AN EXAMINATION OF THE CIVIL CODE ON HUMAN RELATIONS *

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1. SCOPE OF SUBJECT MATTER

Objectives of Study

One of the innovations of the Civil Code is the inclusion in the Preliminary Title of a chapter on human relations. The articles under this chapter are new, in the sense that they were not in the Spanish Civil Code, which was in force prior to the adoption of the present Civil Code. The principles they embody are, nevertheless, not entirely new.

Of this chapter, the Code Commission said:

> Therein are formulated some basic principles that are to be observed for the rightful relationship between human beings and for the stability of the social order. The (old) Civil Code merely states the effects of the law, but fails to draw out the spirit of the law. This chapter is designed to indicate certain norms that spring from the fountain of good conscience. These guides for human conduct should run as golden threads through society, to the end that law may approach its supreme ideal, which is the sway and dominance of justice.[1]

Human beings, in their intercourse with one another, come into certain relations from which some system of social control becomes a necessity. With human relations comes a consciousness of human wants or desires, which may be called interests. Society is composed of men, each with interests of his own. In the course of life, the interests of one man conflict with those of many others. It is the primary function of law to create legal protection for these interests. Amidst the continuous clash of interests, the ruling social philosophy should be, that in the ultimate ideal social order the welfare of every man depends upon the welfare of all.

Our purpose now is to examine these new articles on human relations with the end in view of a better understanding of their content and meaning. In so doing we shall determine their relation to other more specific provisions in the main body of the Code. At the same time, we shall consider their possible effect upon doctrines and jurisprudence established before their inclusion in our body of positive law.

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[1] MALOLOS & MARTIN, REPORT OF THE CODE COMMISSION 39 (1951).

Retroactivity of Provisions

As a general principle, because the articles on human relations are new, they are to be given prospective effect only.

Under Article 2252, "new provisions and rules laid down by this Code which may prejudice or impair vested or acquired rights in accordance with the old legislation shall have no retroactive effect." This implies that if the new provisions on human relations do not prejudice or impair vested rights acquired under the old law, they may be given retrospective effect.[2]

II. PROTECTING DISADVANTAGED PERSONS

Qualifying "equality before law"

A classic principle of law is that all men are equal before the law. The legal effect of their conduct or acts are determined by the standard of an imaginary normal person — a person of prudence, a good "father of the family."

By way of exception, the law extended some protection to persons suffering from some specific cases of incapacity recognized by the law itself, such as minority, insanity or imbecility, the state of being a deaf-mute, prodigality, and civil interdiction (Articles 38 and 39) which limit a person's capacity to act.

Article 24 of the Civil Code extends the mantle of legal protection to a wider area and qualifies at the same time the rigid rule of equality before the law. It provides:

> In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

Scope of Disadvantage

The disadvantage under Article 24 must be on account of a person's moral dependence, ignorance, indigence, mental weakness, tender age or other handicap. With this enumeration, even persons of age who are not insane may be considered as disadvantaged if they could fall under any of the causes of disadvantage mentioned by the article.

The catch-all phrase "or other handicap" could include many situations as constituting a disadvantage. Serious illness, blindness, financial difficulties and inexperience may conceivably be considered handicaps as causes of disadvantage. In the Swiss, German and Mexican codes, indiscretion, distress, and lightmindedness, are among the handicaps mentioned.

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[2] Velayo v. Shell Company of the Philippines Ltd., 100 Phil. 187 (1956).

The law, however, should not be understood to include any and all infirmity or difficulty of a person. It must be a real handicap in the particular relation or situation involved. It must actually place the person at a disadvantage in relation to others. In the light of the enumeration by the Code, the handicap must be of the same nature and effect as those enumerated, following the principle of *ejusdem generis*. In general, it must adversely affect the person's ability to act or decide with complete freedom and/or intelligence.

The mere existence of a handicap, even one expressly mentioned in Article 24, does not necessarily bring a case within the article. The handicap must be the cause of a person's being at a disadvantage in relation to another or others in the particular situation in question. That causal connection must exist.

For example: the indigence of a driver of a motor vehicle would have nothing to do with his rights or obligations arising from a collision between the car he is driving and another.

The determination of whether a handicap exists, and whether it has placed a person at a disadvantage under given circumstances, lies within the sound discretion of the competent court.

Applied to Contractual Relations

The protection or assistance given by Article 24 to disadvantaged persons extend to "all contractual, property or other relations."

Under Article 1330, "a contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable."

A very close relation exists between Article 24 and Article 1330, inasmuch as the provisions of Article 24 could be applied by the court to reach a conclusion as to whether mistake, violence, intimidation, undue influence, or fraud exists in a degree sufficient to annul the contract of a disadvantaged person.

Generally, a person is expected to exercise due diligence or the diligence of an ordinarily prudent person, the good *paterfamilias*, in taking care of his own concerns. The determinative factor in judging whether a party's consent is vitiated would be whether a man of ordinary prudence would, under the circumstances of the case, have been led into error or would have been intimidated or unduly influenced. This was stated in *Vales v. Villa*,[3] as follows:

> All men are presumed to be sane and normal and subject to be moved by substantially the same motives. When of age and sane, they must take care of themselves. In their relations with others in the business of life, wits, sense, intelligence, training, ability and judgment meet and clash and

[3] 35 Phil. 769 (1916).

> contest, sometimes with gain and advantage to all, sometimes to a few only, with loss and injury to others. In these contests men must depend upon themselves — upon their own abilities, talents, training, sense, acumen, judgment. The fact that one may be worsted by another, of itself, furnishes no cause of complaint. One man cannot complain because another is more able, or better trained, or has better sense or judgment than he has; and when the two meet on a fair field the inferior cannot murmur if the battle goes against him. x x x [The law] . . . makes no distinction between the wise and the foolish, the great and the small, the strong and the weak. The foolish may lose all they have to the wise; but that does not mean that the law will give it back to them again. x x x Courts cannot constitute themselves guardians of persons who are not legally incompetent. x x x Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by them — indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a violation of law, the commission of what the law knows as an actionable wrong, before the courts are authorized to lay hold of the situation and remedy it.

