note 106.

¹⁵⁵*Guerrero v. Yuson*, 70 Phil. 385 (1940), held that when the wife engaged in commerce with the consent of the husband and thereby incurred liability, the conjugal assets are answerable therefor. This holding was based on Art. 10 of the Spanish Code of Commerce which provides that "should the wife engage in commerce all her paraphernal property, and the property rights which both spouses may have in the conjugal community or partnership, shall be solidarily liable for the result of her commercial activity." It is believed that the same holding would apply even if the husband did not give consent to the wife's engaging in commerce in view of Art. 117 of the Philippine Civil Code granting her the right to exercise a profession or an occupation or to engage in business even without the prior consent of her husband.

¹⁵⁶*Supra*, notes 74 & 82.

can bind the conjugal assets subject to the same powers and responsibilities that the husband has as administrator of the partnership.

On the other hand, in California, in keeping with the principle of equality between husband and wife in the management and control of community property, such property is liable for all post-marital contracts of the wife.¹⁵⁷ However, she cannot bind community realty and business constituting personal community property which is under the exclusive operation and management of the husband.¹⁵⁸

C. Creditors of the Community

1. Contractual Creditors

The Philippine Civil Code specifically spells out the liabilities of the conjugal partnership as follows:

"Art. 161. The conjugal partnership shall be liable for:

- (1) All debts and obligations contracted by the husband for the benefit of the conjugal partnership, and those contracted by the wife, also for the same purpose, in the cases where she may legally bind the partnership;
- (2) Arrears or income due, during the marriage, from obligations which constitute a charge upon property of either spouse or of the partnership;
- (3) Minor repairs or for mere preservation made during the marriage upon the separate property of either the husband or the wife; major repairs shall not be charged to the partnership;
- (4) Major or minor repairs upon the conjugal partnership property;
- (5) The maintenance of the family and the education of the children of both husband and wife, and of legitimate children of one of the spouses;
- (6) Expenses to permit the spouses to complete a professional, vocational or other course.

These are primary obligations. The conjugal partnership assets must cover those obligations first before such residual liabilities as pre-marital contractual debts or post-marital liabilities for fines and indemnities for crimes of either spouse.¹⁵⁹

Donations to Children

The value of what is donated or promised to the common children by the husband or by the spouses jointly, "only for securing their future or the finishing of a career" also constitutes a liability of the conjugal partnership, unless it is stipulated that it is to be borne by the separate property of either spouse.¹⁶⁰

¹⁵⁷*Supra*, note 101.

¹⁵⁸*Supra*, notes 87 & 88.

¹⁵⁹*Supra*, note 113.

¹⁶⁰PHIL. CIVIL CODE, art. 162.

Support

Support is very broadly defined to include "everything that is indispensable for sustenance, dwelling, clothing, and medical attendance according to the social position of the family" as well as "the education of the person entitled to be supported until he completes his education or training for some profession, trade or vocation, even beyond the age of majority."¹⁶¹ Conjugal obligations for the support of the family "shall be met first from the conjugal property, then from the husband's capital, and lastly from the wife's paraphernal property."¹⁶² The paraphernal property of the wife "shall also be subject to the daily expenses of the family, if the property of the conjugal partnership and the husband's capital are not sufficient therefor."¹⁶³

Liability of the Spouses for Community Debts

In *National Bank v. Quintos and Ansaldo*,¹⁶⁴ decided long before the Philippine Civil Code of 1950 became effective, the Supreme Court held that in the event of insolvency of the conjugal partnership, the spouses are jointly liable for conjugal obligations with their own separate property. It is believed that this ruling has been modified by Articles 111 and 138 cited above, both of which did not exist in the Spanish Civil Code which applied when the case was decided. In the absence of any provision specifically dealing with the liability of the spouses for conjugal obligations in case of insufficiency of conjugal assets, the Court applied suppletorily the rule on contract of partnership that the partners are jointly liable for partnership debts. Reconciling Articles 111 and 138 of the present Code with the case, it may be stated that for conjugal obligations for support, the conjugal assets, the capital of the husband and the paraphernal property of the wife are liable in that order; for conjugal obligations other than for support, such as repairs necessary for the preservation and maintenance of the separate property of either spouse¹⁶⁵ or loans for speculative investments for the benefit of the partnership,¹⁶⁶ the conjugal assets are answerable, and in default thereof, the spouses are jointly liable with their separate assets. *National Bank v. Quintos* is still good case law except insofar as Articles 111 and 138 have modified the rule with respect to obligation for support. Moreover, the Philippine Civil Code expressly provides that its Chapter on "Partnership" has suppletory application. Under present law, the partners are jointly

¹⁶¹*Ibid.*, art. 290.

¹⁶²*Ibid.*, art. 111.

¹⁶³*Ibid.*

¹⁶⁴46 Phil. 370 (1924).

¹⁶⁵PHIL. CIVIL CODE, art. 161(3).

¹⁶⁶*Ibid.*, art. 161 (1).

liable "with all their properties after all the partnership assets have been exhausted."¹⁶⁷

It is pertinent to note that under Articles 111 and 138 the wife's property is last in the order of liability for conjugal debts. In the liquidation of the conjugal partnership, the paraphernal property advanced by wife to the partnership is returned first, before the debts, charges and obligations of the partnership are paid; only thereafter may the husband's credits advanced to the partnership be liquidated and paid.¹⁶⁸ This order of priority, along with Articles 111 and 138, underscores the responsibilities of the husband as head of the family and administrator of the conjugal partnership.

California law makes no distinction between "community debts" and "separate debts." Post-marital contractual debts are either debts of the husband or of the wife, and the community property is indiscriminately liable for post-marital contracts of either spouse.¹⁶⁹ Generally, the separate property of a spouse is liable only for his or her own contracts; it is not liable for the contracts of the other spouse even if they are contracted for the benefit of the family. The only exception relates to debts contracted by either spouse for the necessities of life for which the separate property of the spouses are both liable.¹⁷⁰

2. *For Torts*

In the Philippines, "fines and pecuniary indemnities" arising from crimes or torts¹⁷¹ committed by either spouse are by express provision, not chargeable against the conjugal partnership.¹⁷² In *Reyes v. Santos*,¹⁷³ the wife hit plaintiff, another woman, with a handbag in the presence of the former's husband. The suit for damages filed jointly against the wife and her husband was ordered dismissed with respect to the husband on the ground that he was not liable for the acts of his wife. His joinder in the suit was not necessary because the conjugal property or income would not be liable for the payment of damages even if the court should find the defendant wife liable.

If the separate property of the tort-feasor spouse is not sufficient to pay for the fines and pecuniary damages, as in the case of pre-marital debts, the conjugal partnership may be made to advance payment thereof,

¹⁶⁷*Ibid.*, Art 1816.

¹⁶⁸*Ibid.*, arts. 181 & 182.

¹⁶⁹*Supra*, note 91.

¹⁷⁰CAL. CIVIL CODE, sec. 5121.

¹⁷¹1 CAPISTRANO, CIVIL CODE OF THE PHILIPPINES WITH COMMENTS AND ANNOTATIONS 177 (1950).