With the provisions of Article 24, the rigor of the above position must be relaxed. The handicap of a disadvantaged person may be taken into account in annulling a contract he has entered. The court would have a wider latitude now than before the new Civil Code to consider various factors constituting handicaps which could have placed a party in a disadvantageous position when he entered into a contract which an ordinarily prudent person would not have entered into.

Manresa, for instance, is of the view that error should not be considered as established, when the alleged error would be incomprehensible, absurd or unexplainable if incurred by a person with capacity to contract.[4] Borrel y Soler says that a party cannot allege an error which refers to a fact which he should have known by ordinary diligent examination of the facts.[5] And Ruggiero adds that an error which could have been avoided by ordinary prudence cannot be invoked to annul a contract.[6]

But with Article 24 now as part of our law, the personal handicap of the party, such as his ignorance, mental weakness, or inexperience, may be considered to understand why he was led into error, although an ordinarily prudent man would not have been misled under the circumstances, and to relieve him of the effects of his contract.

In relation to mistake or fraud, Article 1332 may be regarded as a corollary to Article 24. It provides:

> When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.

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4 8 MANRESA, COMENTARIOS AL CODIGO CIVIL ESPAÑOL 665.
5 5 NULIDAD, 241-243.
6 1 RUGGIERO, 271.

Generally, a party is presumed to know the import of a document which he has signed and is bound by its terms; he would have the burden of proof to show he did not know what the document contained. But where a party is suffering from the handicap of illiteracy, Article 1332, in the spirit of Article 24, reverses the presumption, and the burden of proof is transferred to the party enforcing the contract if the illiterate alleges fraud or mistake.

When intimidation or undue influence is alleged by a party to annul his contract, his personal circumstances may be taken into account to determine the sufficiency of the intimidation or undue influence as causes for annulment. Under Article 1335, "to determine the degree of intimidation, the age, sex and condition of the person shall be borne in mind." And under Article 1337, the following circumstances shall be considered in determining undue influence: "the confidential, family, spiritual and other relations between the parties, or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress."

With the wider scope of Article 24, the circumstances that may be taken into account to determine intimidation or undue influence need not be limited to those mentioned in Articles 1335 and 1337. It is not the enumeration of specific personal conditions in these two articles that should control; rather, it is the intent and spirit of Article 24 that should govern, thus permitting the courts to annul the contract of a disadvantaged person even when his particular handicap is not expressly mentioned in Articles 1335 and 1337.

Contracts of Adhesion

A common occurrence of imbalance between parties is to be found in contracts of adhesion. A contract of adhesion is one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. These are contracts where all the terms are fixed by one party and the other has merely "to take it or leave it." Examples of these are the transportation contracts with trains, vessels or airships, the contracts with electric, gas, or water companies, the contracts of insurance, etc.

> Against monopolies, cartels and great concentrations of capital, the individual is usually helpless to bargain for better terms; and must accept those offered, usually in printed forms. Travelers against transportation monopolies, the insured against insurance combinations, customers against exclusive agencies, are all forced to accept contracts carefully worded by skilled counsel to stack the cards against the lone individual and in favor of the corporations. This situation demands greater corrective remedies than contracts produced by bargaining on equal terms, with power lodged in the Courts to deny enforcement of provisions that are exclusively for

the benefit of the stronger party, and cannot be justified by reason of public interest.[7]

These contracts usually contain a series of stipulations which tend to increase the obligations of the adherent, and to reduce the responsibilities of the offeror. There is such economic inequality between the parties to these contracts that the independence of one of them is entirely paralyzed. Although some writers consider that there is no true contract in such cases because the will of one of the parties is suppressed, this is not juridically true. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent.[8]

Our Code does not expressly regulate this contract. But where an individual, under stress of necessity, enters into such a contract, he can find relief in Article 24, if the case does not fall under some express provisions of law.

The Code, particularly referring to carriers, provides:

ART. 1745. Any of the following or similar stipulations shall be considered unreasonable, unjust and contrary to public policy:

(1) That the goods are transported at the risk of the owner or shipper;

(2) That the common carrier will not be liable for any loss, destruction, or deterioration of the goods;

(3) That the common carrier need not observe any diligence in the custody of the goods;

(4) That the common carrier shall exercise a degree of diligence less than that of a good father of a family, or of a man of ordinary prudence in the vigilance over the movables transported;

(5) That the common carrier shall not be responsible for the acts or omissions of his or its employees;

(6) That the common carrier's liability for acts committed by thieves, or of robbers who do not act with grave or irresistible threat, violence or force, is dispensed with or diminished;

(7) That the common carrier is not responsible for the loss, destruction, or deterioration of goods on account of the defective condition of the car, vehicle, ship, airplane or other equipment used in the contract of carriage.

ART. 1746. An agreement limiting the common carrier's liability may be annulled by the shipper or owner if the common carrier refused to carry the goods unless the former agreed to such stipulation."

ART. 1757. The responsibility of a common carrier for the safety of passengers as required in Article 1733 and 1755 cannot be dispensed with or lessened by stipulation, by the posting of notices, by statements on tickets, or otherwise.

Ordinarily, the rule of *inclusio unius est exclusio alterius* would limit an individual's right of action for relief from contracts of adhesion to the

[7] REYES, J.B.L., *Observation on the New Civil Code on Points not Covered by Amendments Already Proposed*, 16 LAW. J. 49 (1951).

[8] 3 COLIN & CAPITANT, CURSO ELEMENTARY DE DERECHO CIVIL 532.

cases thus specified. However, by the application of the broad provisions of Article 24, other cases not specifically so enumerated may properly be subject for relief.

Applied to Other Relations

The protection which Article 24 gives to disadvantaged persons extends, not only to contractual relations, but also to "property or other relations.' This is broad enough to embrace the whole field of human relations. The mantle of protection has been spread wide by the law because it is not possible to foresee all the possible or imaginable situations in which a disadvantaged person may find himself in need of the help of the courts.

A couple of instances may be mentioned:

1. Among co-owners of property, one who is in great financial need, before actual liquidation of expenses and partition of fruits, signs a quit-claim for his share so that he could get an advance to cover his need, when it turns out later that his rightful share is very much more.

2. When after the death of the father, an only son 22 years old renounces his inheritance, consisting of one-half of the conjugal property, thus leaving everything to his mother, following her suggestion, as he had always been morally dependent upon her.

Element of Exploitation or Advantage

The mere fact that a party is disadvantaged does not by itself justify the intervention by the courts on his behalf under Article 24. It must appear that because of his particular handicap, he has been exploited or taken advantage of. The law merely intends that he be protected from the effects of such exploitation or undue advantage by others.

The Codes of other jurisdictions reflect this idea.

Article 138, par. 2, of the German code provides:

> In particular, a juridical act is void whereby a person exploiting the difficulties, indiscretion, or inexperience of another, causes to be promised or granted to him or to a third person for a consideration, pecuniary advantages which exceed the value of the consideration to such an extent that, having regard to the consideration, the disproportion is manifest.

Article 21 of the Swiss code of obligations provides: "If an obvious disproportion between performance and counter-performance results from a contract which one party has caused to be entered into by exploiting the distress, light-mindedness or inexperience of the other, then the victimized party may declare within a year from the making of the contract that he is not bound by the contract, and may demand restitution of any performance already rendered." The German Reichsgericht, in an Opinion of December 14, 1928, considered this better than Article 138(2) of the German code.

Article 17 of the Mexican code states: "When a person, exploiting the gross ignorance, notorious inexperience or extreme distress of another, acquires an excessive advantage which is evidently disproportionate to his own prestation, the party prejudiced shall have the right to ask for the rescission of the contract, and, if this is impossible, for an equitable reduction of his obligation."

Although the element of exploitation or undue advantage by others is not expressly mentioned in our Code, unlike others, it should be implied from the very reason and purpose of Article 24.

An example may be given thus:

Because he sees no occupant, an illiterate ignorant man enters a vacant piece of land knowing it does not belong to him, constructs a house thereon and cultivates it, producing plenty of fruits. If the rightful owner appears and asks him to vacate the property and remove his house or lose it, and demands the fruits after deducting expenses, the ignorance of the intruder cannot be alleged to defeat the rights of the lawful owner of the property or to at least compensate him for his efforts. There is no exploitation or undue advantage from which he should be protected.

Power of Courts

The vigilance of the courts for the protection of the disadvantaged person is exercised to bring about a balancing effect — that an imbalance in fact due to the handicap of one party may be righted or compensated by placing the weight of the judicial hand on the side of the disadvantaged person. The goal is to give justice to the handicapped party.

The remedy that a court may grant depends upon the circumstances of each case. It may be annulment of contracts. It may be the declaration that a particular act of the disadvantaged person is void and of no effect. It may be an award of damages. It may take the form of any remedy that would correct an unfair or unjust situation arising from the inequality of the parties or the handicap of a party.

Article 24 does not lay down a rule of evidence establishing a presumption in favor of the disadvantaged person. The party seeking a remedy under Article 24 would still have the burden of proof of his handicap and the undue advantage of or exploitation by the other party.

Once the essential facts are established, a right of action under Article 24 would exist where no such right may exist under specific provisions of law either before or under the new Civil Code.

Article 24, thus, is a substantive rule of justice to enable the courts to bring about an equilibrium in law between parties with imbalanced circumstances. It is merely intended to protect the disadvantaged person from exploitation, and cannot be used to do injustice to other parties. It is

not a weapon to convert his handicap into an advantage at the expense of others.

Rule of "in pari delicto"

Under Articles 1411 and 1412, when the nullity of a contract proceeds from the illegality of the cause or object, whether it constitutes a crime or not, and the guilt or fault is common to both parties, they shall have no action against each other, whether for performance or for the recovery of what each has given. The law will leave them where they are, without prejudice to criminal prosecution when this is proper.

If one of the parties is disadvantaged, would this circumstance prevent the application of the rule of *"in pari delicto"* contained in Article 1411 and 1412, to enable the disadvantaged person to recover what he has given by invoking Article 24?

We believe that no absolute or categorical answer is possible, but cases must be decided on their particular facts. As a general guide, however, it may be said that if the handicap affects the understanding of the disadvantaged person as to the illegality of the cause or object, Article 24 may be applied. His situation may be likened to that of an innocent or fault-free party under Articles 1411 and 1412.

This position is reflected in Article 1415, which provides: "Where one of the parties to an illegal contract is incapable of giving consent, the courts may, if the interest of justice so demands, allow recovery of money or property delivered by the incapacitated person."

It may also be possible for the disadvantaged party to seek relief from having been exploited, without having to disclose the illegality of the object or cause of the contract. As our Supreme Court has said:

> The courts will not aid either party to enforce an illegal contract, but will leave them both where it finds them; but where the plaintiffs can establish a cause of action without exposing its illegality, the vice does affect his right to recover.[9]

Knowledge of the Law

Under Article 3, "ignorance of the law excuses no one from compliance therewith." Everyone is conclusively presumed to know the law. Compliance with law is obligatory, and no person may avoid its effects by claiming that he does not know its provisions. Actual ignorance of the law cannot afford immunity from punishment for crimes or from liability for the legal consequences of their acts or non-performance of their legal duties.

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[9] Perez v. Herranz, 7 Phil. 693 (1907).

Under this principle, injuries suffered by parties to a contract because of their ignorance of the law must be borne by them, because such ignorance does not favor or prejudice anyone, nor justify the modification or annulment of a contract.[10]

Article 24 mentions "ignorance" as a handicap which entitles a party to the protection of the courts. Can mistake of law be included in this article?