¹⁷²*Supra*, note 113.

¹⁷³G.R. No. L-9398, September 28, 1956, 99 Phil. 1013 (1956).

after the charges and responsibilities of the conjugal partnership have first been provided for. The amount so advanced is then deductible from the net share of the tort-feasor at the time of the liquidation of the partnership.¹⁷⁴ To enforce such residual liability against the conjugal assets, the claimants have the burden of proof to show that the separate or exclusive property of the liable spouse has been exhausted and that all the aforementioned primary responsibilities have been sufficiently covered. However, the courts are not exacting in the appraisal of evidence to prevent the husband or the wife as the case may be, from fraudulently magnifying the primary community obligations to defeat a residual claimants' right of recovery.¹⁷⁵

In California, the legislature has somehow started to recognize the concept of "community debts" with respect to liabilities for death or injury to person or property. Under the new law, community property is made primarily liable if the tort-feasor committed the culpable act or omission while "performing an activity for the benefit of the community;" community property must first be exhausted before the separate property may be held answerable. Conversely, if the tort-feasor is not performing an activity for the benefit of the family when the culpable act or omission occurs, his or her separate property is principally liable; the community property is liable only after the separate property of the tort-feasor has been exhausted.¹⁷⁶

It is strange that in the Philippines where the dichotomy between "community debts" and "separate debts" is well-recognized in contractual obligations, it appears that no similar delineation is made for tort liabilities, while in California which does not recognize "community debts" with respect to contractual obligations of either spouse, a distinction is made between primary "community debts" and primary "separate debts" with regard to the tort liabilities of the spouses. No case squarely raising the question whether a tort committed by a spouse while performing an activity for the benefit of the family is directly enforceable against partnership property has yet been authoritatively decided by

¹⁷⁴*Supra*.

¹⁷⁵*People v. Lagrimas*, G.R. No. L-25355, August 28, 1969, 29 SCRA 153 (1969). "Considering that the obligations mentioned in Art. 161 of the Civil Code are peculiarly within the knowledge of the husband or of the wife whose conjugal partnership is made liable, the proof required of the beneficiaries of the indemnity to show that the requisites for the imposition and enforcement of the fines and indemnities against the conjugal partnership are obtaining should not be most exacting ordinary credibility sufficing. Otherwise, the husband or the wife, as the case may be, representing the conjugal partnership, may find the temptation to magnify its obligation irresistible so as to defeat the right of recovery of the family of the offended party. That result is to be avoided. The lower court should be on the alert, therefore, in the appraisal of whatever evidence may be offered to assure compliance with the codal provision." (29 SCRA at 159-160).

¹⁷⁶*Supra*, note 91.

Philippine courts. It is reasonable to expect that a Philippine Court when presented with the question may be persuaded to hold that the conjugal partnership property is principally liable for torts committed by a spouse for the benefit of the family. Not only may the provision¹⁷⁷ making the partnership property liable for obligations contracted for the benefit of the partnership be cited by analogy, but more importantly, the equitable principle that no one shall be unjustly benefited at the expense of another will be strongly persuasive. For example, suppose that a husband uses trust funds to support the family, and thereby commits embezzlement, the conjugal partnership would be unjustly enriched at the expense of the husband's separate estate if the pecuniary indemnification could not be charged to the partnership fund. Following the California distinction, it is possible to interpret Article 163 of the Philippine Civil Code making the conjugal partnership property only residually liable for fines and civil indemnification, along with pre-marital debts, as contemplating only a situation where the crimes or torts did not inure to the benefit of the partnership. The interpretation is made stronger by the fact that fines and pecuniary indemnification for crimes and torts are treated in exactly the same way as pre-marital debts. There can hardly be any disagreement that if a pre-marital debt redounded to the benefit of the family (for example, when the pre-marital debt was incurred to purchase a house which later on became the family home), the conjugal partnership would be principally liable therefor.

IV. IMPACT OF BANKRUPTCY

A. *Effect on Community Property and Separate Property*

In the Philippines, insolvency proceedings may be initiated either voluntarily by petition of a debtor himself who owes debts exceeding One Thousand Pesos (P1,000.00) or involuntarily by petition of three or more creditors who are residents of the Philippines, whose credits and demands with an aggregate amount of not less than One Thousand Pesos (P1,000.00) accrued in the Philippines, provided that none of the petitioners has become a creditor by assignment, however made, within thirty days prior to the filing of the petition. The petition for involuntary insolvency must set forth one or more acts of insolvency committed by the debtor.¹⁷⁸

Upon adjudication of the debtor as an insolvent, the court schedules a meeting among creditors for the election of an assignee. "As soon as

¹⁷⁷*Supra*, note 74.

¹⁷⁸Act No. 1956 (1909), as amended, otherwise known as the Philippine Insolvency Law, secs. 14 & 20.

an assignee is elected or appointed and qualified, the clerk of court shall, by an instrument under his hand and seal of the court, assign and convey to the assignee all the real property and personal property, estate and effects of the debtor with all his deeds, books, and papers relating thereto. Such assignment. . . "by operation of law shall vest the title to all such property, estate, and effects in the assignee although the same is then attached on mesne process, as the property of the debtor." "Such assignment shall operate to vest in the assignee all of the estate of the insolvent debtor not exempt by law from execution."¹⁷⁹

Transfer of Conjugal Assets to Bankruptcy Assignee

Will community property pass to the assignee for distribution to the creditors on adjudication of insolvency of either the husband or the wife? The distinction in the Philippines between community debts and separate debts has a direct bearing on the impact of insolvency of either spouse on community property. While no case has yet been decided on this matter, it is explicitly covered by the Philippine Civil Code, which provides:

"Art. 2238. So long as the conjugal partnership or absolute community subsists, its property shall not be among the assets to be taken possession of by the assignee for the payment of the insolvent debtor's obligations, except insofar as the latter have redounded to the benefit of the family. If it is the husband who is insolvent, the administration of the conjugal partnership or absolute community may, by order of the court, be transferred to the wife or to a third person other than the assignee."

It is clear that community property is not available to the separate creditors of the insolvent. This provision is consistent with the doctrine that the interest of a spouse in the community property is inchoate and expectant before its liquidation. It seems that the community would not be affected at all by the insolvency of either spouse on account of separate debts. In case it is the husband who becomes insolvent, its management may be ordered transferred to the wife or any third person other than the assignee of the insolvent husband.¹⁸⁰

If community debts are involved in insolvency proceedings against either spouse, community property will pass to the assignee to the extent necessary to pay community debts. The rule in execution that the judgment debtor may direct the order in which his property shall be sold to satisfy the judgment¹⁸¹ may be followed such that in case the community property exceeds community debts whoever exercises management and

¹⁷⁹*Ibid.*, sec. 32.

¹⁸⁰*Supra*, note 81.

¹⁸¹PHIL. RULES OF COURT, Rule 39, sec. 21.

control of the community may choose the community assets that will be transferred to the assignee.

Community Debts and the Insolvency of either Spouse

Are community debts contracted by one spouse probable claims in the insolvency proceedings of the other spouse? There might be a difference in result between the bankruptcy of the husband and that of the wife.

If the bankrupt is the husband, it is arguable that community debts contracted by the wife in the cases where she is authorized to subject the community to liability¹⁸² are enforceable against the husband in his capacity as manager of the community.¹⁸³ Community debts contracted by the wife might, therefore, be considered provable claims in the insolvency proceedings of the husband.

On the other hand, if the wife is the bankrupt, community debts contracted by the husband are not enforceable against the wife because she is not the manager of the partnership. Consequently, it may be argued that they are not provable claims in the insolvency proceedings of the wife. Under this analysis, community debts contracted by the wife may enjoy preference over community debts contracted by the husband in the insolvency proceedings. However, claimants for community debts contracted by the husband might initiate involuntary proceedings against the conjugal partnership represented by the husband. They could argue that by the vesting of title to community property in the assignee of the bankrupt wife to the extent necessary to pay community debts contracted by the wife, the partnership suffered a lien on or against its property that might hinder, defraud or delay collection of their claims.¹⁸⁴ The insolvency of the partnership will reach the separate estate of the husband because of its subsidiary liability for community debts.¹⁸⁵ The proceedings could then be consolidated and conducted as in the case of insolvency proceedings by or against the partnership discussed below.

It is believed that the same result would follow if community assets are less than provable community debts in the insolvency proceedings of either spouse. The community assets will pass to the assignee; the separate estate of the non-bankrupt would also pass to the assignee to enforce its subsidiary liability for community debts. The proceedings

¹⁸²*Supra*, notes 74 & 82.

¹⁸³*Supra*, note 60; *Infra*, notes 203 & 204.

¹⁸⁴The 8th act of insolvency states: "(8) that he has suffered or procured his property to be taken on legal process with intent to give preference to one or more of his creditors and thereby hinder, delay or defraud any one of his creditors." (Sec. 20, Phil. Insolvency Law).

¹⁸⁵*Supra*, note 164.

should then proceed as in the insolvency of the conjugal partnership itself.

It might be argued that the claims of the community creditors who contracted with the husband are provable in the bankruptcy proceedings of the wife on the equitable ground that since community property is liable for community debts contracted by the wife, their claims should likewise be allowed to achieve an equitable distribution of community assets to all community creditors. On balance, it is submitted that this argument is less persuasive. Provable claims are defined generally as debts and liabilities of the debtor existing at the time of the adjudication of insolvency.¹⁸⁶ Since the wife is not the manager of the partnership, she does not represent it in the proceedings and its debts cannot be said to be her debts. It is more plausible that community claims not enforceable against the insolvent in any capacity are not provable.

Insolvency of the Conjugal Partnership

The practice in Washington of allowing the marital community to go into bankruptcy is possible in the Philippines. Notwithstanding the contrary view expressed by an eminent Filipino author,¹⁸⁷ there could hardly be any doubt that the conjugal partnership in the Philippines is a separate entity with juridical personality distinct and apart from the spouses. It is clearly recognized that the conjugal partnership is capable of incurring conjugal debts. The definition of the conjugal partnership conforms to that of a general partnership.¹⁸⁸ Indeed, it is a special kind of partnership between husband and wife. The Philippine Civil Code expressly provides that the conjugal partnership shall be governed by the rules on general partnership "in all that is not in conflict with what is expressly determined in [its] Chapter" on the conjugal partnership of gains.¹⁸⁹ Philippine Civil Code Article 1768 provides that "The partnership has a juridical personality separate and distinct from that of each of the partners..." The application of this provision to a conjugal partnership does not conflict with the provisions in Chapter V of the Code on conjugal partnership of gains. As the Philippine Supreme Court stated in *National Bank v. Quintos and Ansaldo*:¹⁹⁰

"The ganancial partnership, to use the expression of Mr. Manresa, is the same conjugal partnership constituted, in its economical (sic) aspect, under the system established by the law as suppletory. It is, therefore, formed by the husband and the wife, each with his or her own property and with his or her own debts."

¹⁸⁶*Ibid.*, sec. 53.

¹⁸⁷1 PADILLA, CIVIL LAW, CIVIL CODE ANNOTATED 589 (1971).

¹⁸⁸Art. 142; *supra*, p. 4; Art. 1767, PHIL. CIVIL CODE.

¹⁸⁹PHIL. CIVIL CODE, art. 147.

¹⁹⁰*Supra*, note 164 at 378.

Under the rules governing partnership bankruptcy, in the event of insolvency proceedings by or against the conjugal partnership all its non-exempt assets and the non-exempt separate assets of the spouses shall pass to the assignee "and all creditors of the partnership, and the separate creditor of each partner, shall be allowed to prove their respective claims." The assignee elected by the creditors of the partnership administers the partnership assets and the separate estate of each spouse. The expenses of administration are shared by the three estates in the proportion determined by the court.¹⁹¹

The assignee is directed to make the liquidation in the following order:

"x x x The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus of the partnership property remain after paying the partnership debts, surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership. x x x"¹⁹²

It must be noted that the provision of the Philippine Insolvency Law is silent on a situation where partnership liabilities exceed partnership assets. Does the first sentence in the quoted provision mean, as it seems to imply, that only partnership assets are available for distribution in payment of partnership obligations even when such assets are insufficient? A careful analysis, however, indicates that the separate estates of the spouses are administered in the bankruptcy proceedings because they are subsidiarily liable for the obligations of the partnership.¹⁹³ Conjugal creditors should, therefore, be able to share, in proportion to their residual claims, in the liquidation of the separate estates of the spouses.¹⁹⁴ Following the order of subsidiary liability of the separate property of the spouses, conjugal obligations for support should be collected primarily from the estate of the husband and then from the estate of the wife. Conjugal obligations incurred for other purposes are collectible from the two estates on a fifty-fifty basis since their liability therefor are joint.¹⁹⁵

Certificate of discharge is granted not to the partnership but to each spouse "as the same would or ought to be if the proceedings had been by or against him [or her] alone."¹⁹⁶

¹⁹¹PHIL. INSOLVENCY LAW, sec. 51.

¹⁹²*Ibid.*

¹⁹³*Supra*, note 191.

¹⁹⁴*Supra*, note 164.

¹⁹⁵*Supra*, note 167; see p. 37.

¹⁹⁶*Supra*, note 191.