Some writers contend, with good reason, that a mistake of law, like a mistake of fact, vitiates consent. The provision of Article 3, that "ignorance of the law excuses no one from compliance therewith" is considered to be no obstacle to giving the same effect to mistake of law and to mistake of fact with respect to consent. They cite the decision of the Spanish Supreme Court of April 4, 1903, which says: "there is no difference between ignorance of the law favoring the person who suffers from it, and a want of knowledge or an erroneous conception contrary to reality, which vitiates the will." There is a fundamental difference between compliance with the law, the obligatory force of which does not depend on the intention of those subjected to it, and the validity of a contract which results only from the real or presumptive intention of the parties. They conclude that there is no reason for distinguishing a mistake of fact and a mistake of law; both have the same effect, the nullity of the act.[11]

In the Italian code, it is provided that a mistake of law produces the nullity of a contract when it is the sole or principal cause of the contract. In this exceptional case, error of law is treated in the same way as error of fact. Thus, X promises to give support to Y in the belief that he is legally bound to give such support; or X promises to pay indemnity for damages in the belief that he is liable under the law.[12]

With respect to possession in good faith, Manresa is of the opinion that inexcusable ignorance of the law itself, cannot be the basis of good faith. Sanchez Roman and Navarro Amandi sustain the theory that even ignorance of the law can be the basis of good faith, because Article 526, in its first paragraph, makes no distinction. All seem to agree, however, on the proposition that error in the application of the law, in the legal solutions that arise from such application, in the appreciation of the legal consequences of certain acts, and in the interpretation of doubtful provisions of doctrines, may properly serve as a basis for good faith.[13]

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[10] Luna v. Linatoc, 74 Phil. 15 (1942); Sentencias of Feb. 20, 1861, May 9, 1867 and December 8, 1867.

[11] 1 COLIN & CAPITANT, *op. cit.*, 171-172; Perez Gonzalez & Alguer: 1-11 ENNECCERUS, KIPP & WOLFF, TRATADO DE DERECHO CIVIL 200; 2 CASTAN, DERECHO CIVIL ESPAÑOL 609, citing DE BUEN.

[12] Brugi, p. 129.

[13] 4 MANRESA, *op. cit.*, 109-110; 2 NAVARRO AMANDI, CUESTONARIO DEL CODIGO CIVIL 158-159; 3 SANCHEZ ROMAN, ESTUDIAS DE DERECHO CIVIL 436-437.

Before the enactment of the new Civil Code, our Supreme Court had already held that excusable ignorance of the provisions of a law may be the basis of good faith.[14]

Under the last paragraph of Article 526 of the new Code, "mistake upon a doubtful or difficult question of law may be the basis of good faith."

Considering all the foregoing in relation to the spirit, reason and objective of Article 24 we believe that excusable ignorance of the law could be included within the handicap "ignorance" mentioned in this article.

In the Mexican code, the rule that "ignorance of the law excuses no one from compliance therewith," is qualified by a provision (Article 21) that judges, taking into account the notorious mental deficiency of certain individuals, or their miserable economic condition, may exempt them from the sanctions imposed by law which they do not know, unless the law directly affects public interest. That rule is in consonance with the principle expressed in the present article. The duty imposed upon our courts to be vigilant for the protection of handicapped persons seems to be broad enough to include the power given by the Mexican code. It seems, therefore, that considering the spirit of Article 24, the Mexican rule can be followed in this jurisdiction to qualify the unrealistic conclusive presumption of knowledge of the law in appropriate cases.

Rebus sic stantibus. If at the time a contract was entered into, there was no disproportion or imbalance in the positions of the parties — no handicap on the part of either — would a subsequent change of circumstances justify the intervention of the courts under Article 24?

In determining whether the *clausula rebus sic stantibus* could be invoked to obtain relief from a contract which has become too onerous for a party because of financial distress occasioned by an economic depression, the Swiss Federal Court said:

> In Romanist doctrine the view was taken that the so-called *clausula rebus sic stantibus* constitutes a general limitation upon the continued existence of a contractual obligation. Like the other modern codifications, the positive law of Switzerland has not adopted this view. Nevertheless, this Court has recognized that a promisor must be discharged if extraordinary unforeseeable circumstances render his duty to perform the promise so onerous that insistence upon such performance would cause economic ruin.
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> x x x x x At the bottom of the doctrine of the *clausula rebus sic stantibus* there is the consideration that even the principle imposing the duty of faithful performance of contracts is limited by the higher principle of good faith. If a contract may be rescinded in case of a mistake concerning its necessary original basis, then there must be some relief also

[14] Kasilag v. Roque, 69 Phil. 217 (1940).

> in case such basis is subsequently changed in an intolerable degree. x x x x x
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> In applying the *clasula,* this Court has repeatedly used in criterion whether the duty of performance has become so onerous for the obligor that insistence upon his performance would be equivalent to his economic ruin. x x x x x Upon renewed examination, we cannot adhere to this criterion without qualification. If the principle of *bona fides* x x x x x is the yardstick for the applicafion of the *clausula,* then the decision cannot be made to depend solely upon the effect which the change of circumstances has had upon the obligor's duty to perform. The effect of the change on the entire legal relationship must be examined. The criterion of the threatened ruin of the obligor would in the last analysis depend upon his subjective ability to perform.
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> The disturbance, through change of circumstances, of the balance between performance and counterperformance must be recognized as a ground for termination or adjustment if such disturbance is great, obvious, excessive. x x x x x There must be a manifest disproportion. Inasmuch as Article 21 of the (Swiss) Code of Obligations uses this latter term we may look to that Article for some indication of what is meant. The question of disproportion is to be determined by the objective value of the performances (rendered or promised) as of the time when the issue of *clausula* is before the court.
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> Even such manifest disproportion, however, is not sufficient to justify termination or adjustment of a contract. x x x x x There must be, in addition, the subjective factor that the obligee's insistence upon the terms of the contract amounts to an exploitation of the obligor's emergency; in other words, that the conduct of the obligee is usurious and predatory. x x x x x The decisive question of the instant case, as correctly formulated by the court below, is thus whether defendant's insistence on the original terms of the contract must be characterized as usurious exploitation of an obvious disproportion, caused by the change of conditions, between performance and counterperformance.