In California, only the husband or the wife may be adjudged a bankrupt either by his/her voluntary petition or on the involuntary petition of qualified creditors against either spouse complying with the requirements of the Bankruptcy Act. The marital community cannot be adjudged a bankrupt because it is not recognized as a separate entity capable of incurring "community debts".¹⁹⁷

Under the recent amendments in the community property laws in California granting the wife equality in the management and control of the community property, the consequences on community property of the bankruptcy of the husband and that of the wife are now the same. Upon adjudication of bankruptcy of either spouse, his or her separate property and all the community property shall automatically pass to the trustee. The separate property of the bankrupt and the personal community property subject to equal management and control pass to the trustee as property which the bankrupt "could have transferred."¹⁹⁸ Community realty and community business or community interest in a business under the management of the other spouse similarly pass to the trustee as property "which might have been levied upon and sold under judicial process against [the bankrupt]"¹⁹⁹ inasmuch as all community property, without any distinction, is liable for the post-marital contracts of either spouse.²⁰⁰

Effect of Insolvency on Non-bankrupt Spouse

What is the impact of adjudication of bankruptcy of a spouse on the other spouse? Under the new California community property laws, the non-bankrupt spouse might be dragged into the bankruptcy proceedings of the bankrupt spouse and be treated there in the same way as a bankrupt. Since under the new law, the separate property of the non-bankrupt spouse is liable for the payment of debts contracted by the bankrupt for the necessities of life,²⁰¹ it passes to the trustee as property which could have been levied upon and sold under judicial process by the creditors of the husband for his debts contracted for the necessities of life.²⁰² It is arguable that the creditors of the non-bankrupt spouse have provable claims in the bankruptcy proceedings because community property which

¹⁹⁷*Supra*, note 135; see p. 29.

¹⁹⁸Sec. 70(a)(5), 11 U.S.C. Sec. 110 (U.S. Bankruptcy Act).

¹⁹⁹*Ibid.*

²⁰⁰*Supra*, note 93.

²⁰¹*Supra*, note 170.

²⁰²*Britt v. Damson*, 334 F. 2d 896 (1964), held that the "strong arm" provision of section 70(c) of the Bankruptcy Act reaches only the property of the bankrupt. This ruling disregards the plain language of the law and relies on legislative history as an extrinsic aid of interpretation. Thus, the Court said:

As indicated in section 70, sub. (c), the property therein referred to need not be property which has come into the possession or control of the

bankruptcy court. *Nor is the lien therein referred to limited to encumbrances upon property in which the bankrupt has legal title.* It extends to all property " * * * upon which a creditor of the bankrupt could have obtained a lien by legal or equitable proceedings at the date of bankruptcy * * *." Thus since, under Washington law, those creditors of the bankrupt who were creditors of the former marital community could have obtained a lien by legal or equitable proceedings upon the community property set over to Mrs. Damson, section 70, sub. (c) broadly read, would seem to vest similar rights in the trustee.

Recourse to the legislative history of the Act of July 7, 1952, section 23(e) of which clarified section 70, sub. (c) of the Bankruptcy Act, indicates however, that the latter section as amended, should not be read this broadly. See H. R. Rep. No. 2320, 82nd Cong., 2d Sess. 16 (1952), 2 U.S. CODE CONG. AND ADMIN. NEWS 1960, 1976 (1952). According to this House Report, what was intended to be said is that the trustee " * * * has the rights of a lien creditor upon property in which the bankrupt may be the ostensible owner." See also, 4 COLLIER ON BANKRUPTCY, Sec. 70.47 [4] at 1396 (14th ed.).

This case cannot be considered a established case law. It is clear from Sec. 70(c) that ownership or legal title of the bankrupt is not required. It is enough that the "creditor of the bankrupt could have obtained a lien [upon the property] by legal or equitable proceedings at the date of the bankruptcy." The decision violates the cardinal principle in statutory construction of no more than one meaning, it is the duty of the court to enforce it according to its terms (*Carneneti v. United States*, 242 U.S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1917)). It is generally recognized that extrinsic aid may be considered only where the statute is ambiguous and not where the language is clear. (2-A SUTHERLAND, STATUTORY CONSTRUCTION, Sec. 48.01 at 182-183 (1973 ed.).

The *Britt v. Damson* ruling is inconsistent with that of *Gillaspy v. International Harvester Co.*, 109 Miss. 136, 38 Am. B. R. 827, 67 S. 904 (1915) and *Chesapeake Shoe Co. v. Seldner*, [(C.C.A. 4th Cir.) 10 Am. B. R. 466, 122 F. ed 593 (1903)] both of which held that consigned property passed to the trustee of the bankrupt because it was subject to the levy and sale by his creditors just as if it were his own property. This *Gillaspy* decision relied on Collier in reaching this result:

"x x x There can be no doubt that the engine was shipped to the hardware company for the purpose of selling the same, if that could be done. It is also true that the harvester company was in doubt about the sale, but nevertheless the machine was acquired by the hardware company for the purpose of selling same. As between the parties to this contract, it may be admitted that the harvester company remained the owner of the machine, but it seems clear that by our statute the engine could have been levied upon and sold by the general creditors of the hardware company. When a trader acquires or uses property in this business, the property so acquired or used, as to creditors, will be treated as the property of the trader, no matter what may be the undisclosed contract of the trader and the party from whom the property is acquired. The property in question was not only acquired in the business, but we think it was also used in the business. There can be no reason to question the authority of the hardware company to sell the engine, either before or after its demonstration. Persons dealing with traders are not burdened with the necessity of inquiring about the ownership of property offered for sale or use in the trader's business. The law fixes the ownership so far as the legal rights of creditors may be affected thereby. The bankrupt act passes to the trustee of the bankrupt all "property which prior to the filing of the petition he could by any means have transferred, or which might have been levied upon and sold under judicial process against him."

COLLIER ON BANKRUPTCY, 1005, (10th ed.), analyzing the provision of the bankrupt act above referred to, has this to say:

The test is simple and easily applied. Could the property in question have been (1) transferred, or (2) levied on and sold under judicial process against the bankrupt? If so, it passes to the trustee; if not, it does not... Whether or not the property prior to the filing of the petition, could have been levied upon and sold under judicial process against the bankrupt must be determined by the local law.

Under our statute this engine could have been "levied upon and sold under judicial process" against the hardware company." (109 Miss. at 139-140).

has become part of the bankrupt estates is liable for the contracts of the non-bankrupt spouse. In the sense that the debts of the non-bankrupt spouse are chargeable to the community, they might be considered community debts. Under Section 63 of the Bankruptcy Act, these community debts are "[d]ebts of the bankrupt [which] may be proved..." because these community debts are enforceable against him in his capacity as manager of the community property. This analysis finds support in *General Insurance Company of America v. Schian*²⁰³ which cited with approval the rule in Washington that "the adjudication against the husband as administrator of the community is also an adjudication against the community..." "since the husband was the manager of the community and thus represented the community as well as himself in the bankruptcy proceedings..."²⁰⁴

The foregoing analysis will result in the non-bankrupt spouse's being dragged in the proceedings and in effect subjected to administration in bankruptcy proceedings. Since the non-bankrupt spouse's separate property passes to the trustee to answer for necessity debts, and all the creditors of the non-bankrupt spouse would have provable claims in the proceedings because community property is liable for all the debts of either spouse,²⁰⁵ the situation of the non-bankrupt spouse is not different from that of the bankrupt spouse. It is, therefore, equitable to treat the non-bankrupt spouse as going through bankruptcy with all the incidents and benefits relating thereto.

This analysis also finds some support in *Francis v. McNeal*²⁰⁶ where the Supreme Court of the United States recognized the broad power of the bankruptcy court to administer estates and marshal debts of non-bankrupts if such a procedure is necessary to achieve an equitable distribution of the bankrupt's estates.

Distribution of Property

The most important administrative problem that comes up is how the proceeds of the community property and the separate property of each spouse should be distributed among the different claimants. In order to distribute them according to their liabilities, the three (3) estates should be administered and liquidated separately. Debts contracted by either spouse before the marriage should be paid from his/her separate estate and the community estate (excluding the earnings of the other

²⁰³56 Cal. Rptr. 767 (1967).

²⁰⁴*Ibid.*, at 769.

²⁰⁵*Supra*, notes 91, 101, 114.

²⁰⁶228 U.S. 620, 31 S.Ct. 723, 55 L.Ed. 612 (1911).

spouse) but not from the separate estate of the other spouse.²⁰⁷ Debts contracted by either spouse after the marriage are payable from his or her separate estate and from community estate, without any exception, but not from the separate estate of the other spouse.²⁰⁸ Debts for necessities of life should be paid from the community estate and the separate estates of the spouses regardless of which spouse contracted them. Community torts are collectible principally from the community estate and subsidiarily from the estate of the tort-feasor but not from the estate of the other spouse.²⁰⁹ Conversely, non-community torts are collectible principally from the separate estate of the tort-feasor spouse and subsidiarily from the community estate but not from the separate estate of the other spouse.²¹⁰

In the mathematical computation, a creditor should be allowed to share *pro rata* in the estates directly liable for his claims, but his dividends in the aggregate should not exceed the amount of his claim. For example, the claim of a creditor for necessities of life should be allowed at the same time as a principal claim in all the three estates which are all directly liable therefor. Similarly, contractual obligations should be allowed as principal claims both in the community estate and the separate estate of the spouse who contracted them. But a tort claim should be allowed first in the estate primarily liable; only the residual claim should then be allowed in the estate which is only subsidiarily liable.

B. *Effects of Discharge*

In the Philippines, the discharge of a husband who was adjudged bankrupt on account of separate debts will operate as a release only from his own creditors. If there are conjugal creditors, conjugal property will pass to the assignee to the extent necessary to pay community debts.²¹¹ If the partnership property is not sufficient, the non-bankrupt spouse, the wife, will be dragged into the proceedings because her separate property is subsidiarily liable for community debts.²¹² In this case, the liquidation will proceed as in the case of the bankruptcy of the conjugal partnership itself. The discharge of the husband will then operate as a discharge of the conjugal partnership as well because in the bankruptcy proceedings he represented not only himself but also the conjugal part-

²⁰⁷*Supra*, note 114.

²⁰⁸*Supra*, note 101.

²⁰⁹*Supra*, note 90.

²¹⁰*Supra*, note 91.

²¹¹PHIL. CIVIL CODE, art. 2238.

²¹²*Supra*, note 164.

nership, since the latter is subject to his management and control.²¹³ In the same proceedings, the wife may also be adjudicated a bankrupt and given a discharge since her separate property is administered and liquidated in payment of community creditors and her separate creditors.²¹⁴

If it is the wife who goes into bankruptcy, conjugal assets will pass to the assignee to the extent necessary to pay community debts incurred by the wife in the cases where she could bind the conjugal partnership, such as her obligations contracted for support. If community property is not sufficient, the separate estate of the husband passes to the assignee because it is subsidiarily liable for community debts.²¹⁵ The effect of bankruptcy of the spouses and of the partnership is the same.²¹⁶ The spouses are given a discharge. The discharge of the husband includes a discharge of the partnership which he represented in the proceedings in his capacity as manager thereof.

Under California law, the discharge in bankruptcy of *either* spouse will operate as a discharge of the community because when a spouse goes into bankruptcy he or she represents himself or herself and the community in the bankruptcy proceedings. Since their claims are enforceable against the community property,²¹⁷ creditors of the non-bankrupt spouse have provable claims against the bankrupt in his or her capacity as manager of the community.

The proposition is supported by *General Insurance Company of America v. Schian*,²¹⁸ involving husband and wife who defaulted in the performance of a contractual obligation guaranteed by a surety bond. The husband, Harvey Schian had previously filed a voluntary petition for bankruptcy and was granted a discharge. In this case brought by the surety against Harvey and Olivia, the court held that "*when Harvey Schian obtained a discharge in bankruptcy from his obligation, under the surety agreement, said discharge operated to release from further liability both his separate property and all community property subject to his management and control.*" The rationale for this holding is the rule in Washington, adopted by the California Court in this case, that "the adjudication against the husband as administrator of the community is also an adjudication against the community..." "...since the husband was the manager of the community and this represented the community as

²¹³*Supra*, notes 21 & 203.

²¹⁴*Supra*, note 164.

²¹⁵*Supra*, notes 164 to 167.

²¹⁶Since the partnership is involved in the bankruptcy and in effect goes through liquidation itself, the rule on partnership bankruptcy should apply. (*Supra*, note 60).

²¹⁷*Supra*, note 205.

²¹⁸*Supra*, note 203.

well as himself in the bankruptcy proceedings, the discharge in his favor was also a discharge in favor of the community."²¹⁹

How is the holding in the case affected by the new California community property laws? The last two paragraphs of the decision seem to give an impression that if the community were liable for the wife's contracts or other acts, the community would not have been discharged from her liabilities.²²⁰ A possible conclusion would then be that the discharge of the husband does not discharge the community from the obligations of the wife because under the new law, the community is liable for her contracts and other acts.

A deeper examination of the problem, however, will reveal that such conclusion is untenable. The fact that the wife is now granted equal management and control of community property and the correlative right to subject it to her liabilities does not alter but rather reinforces and expands the holding in the *General Insurance* case. Because the community property is now liable for all debts of the wife²²¹ under the new policy of equal management and control, it is believed that all her creditors have provable claims in the bankruptcy proceedings of the husband. The Washington rule adopted as the rationale in the case is that the adjudication of bankruptcy against the husband as manager of the community is also an adjudication of bankruptcy against the community since the husband represents the community as its manager in his bankruptcy proceedings. Since he represents the community, it follows that the wife's creditors have provable claims against the husband in his capacity as representative of the community to enforce their claims against the community property. The objection that the community is not a person and therefore may not be treated as a bankrupt that may enjoy the benefit of discharge is of no moment in the assessment of the effect of this new policy of equal management and control in California. Such objection could also be raised even under the previous state of the law.

It is believed that the new legislative changes in the California community property laws have actually expanded the holding in *General Insurance*.²²² Since community property is now made liable for debts contracted by either spouse, all community property will pass to the trustee upon bankruptcy of either spouse.²²³ The discharge in favor of

²¹⁹*Supra*, note 204.

²²⁰*Supra*, note 203 at 770. Mr. Alan Pedlar has taken this view. He concludes that the non-bankrupt "spouse's creditors should be allowed to reach the community property acquired after a discharge of the other spouse." (*Supra*, note 89 at 1648)

²²¹*Supra*, note 93.

²²²*Supra*, note 203.

²²³*Supra*, note 205.

the community will now extend to all community property, not only to community property under the management and control of the bankrupt as the case seems to suggest. Furthermore, the holding should apply equally to the wife if she goes through bankruptcy and gets a discharge because now she has equal management and control of community property. It might equally be said that she also represents the community in her bankruptcy proceedings and corollarily, her discharge also operates a discharge of the community.