It seems to us that the *clausula* could be invoked under Article 24 in appropriate circumstances. In the first place, the disadvantage or handicap is not confined by this article to one existing at the time a contract or other relation comes into existence; it may, therefore, arise subsequently.

In the second place, the injunction that "the courts must be vigilant" for the protection of the handicapped is not limited to any definite or particular time; therefore, this duty may exist at any moment when a disadvantaged person is being exploited.

There are some provisions of the Code which embody the principle of *rebus sic stantibus:*

> ART. 1266. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor.
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> ART. 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

> ART. 1250. In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary.

These articles indicate that under the Code, the doctrine of *rebus sic stantibus* is recognized. They strengthen our position that the doctrine may be applied in relation to Article 24, when the change of circumstances involves a handicap or disadvantage for one party so serious that insistence on performance by the other would amount to exploitation of the former.

Although the parties to a contract must be presumed to have assumed the risk of unfavorable developments, when absolutely exceptional and unforeseen changes of circumstances occur, equity demands assistance for the disadvantaged party. Equity requires a certain economic equilibrium between prestation and counter-prestation, and cannot permit the excessive impoverishment or unbearable sacrifice or disproportionate risks of one party for the benefit of the other. That is, however, mainly a question of fact whose determination lies within the sound discretion of the court.

If the disadvantaged party is afforded total or partial release from performance of his prestation, equity demands that he return what he has already received proportionate to the extent of his release. He cannot keep or demand more than what corresponds to what he himself has performed or can perform. Otherwise, Article 24 would be instrument of injustice or unjust enrichment.

Finally, while courts can release the party disadvantaged by a change of circumstances from his presentation, fully or partly, we believe that the court cannot modify the contract by imposing new or different terms, without the consent of both parties. The court may relieve a disadvantaged party from obligations under a contract, but cannot create a new contract for the parties without their mutual consent.

III. ABUSE OF RIGHTS

Abandonment of Old Rule

Article 19 of the Code provides: "Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

This article incorporates into our Code the principle of "abuse of rights." This phrase is self-contradictory. If a person acts with abuse, his right to act ceases, his act becomes illicit, and he incurs liability.[15] For lack of a better term, however, "abuse of rights" has been adopted to designate this principle. Its incorporation in the Code is of far-reaching importance.

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[15] 3 CAMUS, CODIGO CIVIL ESPAÑOL EXPLICADO 550.

The classical theory is that "he who uses a right injures no one." Traditionally, therefore, it has been a settled doctrine that no person can be held liable for damages occasioned to another by the exercise of a right. Spanish jurisprudence has expressly sanctioned this point of view.[16] It has, however, been severely criticized, especially by De Buen, who states: "Certainly, our Supreme Court has committed a sin of excess in laying down this principle in such absolute terms."[17]

The modern tendency is to depart from the classical and traditional theory, and to grant indemnity for damages in cases where there is an abuse of rights, even when the act is not illicit. Law cannot be given an anti-social effect. If mere fault or negligence in one's acts can make him liable for damages for injury caused thereby, with more reason should abuse or bad faith make him liable. A person should be protected only when he acts in the legitimate exercise of his right, that is, when he acts with prudence and in good faith; but not when he acts with negligence or abuse.

The responsibility arising from abuse of rights, according to Josserand, has a mixed character, because it implies a reconciliation between an act, which is the result of an individual juridical will, and the social function of right. The exercise of a right, which is recognized by some specific provision of law, may nevertheless be contrary to law in the general and more abstract sense. The theory is simply a step in the process of tempering law with equity.[18]

The exercise of a right ends when the right disappears, and it disappears when it is abused, especially to the prejudice of others. The mask of a right without the spirit of justice which gives it life is repugnant to the modern concept of social law. It cannot be said that a person exercises a right when he unnecessarily prejudices another or offends morals or good customs. Over and above the specific precepts of positive law are the supreme norms of justice which the law develops and which are expressed in three principles: *honesto vivere, alterum non laedere* and *just suum quique tribuere*; and he who violates them violates the law. For this reason, it is not permissible to abuse our rights to prejudice others.[19]

Therefore, the application of specific provisions of law, whether contained in the Civil Code or in other statutes, must be guided and controlled by Article 19.

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[16] See Sentencias of May 10, 1893, April 28, 1913, June 13, 1921, January 19, 1925, May 7, 1929, April 4, 1932, and April 20, 1933.

[17] DE BUEN, CURSO ELEMENTAL DE DERECHO CIVIL as cited by 3 COLIN & CAPITANT, *op. cit.*, 883.

[18] CASTAN, *op. cit.*, 125.

[19] BORRELL MACIA, RESPONSABILIDADES DERIVADAS DE CULPA EXTRACONTRACTUAL CIVIL 87-89.

Determination of Abuse of Right

A glance over similar articles or provisions in other Codes can be very enlightening for a proper determination of when there is an abuse of rights.

Article 2 of the Swiss civil code provides: "Every person is bound to exercise his rights and to fulfill his obligations according to the principles of good faith. The law does not protect the manifest abuse of a right."

The rule is more restricted in the German code (Article 226), restated in Article 148 of the Chinese code: "The exercise of a right is forbidden if it can have no other purpose than to injure another." This is the same idea expressed in the Mexican code (Article 1912), under which there is abuse of right, giving rise to liability for damages, when the defendant exercises a right only for the purpose of causing injury to another and without any utility to himself.