Effect of Discharge of Husband on Wife

What is the effect of discharge of the husband on the obligations of the wife? By placing the wife's separate property under administration and subject to liquidation in the same proceedings, the wife, in effect, is treated as a bankrupt like the conjugal partnership. It is, therefore, equitable that she be adjudicated a bankrupt and given a discharge from all provable claims in the same proceedings. These observations in the Philippines are also applicable in California. If she is not expressly granted her own discharge, it is highly doubtful if the discharge of the husband will likewise operate as her discharge. For unlike the community, she is not represented by the husband in the proceedings.

V. COMPARATIVE ANALYSIS AND EVALUATION

A. Damages for Personal Injury

Philippine cases²²⁴ involving physical injuries hold that patrimonial and moral damages recovered by the injured spouse are his or her separate property. Where no physical injuries are involved, the damages are classified as community property.²²⁵ It is believed that this distinction is arbitrary. The better solution is to determine the effect of the personal injury, whether physical or otherwise, on the community. If it injures the community, as for example, when it results in loss or diminution of earning capacity or loss of expected income, the damages awarded should be considered conjugal. Otherwise, if the personal injury does not affect the community, the damages should be separate property of the injured spouse. Such distinction based on the effect of the injury on the community should likewise be adopted in California where damages for personal injuries to either spouse recovered from third parties are unqualifiedly considered community property.

²²⁴*Supra*, note 33.

²²⁵*Supra*, note 31.

The rule in California making recoveries for injuries inflicted by the other spouse personal property of the injured spouse²²⁶ is based on sound policy to exclude the guilty spouse from the benefit of the very indemnity that the law condemns him or her to pay. It should be adopted in the Philippines.

B. Fruits and Profits of Separate Property

The Philippines classifies fruits and profits from separate property of either spouse as community property²²⁷ while California treats them as separate property. The Philippine rule appears to be inequitable to the owner of the separate property from which the fruits and profits are derived. It is contrary to the basic principle incorporated in the Philippine Civil Code itself, that ownership of property gives to the owner the right to its fruits and "everything which is produced thereby."²²⁸ The Supreme Court of California has held such a rule to be unconstitutional:

"x x x It is not perceived that property can be in one in full and separate ownership, with a right in another to control it, and enjoy all its benefits. The sole value of property is its use; to dissociate the right of property from the use in this class of cases, would be to preserve the name — the mere shadow — and destroy the thing itself — the substance x x x"²²⁹

This observation carries greater force with respect to the classification under Philippine Civil Code as community property of "fruits, pensions and interests" from "an annuity, whether perpetual or for life, and the right of usufruct," including "[t]he usufruct which the spouses have over the property of their children, though of another marriage."²³⁰ The annuity and the usufruct (a life estate similar to dower or curtesy) cannot be dissociated from their benefits. What is the use of ownership of an annuity if the annuity payments do not belong to the owner? How can the "right of usufruct," which is classified as separate property, be dissociated from its fruits, which are classified as conjugal property, when usufruct by definition is "a right to enjoy the property of another with the obligation of preserving its form and substance."²³¹ Classifying the fruits as conjugal property while recognizing at the same time the "right of usufruct" as separate property is diametrically inconsistent with the provision of the Philippine Civil Code that "[t]he usufructuary shall be entitled to all the natural industrial and civil fruits of the property in usufruct."²³²

²²⁶*Supra*, note 30.

²²⁷PHIL. CIVIL CODE, art. 441.

²²⁸*Ibid.*, art. 440.

²²⁹*Supra*, note 44.

²³⁰*Supra*, note 49; PHIL. CIVIL CODE, art. 157.

²³¹*Supra*, note 52.

²³²PHIL. CODE CODE, art. 566.

On the other hand, the rule in California, produces a fair and equitable result. Rents, issues, fruits and profits are generally classified as separate property from which they are derived. However, if efforts or industry on the part of either spouse have been expended in bringing them about, part of the fruits and profits is considered as community property to the extent that it may be considered fair return for such efforts and industry of the spouse, taking all relevant factors into account.²³³

C. Management and Control of Community Property

In recognition of equal rights for women, California, following the trend in the other community property states in the United States, except Louisiana, is ahead of the Philippines in granting the wife equal management and control of community property. However, it is not unlikely for the Philippines to follow this trend. Filipino customs and family way of life are suitable for a comparable legislative change, granting the wife equal or joint management and control of community property. As early as 1948, the Report of the Code Commission stated that "[t]he Filipino woman has from time immemorial occupied an important place in the economic life of the community and in the management of the property of the family."²³⁴

The Commission added in the Philippine Civil Code provisions for the optional establishment of absolute community where the spouses enjoy joint management and control.²³⁵ In the view of the Commission, the system of absolute community is more in keeping with the "real and actual conditions" and "established custom in a majority of Filipino families." However, the Commission felt that absolute community, whereby the spouses become co-owners of all the property brought into and acquired during the marriage "would be looked upon as revolutionary," if made the legal standard in the absence of stipulation.²³⁶

Vesting the power of management and control in the husband alone is inconsistent with the principle of equal interest and common ownership of conjugal property by the spouses. The law clearly discriminates against the wife. This could be subject to challenge as a denial to the wife of equal protection of the law. The Bill of Rights in the Constitution of the Philippines is patterned after the American Bill of Rights

²³³*Supra*, note 45.

²³⁴*Supra*, note 5.

²³⁵PHIL. CIVIL CODE, art. 206.

²³⁶REPORT OF THE CODE COMMISSION ON THE PROPOSED CIVIL CODE OF THE PHILIPPINES, p. 25 (Jan. 26, 1948).

and has an equal protection of the law clause, identical to that found in the th 14th amendment of the United States Constitution.²³⁷

The grant of exclusive management of community property in the Philippine Civil Code to the husband is a discrimination based on nothing but the accidental characteristic of sex. Since Filipino wives actually play active role in the management of community property,²³⁸ there is no rational basis for the law to deny them such management as a matter of legal right. The trend in the United States treating any sex-based discrimination as suspect and subject to rigid judicial scrutiny under the Equal Protection Clause may be invoked by a Filipino wife as persuasive authority in challenging the law. In *Reed v. Reed*,²³⁹ the United States Supreme Court declared unconstitutional an Idaho statute which preferred men to women as administrators of estates. In the more recent decision in *Frontiero v. Richardson*,²⁴⁰ the Supreme Court of the United States invalidated a federal law which required that "a female member of the uniformed services seeking to obtain housing and medical benefits for her spouse must prove his dependency in fact, whereas no such burden is imposed upon male members."²⁴¹ The Court "conclude[d] that classifications based upon sex, like classification based upon race, alienage, or national origin are inherently suspect, and must, therefore, be subjected to strict judicial scrutiny." Particularly pertinent to the Philippine law under challenge is the following observation of the court:

"Moreover, since sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth, the imposition of special disabilities upon the members of a particular sex because of their sex would seem to violate "the basic concept of our system that legal burdens should bear some relationship to individual responsibility..." *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175, 31 L. Ed. 2d 768, 92 S. Ct. 1400 (1972). And what differentiates sex from such non-suspect statutes as intelligence or physical disability, and aligns it with the recognized suspect criteria, is that the sex characteristic frequently bears no relation to ability to perform or contribute to society. As a result, statutory distinction between the sexes often have the effect of invidiously relegating the entire class of females to inferior legal status without regard to the actual capabilities of its individual members."²⁴²

It is anticipated that an argument might be made that since the wife could have asked the husband for a stipulation in a pre-nuptial

²³⁷No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (PHIL. CONST., Bill of Rights, sec. 1)

²³⁸*Supra*, note 234.