The Peruvian code (Article II of its Preliminary Title) provides: "The law does not protect abuse of right." This follows the Swiss. This is the same tendency in the Italo-French project of obligations (Article 74), and in the project of the code of obligations of Brazil (Article 156), which provides: "He who, by having exceeded the limits of the interest protected by the law or fixed by good faith, causes damage to another in the exercise of his rights, must pay damages to the injured party."

The tendency, therefore, is to follow the broader concept expressed in the Swiss code; this is the trend of our Civil Code.

Modern jurisprudence does not permit acts which, although not unlawful, are anti-social. There is undoubtedly an abuse of right when it is exercised for the only purpose of prejudicing or injuring another. When the objective of the actor is illegitimate, the illicit act cannot be concealed under the guise of exercising a right. The principle does not permit acts which, without utility or legitimate purpose, cause damage to another, because they violate the concept of social solidarity which considers law as rational and just.

Hence, every abnormal exercise of a right, contrary to its socio-economic purpose, is an abuse that will give rise to liability. The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another.

The absence of good faith is essential to abuse of right. Good faith is an honest intention to abstain from taking any unconscientious advantage of another, even through the forms of technicalities of the law, together with an absence of all information or belief of facts which would render

the transaction unconscientious.[20] In business relations, it means good faith as understood by men of affairs.[21]

Ultimately and in practice, courts, in the sound exercise of their discretion, will have to determine under all the facts and circumstances when the exercise of a right is unjust, or when there has been an abuse of right.[22]

Abuse in Relation to Property

Under Article 428, the owner "has the right to enjoy and dispose of a thing, without other limitations than those established by law."

A general limitation on ownership provided by the Code is in Article 431: "The owner of a thing cannot make use thereof in such manner as to injure the rights of a third person."

As a rule, an owner cannot be prevented from or be held liable for the legitimate use of his property simply because it may cause real damage to another.[23] When an owner makes use of his property in the general and ordinary manner in which such property is used, nobody can complain as having been injured, because the inconvenience arising from such use can be considered as a mere consequence of community life.

But Pothier advances the view that however absolute the rights of an owner may be, they cannot be exercised to the prejudice of his neighbors; that the fact of neighborhood imposes certain limitations upon the extent to which an owner may make use of his property. Sanchez Roman sustains the same theory, that the owner cannot perform acts prejudicial or offensive to the rights of others; he states that *jus abutendi* has been erroneously understood as meaning the rights to do what the owner pleases with his property, even to the prejudice of others.[24] This is also recognized by the decisions of the Spanish Supreme Court before the Civil Code.[25]

The rule is that when a person makes an exceptional or extraordinary use of his property, thereby causing injury to third persons, he should be liable for the damages caused.[26] However absolute and unqualified his title may be, the owner holds his property under the implied liability that its enjoyment shall not be injurious to the equal enjoyment of others of their rights.[27]

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[20] Wood v. Conrad, 2 S.D. 334, 50 N.W. 95 (1891).

[21] Gutteridge, *Abuse of Rights*, 5 CAMB. L.J. 22 (1933) as cited in SCHLESINGER, COMPARATIVE LAW, CASES & MATERIALS 336 (1950).

[22] 1 Cammarota, 132-133; 6 PLANIOL & RIPERT, TRAITE ELEMENTAIRE DE DROIT CIVIL 793-795; 3 COLIN & CAPITANT, *op. cit.*, 835; 1 BONET, DERECHO CIVIL COMUN Y FORAL, DERECHO DE FAMILIA Y SUCESSIONES 128; 1 CAMUS, *op. cit.*, 352.

[23] Higgins Oil & Fuel Co. v. Guaranty Oil Co., 145 La. 233, 82 So. 206 (1919).

[24] 3 SANCHEZ ROMAN, *op. cit.*, 84.

[25] Sentencias of Feb. 24, 1855, Dec. 3, 1857, Dec. 13, 1865, May 10, 1860, and Feb. 6, 1878.

[26] 8 SALVAT 614.

[27] Fabie v. City of Manila, 21 Phil. 486 (1912); 3 MANRESA, *op. cit.*, 141, 161.

This is the limitation imposed by Article 431, which embodies the principle in the Latin maxim *"Sic utere tuo ut alienum non laedas."* But where does the right of the owner end, and where does the right of third persons begin?

A clearer statement of the limitation is made in the Mexican code (Article 840) as follows: "It is unlawful to exercise the right of ownership in such a manner as to have *no other effect* than to injure a third person *without benefit to the owner.*"

We believe that this should be how Article 431 should be understood. This is in keeping with the principle of abuse of rights.

The following are some illustrative cases decided by courts in other jurisdictions:

(1) The owner of a house erected a tall dummy chimney on his roof for the sole purpose of annoying a neighboring householder by depriving him of light in certain rooms. The defendant argued that he was merely doing what he had a right to do with his property. The French Court of Colmar held that, although the defendant was exercising a right given him by law, he was acting with spiteful intent and had no serious and legitimate aim in what he was doing. His act was, therefore, treated as wrongful.[28] The same conclusion was reached where the owner of a piece of land, without any advantage to himself, erected on one side of his property a very high wall in order to deprive his neighbor of light and air,[29] or to prevent the latter from having a view over the nearby sea.[30]

(2) A company manufacturing airships wanted to purchase an adjacent lot, but got into a quarrel with the owner of the lot. This resulted in the reluctance of the company to pay the lot at a high valuation. The lot owner then erected within his own boundaries a number of wooden scaffolds of a considerable height fitted with projections bristling with spikes. His intention was to bring pressure to bear on the company by making it difficult to launch airships from its property or land thereon; and in fact on one occasion an airship collided with one of these structures. The French Court of Cassation, affirming the decision of the Court of Amiens, held that the lot owner was guilty of abuse of rights, since he sought to attain his ends by threat of injury to the airships of the company.[31]

(3) There were a number of springs yielding the famous St Galmier mineral water. The proprietor of one of the springs installed a powerful pump with the result that the yield of an adjoining spring belonging to another was diminished by two-thirds. There was no direct evidence of spite in the case; but the French Court of Lyons inferred that the owner

[28] *Supra*, note 21 at 333.
[29] NUÑEZ, Appendix 1, 185-186; 6 VON TUHR, 267-268.
[30] 3 COLIN & CAPITANT, *op. cit.*, 835-836.
[31] *Supra*, note 21 at 335-337.

of the pump was inspired solely by a desire to inflict harm because he merely wasted the additional supply of water which he obtained in this way. The owner pleaded the right of ownership, which gave him the right to enjoy and dispose of his property without further limitations than those imposed by law. But the court held that where an act is done with the sole and deliberate intention of inflicting injury, it is wrongful and cannot be justified by pleading a proprietary right.[32]

In the light of Article 19 and the foregoing examples, there are some doctrines enunciated before the new Civil Code which may have to be re-examined, and codal provisions which may be qualified.

The Code permits the owner of a tenement, over which no easement of light or view has been established or acquired for the benefit of an adjoining tenement, to construct or raise a wall on his own land that would obstruct the light or view through or from the wall of such adjoining tenement.[33]

The exercise of this right can no longer be considered unrestricted or absolute. Article 19 qualifies it. The decisions from other jurisdictions set forth above would be applicable.

We believe that for the same reason the application of Article 680 should be guided by Article 19. That article provides: "If the branches of any tree should extend over a neighboring estate, tenement, garden or yard, the owner of the latter shall have the right to demand that they be cut off insofar as they spread over his property, and, if it be the roots of a neighboring tree which should penerate into the land of another, the latter may cut them off himself within his property."

If the owner who has the right to cut off the roots or to require that branches be cut off, should be motivated by no other reason than to prejudice his neighbors, without any benefit to himself, he would be acting in abuse of his rights, and Article 19 could be invoked against him.

The desire to do harm, or the element of spite, while necessary for the application of the principle of abuse of rights in relation to the enjoyment of property, is, however, not required when such use constitutes a nuisance.[34] Such nuisance may be stopped or abated, and injured parties may recover damages, regardless of the intention or motive of the owner of the property.

Abuse in Contractual Relations

No person may be compelled, generally, to enter into a contract. The freedom to contract involves the freedom not to contract. Hence, the motives or reasons for a person's refusal to enter into a contract cannot be inquired

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[32] *Ibid.*, p. 333-334.
[33] CIVIL CODE, art. 669; 2 NAVARRO AMANDI, *op. cit.*, 329-330.
[34] CIVIL CODE, arts. 694-707.

into. Under certain extraordinary or exceptional circumstances, however, refusal to enter into a contract may constitute an abuse of right.

Thus, the refusal of enterprises holding a virtual monopoly, such as railroad companies, shipping lines, and the like, to accept merchandise for transportation from a person, when there is no legitimate reason for the refusal, constitutes abuse. The refusal of a hotel owner to receive as guest certain persons, without just cause, when there is no other place available to them, is likewise an abuse of right.[35] This is also true of a baker who refuses to sell bread, without lawful reason, to a person who is willing to pay the price, when he is the only baker in town.

When a person makes an offer to another to enter into a contract, he is free to withdraw the offer before the contract is perfected by acceptance. There being no contract yet, the revocation of the offer cannot legally give rise to any injury or damage to the offeree.[36] It would be a case of *damnum absque injuria,* even if the offeror withdraws his offer after the acceptance had been sent by the offeree but before the former received it.[37]

But if the offeror, in abuse of right, withdraws his offer without reason, after the offeree in good faith has incurred expenses preparatory to entering into the contract, he would be liable for damages.[38] The offeree may not have a right to compel the offeror to enter into the contract, but he may recover the damages he has suffered in the belief that the contract would, in good faith, be perfected.[39]

The following are some instances of abuse of rights in contractual relations:

Where a lessee is prohibited by the lease contract from subleasing the property without the consent of the lessor, and the latter refuses capriciously to allow the sub-lease, without giving any reason therefor, if the failure to sub-lease the property causes injury to the lessee, there is an abuse of right on the part of the lessor.[40] On the other hand, when the lessee abandons the house leased before the expiration of the term, but refuses to place it at the disposal of the lessor in exchange for the return or remission of the rents for the unexpired period, there is abuse on the part of the lessee.[41]

An artist has a contract with a theater owner to sing for a certain season. A competing theater owner, by offering more advantageous terms, induces the artist to sing in his own theater and violate the contract with the first theater. This is an abuse of the right to enter into contracts, and

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35 2 GASPERI, 466-367.
36 2-I RUGGIERO 281; 8 MANRESA, *op. cit.*, 650.
37 Laudico v. Arias Rodriguez, 43 Phil. 270 (1922).
38 3 VALVERDE, 120-127.
39 2-I RUGGIERO, *op. cit.*, 283; SCAEVOLA, cited in Laudico v. Arias Rodriguez, *supra*, note 37 at 270, 273.
40 2 GASPERI, *op. cit.*, 470.
41 6 VON TUHR, *op. cit.*, 267-268, citing German decisions.

gives rise to liability for damages suffered by the first owner. The act of lowering prices to a level that will ruin a competitor, known as cut-throat competition, is a variety of abuse of the right to free competition.[42]

German courts have held that a party to a contract who had advised the other party that the contract could be validly entered into without any formality, was prevented by the principle of good faith from later interposing the defense of the Statute of Frauds. Similarly, the defense of prescription of action was disallowed if interposed by one who, by settlement negotiations conducted in bad faith, had caused the plaintiff to refrain from the timely commencement of action.[43]

It has also been held that a party to a contract may not suddenly avail himself of a right of rescission which by the terms of the contract he may exercise in the event of certain contingencies, if in prior similar situations he failed to exercise the right and thus led the other party to believe that he did not insist on rigorous enforcement of the contract clause in question.[44]