²³⁹404 U.S. 71, 92 S.Ct. 251, 30 L.Ed. 2d 225 (1971).

²⁴⁰411 U.S. 677, 93 S.Ct. 1764, 36 L.Ed. 2d 583 (1973).

²⁴¹*Ibid.*, at 688.

²⁴²*Ibid.*, at 591-592.

property settlement agreement for equal management and control over conjugal property, she must be deemed to have waived the right to object to the provision of law vesting in the husband exclusive management in the absence of contrary stipulation. This argument is not persuasive for two reasons. First, the wife probably was not aware of the law at the time of the marriage. The doctrine of waiver requires clear and unequivocal acts relinquishing a right.²⁴³ Second, assuming that she knew the law, still she could not compel the husband-to-be to stipulate on equal management and control if the latter refused.

In the event the Supreme Court holds the law granting the husband exclusive right of management over conjugal property invalid under the Equal Protection of the Law Clause, the unequal burdens on the husband made by reason of his being the administrator of the partnership must be eliminated. For example, Article 138 of the Philippine Civil Code, requiring exhaustion first of his separate property before the wife's separate property may be held liable for the family's support in the event of insolvency of the partnership, and Article 181 giving priority to the claims of the wife in the liquidation of partnership assets must also be invalidated as discriminatory to the husband.

D. Differentiation between community debts and separate debts

The distinction between community debts and separate debts in the Philippines is fair and equitable. It is a fundamental concept of justice and equity that the estate which receives the benefits must bear the correlative burdens. The Philippine rule making the separate estates subsidiarily liable for community debts is fair to the creditors, and at the same time not unfair to the spouses, because the community after all exists for their benefits.

The California rule making the entire community property indiscriminately liable for all contracts of either spouse without regard to whether the contracts benefit the community or the separate spouse exclusively could lead to inequitable and unjust results. One spouse loses his or her interest in the community property when the latter is subjected to a judicial execution for the payment of obligations incurred by the other spouse solely for his or her own exclusive benefit. This result is irreconcilable with the principle that the interest of either spouse in community property is "equal, present and existing." The requirement that the spouses must observe good faith toward each other in the management and disposition of community property is not an adequate safeguard.

²⁴³Waiver is defined as the relinquishment of a known right with both knowledge of its existence and an intention to relinquish it. (1 TOLENTINO, *supra*, note 48 at 27, citing *Portland & F.R. Co. v. Spillman*, 23 Ore. 587, 32 P. 689 (1893).

It is possible for a spouse who acts in perfect good faith to plunge the community property into disaster in activities not redounding to the benefit of the family. For example, a gratuitous guarantee of a husband in favor of a friend who has given him a purely personal favor will subject the community property to liability upon default of the principal even if the husband acted in perfect good faith in making the guaranty. Considerations of justice and equity demand a differentiation in California between community debts and separate debts based on benefits as recognized in the Philippines.

The California legislature has made a first step in this direction in providing for a distinction between torts committed while performing activities for the benefit of the family and torts not so committed. Applying the same distinction to contractual debts to give meaningful respect and recognition to the "equal, present and existing interest" of the spouses in community property would not be too difficult.

The community should not be unqualifiedly liable for all debts, including the spouses' separate debts which do not redound to community benefit. It should be liable only for community debts and for the separate debts of the obligor-spouse to the extent of his or her "equal, present and existing interest" in order to respect and protect the right and interest of the non-obligor spouse in community property.

E. Tort liabilities

Both in California and in the Philippines, community property is liable for personal torts. While California unconditionally subjects community property to personal tort liabilities once the separate property of the tort-feasor spouse is exhausted, the Philippines protects the interest of the family by taking care first of the obligations and responsibilities of the community before subjecting community property to personal tort liabilities of a tort-feasor spouse whose separate property is insufficient to pay them. Moreover, in fairness to the non-tort-feasor spouse, the payment made by the community for personal tort claims is chargeable to the net share of the tort-feasor at the liquidation of the community. This rule seems better than the unqualified California rule.

F. Pre-marital debts

The rule in California that pre-marital debts of a spouse are enforceable against community property except the earnings of the other spouse seems to be unfair. Generally, pre-marital debts do not inure to the benefit of the community. Although the earnings of the other spouse are not touched, still the rule deprives the community part of its property

and permits unjust enrichment of the separate estate of the debtor-spouse. Unlike in the rule applicable to personal torts, it is not even required that the personal estate of the debtor be exhausted first before his or her pre-marital debts can be enforced against community property.

The counterpart rule in the Philippines appears to be fair and equitable. Pre-marital debts, like tort liabilities, are enforceable against community property only after exhausting the separate property of the debtor. The community property is liable only after deducting community obligations and responsibilities. At the liquidation of the community, payment for the pre-marital debts is charged to the net share of the debtor. In this way, pre-marital debts, which as a rule do not confer benefits on the community, are ultimately borne by the estate of the debtor.

G. *Post-marital personal debts*

The rule in California that community property is liable for all debts contracted by either spouse after the marriage without any distinction could lead to inequitable results. The entire community property might be eaten up by the post-marital debts incurred by a spouse for his or her own exclusive benefit, to the detriment of the other spouse. As suggested earlier, the solution is to adopt a differentiation between "community debts" and "separate debts," as these concepts are recognized in the Philippines and then to make community property liable for all community debts, and for separate debts only to the extent of the interest of the debtor in order to protect and give substantive meaning to the "equal, present and existing interest" of the other spouse in the community property.

Separate post-marital debts in the Philippines are enforceable only against the separate property of the debtor. The separate creditors cannot even reach the interest of the debtor in the community property during the existence of the conjugal partnership because such interest then is only inchoate and expectant. This is unfair to the separate creditors.

The Philippine rule making pre-marital personal debts but not post-marital personal debts subsidiarily enforceable against community assets after covering community obligations is defective. There is no rational basis for making a distinction between post-marital and pre-marital personal debts to justify a difference in treatment. An eminent Civil Code commentator opined that the rule on pre-marital personal debts, should apply by analogy to post marital personal debts.²⁴⁴ This opinion

²⁴⁴1 TOLENTINO, *supra*, note 48 at 409.

was cited by the Court of Appeals in *Philippine American Life Insurance Co., Inc. v. Soriano*,²⁴⁵ holding that "even if the obligation here were of the wife's alone and would not clearly fall under Article 161 of the new Civil Code, in case of the insolvency of the wife, the conjugal partnership must be subsidiarily liable..." This decision as well as the comment used to support it, appears to be erroneous. It seems contrary to the provision of Article 2237 that community property shall not pass to the trustee "for the payment of the insolvent debtor's obligations, except insofar as the latter have redounded to the benefit of the family." This provision clearly intends to insulate the property of the community from liability for personal debts, which by definition, are contracted for the benefit not of the family, but of the debtor-spouse personally. The Supreme Court has generally held that the conjugal partnership is not liable for the separate debts of the spouses.²⁴⁶

H. *Interest of each spouse in the community property*

The California rule that the interest of each spouse in the community property is "*equal, present, and existing*" is only a matter of form because the entire community property may be gobbled up by the separate debts of the other spouse. In order to give meaningful substance to the rule, community property should be made answerable for the separate debts of each spouse only to the extent of his or her interests there. In this way the "*equal, present and existing interest*" of the other spouse may be protected. This recommendation presupposes the existence of a differentiation between "community debts" and "separate debts."

The doctrine in the Philippines that the interest of each spouse in the community property is "inchoate, a mere expectancy and constitutes neither a legal nor an equitable estate before liquidation" is artificial and unrealistic. This approach is grossly unfair to the separate creditors of either spouse because it bars them from reaching the interest of the debtor in the community property if his or her separate property is insufficient. Thus, when a spouse who has enormous separate debts and minimal separate property goes into bankruptcy, the trustee cannot reach the community property for the payment of the separate creditors of the bankrupt.²⁴⁷ The spouse gets a discharge and keeps intact his or her sizeable interest in the community property. In fairness, the separate creditors should be able to reach the one-half interest of the bankrupt in the community property after the obligations of the community has been met, as in the case of pre-marital creditors.²⁴⁸

²⁴⁵61 O.G. 2504, 2506 (1965).

²⁴⁶*Supra*, notes 97, 117 & 120.

²⁴⁷*Supra*, notes 246 & 211.

²⁴⁸*Supra*, note 113.

Legislative reform to correct the anomalous situation seems desirable. The community must be forced into liquidation upon insolvency of either spouse to enable the separate creditors of the insolvent to reach the latter's interest in the community property. The law²⁴⁹ must be amended to make insolvency of either spouse an additional ground for dissolution and liquidation of the conjugal partnership.

I. *Bankruptcy and Discharge of the Community*

The Philippine rule whereby the spouses are expressly granted certificates of discharge in the bankruptcy proceedings by or against the community seems just and equitable because for all practical purposes, the spouses themselves have gone through bankruptcy. The community then, as an economic entity, would have the benefit of a fresh start once the spouses are granted their respective discharge.

In California, the non-recognition of the community as a separate entity casts serious doubt upon its ability to obtain a bankruptcy discharge. Section 1 of the Bankruptcy Act specifically requires that only a person, which includes partnership, corporations and other legal entities, may become a bankrupt entitled to the benefits of the Act, the most important of which is the bankruptcy discharge. The holding in *General Insurance Company of America v. Schian*²⁵⁰ that the discharge of the husband operates as a discharge of the community since he represents the community as its manager in his own bankruptcy proceedings is subject to serious doubt unless the community is recognized as having separate juridical personality, as in the Philippines.

VI. CONCLUSION

The conjugal partnership of gains in the Philippine and the system of community property in California have a common origin in the Spanish system of community of acquests and gains. However, the judicial and legislative developments in the two jurisdictions proceeded in substantially different directions.

Because of the strong influence of the common law, California generally treats profits and earnings from separate property as separate property. The Philippines still follows the Spanish system and unqualifiedly considers all the fruits and profits from separate property as part of the conjugal property. The California rule classifies such fruits and profits only as community property to the extent of what may be regarded as

²⁴⁹PHIL. CIVIL CODE, art. 175.

²⁵⁰*Supra*, note 203.

fair and equivalent return on the efforts and industry, if any, exerted by either spouse in the production of such fruits and profits.

In California, damages for personal injury recovered by a spouse from third parties are unqualifiedly classified as community property. On the other hand, Philippine cases classify such damages as community property, if no physical injuries are involved and as separate property if the spouse indemnified was physically injured. The better rule, both for California and the Philippines, is to base the classification on the effect of the injury to the community. Damages for injury that adversely affects the community should be community property regardless of whether physical injuries are involved or not.

California has gone ahead of the Philippines in giving meaningful equality to women by vesting the wife with equal right of management and control over community property. This reform is suitable to Filipino customs but it is unlikely to be adopted by legislation in the immediate future because of the more pressing political and economic problems confronting the Philippines at present. The reform might also be achieved through the judicial process if a wife could successfully challenge the grant of exclusive power of management of community property to the husband as a violation of the Equal Protection of the Law Clause of the Philippine Constitution.

The Philippines does better than California in serving the interest of equity by maintaining a distinction between "community debts" and "separate debts." It is only fair that, as a general rule, only the estate benefited by an obligation should be made liable therefor. This dichotomy protects the equal interest of a spouse from being reached by the separate creditors of the other spouse. The Philippines, however, carries the distinction too far by totally insulating community property from the claims of the separate post-marital creditors of either spouse, even in the event of bankruptcy of the latter. This rule is unfair to the post-marital personal creditors. Moreover, it is inconsistent with the rule making the community property subsidiarily liable for pre-marital debts. There seems to be no rational basis for distinguishing between pre-marital and post-marital personal debts to warrant a difference in their treatment.

The differentiation between "community debts" and "separate debts" is not a remote possibility in California. The legislature has taken the first step by differentiating between "community torts" and "personal torts". Similar differentiation with respect to contractual debts would not be too difficult to make. In addition to strong equitable considerations, protection of "equal, present and existing interest" of a spouse in the

community property against the separate debts of the other spouse serves as strong justification for such differentiation.

In the Philippines, the husband, the wife or the conjugal partnership itself may go into bankruptcy. The adjudication of bankruptcy of either the husband or the wife will not transfer conjugal property to the trustee except to the extent necessary to pay community debts contracted by the bankrupt spouse. If such community debts exceed the community property, the conjugal partnership and the non-bankrupt spouse will in effect be thrown into bankruptcy in the same proceedings. The separate property of the non-bankrupt spouse will also pass to the trustee because it is subsidiarily liable for community debts. Since the conjugal partnership goes into liquidation, the proceedings applicable when the conjugal partnership itself goes into voluntary or involuntary bankruptcy should be followed. The conjugal creditors and separate creditors should be allowed to file their claim. Each spouse gets a certificate of discharge. The discharge of the husband operates as a discharge of the conjugal partnership which he represents in the proceedings in his capacity as administrator.

In California, the bankruptcy of either spouse engulfs the separate property of the bankrupt, the community property and the separate property of the other spouse. The creditors of the non-bankrupt have provable claims in the proceedings because the community property is liable for the non-bankrupt's debts. For this reason, under Section 63 of the law, these debts may be considered "debts of the bankrupt" in his or her capacity as manager of the community. An authority supports the proposition that the discharge of the bankrupt spouse operates as a discharge of the community. This presupposes recognition of the community as a separate entity and distinction between community debts and separate debts, as in the Philippines. Both of these concepts are not yet accepted in California, but recent trends in its community property laws indicate that their adoption is not a remote possibility.

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