In an Opinion of the German Supreme Court (Reichsgericht) of February 1, 1935, and in numerous other cases, it was held that even before the expiration of the statutory period of limitation the exercise of a right may be violative of the principles of good faith and hence improper, if the plaintiff has been silent during a long period of time, and if defendant has changed his position in reliance upon plaintiffs continued inaction. This doctrine was reaffirmed by the German Supreme Court for the British Zone in an Opinion of December 9, 1948.[45]

Where a number of workers, forming a union, entered into a working agreement with their employees, but later on all of them, except one, formed another union and demanded new working conditions from the employer while the original agreement was still in force, our Supreme Court held:

> If this move were allowed the result would be a subversion of a contract freely entered into without any valid and justifiable reason. Such act cannot be sanctioned in law or in equity as it is a derogation of the principle underlying the freedom of contract and the good faith that should exist in contractual relations.[46]

Even when there is a right to dismiss an employee, that right must not be exercised in a manner that is anti-social or oppressive.[47]

Under Article 1920, the principal may dismiss an agent or revoke the agency at will. This rule constitutes an exception to the binding force

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[42] 2 GASPERI, *op. cit.*, 467-469.
[43] *Supra*, note 21 at 340.
[44] *Ibid.*, p. 341.
[45] 3 COLIN & CAPITANT, *op. cit.*, 834-835.
[46] Manila Oriental Sawmill Co. v. National Labor Union, 91 Phil. 28 (1952).
[47] Quisaba v. Sta. Ines-Melale Veneer & Plywood, Inc., G.R. No. L-38088, August 30, 1974, 58 SCRA 771 (1974).

and mutuality of contracts, because confidence is the basis of agency, and the person represented may terminate the representation at his pleasure. The power to revoke and the manner of exercising such power are two things that should not be confused.

The power of the principal to revoke an agency must be exercised with just cause. Whether there is a cause or none for the revocation, it will produce the effect of revoking the agency; but, if the revocation was capricious or for the purpose of prejudicing the agent, the principal must indemnify his victim for the damages the latter may suffer from his act, which is intrinsically legal but abusive and unjust in origin. This has been the uniform rule in French jurisprudence.[48] Thus, if an agent, after having acquired a large clientele for his principal, is arbitrarily dismissed, he can recover damages from the principal who has abused his right to revoke the agency.[49]

Abuse in Other Relations

There can be abuse of rights in numberless relations, because where there is a right or a duty, there is a possibility of abuse. Whether there has been a violation of Article 19 will depend upon the facts and circumstances of each case and the sound discretion of the court.

Promise to Marry.—In the original draft of the present Code as submitted to the Congress, a chapter on "Promise of Marriage" was included by the Code Commission. That chapter provides for an action for damages. both material and moral, for breach of promise to marry, and determines who may bring the action as well as who may be held liable in such action. The whole chapter, consisting of ten articles, was eliminated by the Congress.

Before the present Code was drafted, our Supreme Court had stated, in *De Jesus v. Syquia*,[50] that "the action for breach of promise to marry has no standing in the civil law, apart from the right to recover money or property advanced by the plaintiff upon the faith of such promise." In eliminating the proposed chapter on promise of marriage, the Congress manifested its intention to keep this rule. After citing that case, the Senate Special Committee on the Civil Code, recommending the suppression of the proposed chapter, said:

> The history of breach of promise suits in the United States and in England has shown that no other action lends itself more readily to abuse by designing women and unscrupulous men. It is this experience which has led to the abolition of rights of action in the so-called Heart Balm suits in many of the American states. The Commission perhaps thought that it has followed the more progressive trend in legislation

[48] 2 GASPERI, *op. cit.*, 471.
[49] 1 VALVERDE, *op. cit.*, 578-583; NUÑEZ, Appendix I, 185-186.
[50] 58 Phil. 866 (1933).

> when it provided for breach of promise to marry suits. But it is clear that the creation of such causes of action at a time when so many states, in consequence of years of experience, are doing away with it, may well prove to be a step in the wrong direction.

It may now be asked: Can damages be recovered for breach of promise to marry?

There is breach of promise to marry where before the time set for the performance of the marriage, one party declares that he will not carry it out.[51]

We believe that an action based purely on breach of the contract to marry, will not lie. Thus, if a young man and young woman agree to marry at some future time, and after a while the young man changes his mind and breaks the engagement, there being no seduction or abuse of right, the young woman will have no cause of action for damages. There is no legal provision creating a right of action for her. It is true that she may suffer from wounded feelings and mental anguish, and these are recognized as elements of moral damages under Article 2217 of the Code; but before such damages can be recovered, there must first be a right of action, and there is no law granting a right of action purely on breach of contract to marry.[52]

In cases decided prior to the present Code, our Supreme Court has held that a promise of marriage, based upon carnal relations, is founded upon an unlawful consideration, and no action can be maintained by the woman against the man for a breach thereof.[53] The reason given for this rule is that if the carnal intercourse between the parties is a crime, it is common to both parties, and Article 1305 of the old Code (1411 in the new Code) bars a recovery. If it is not a crime, the act is immoral, and the fault lies with both parties; under article 1306 of the old Code (1412 of the present), neither party can recover from the other. Nor can a recovery be allowed under Article 1902 of the old Code (Article 2176 of the present), which provides that a person who by an act or omission causes damage to another by his fault or negligence shall be obliged to repair the damage so done, for the plaintiff woman participates in the act.[54]

In one case, however, it appearing that when the plaintiff became pregnant the defendant urged her to resign from her position as a school teacher, and the plaintiff, confiding in the sincerity of the defendant's promise of marriage, acceded to his suggestion and resigned from her employ-

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[51] Kelley v. Renfro, 9 Ala. 325; Anderson v. Kirby, 125 Ga. 62, 54 S.E. 197 (1906).

[52] Galang v. Court of Appeals, 114 Phil. 14 (1962); Estopa v. Piansay, 109 Phil. 640 (1960); Hermosisima v. Court of Appeals, G.R. No. L-14628, September 30, 1960, 60 O.G. 1846 (March, 1964); Peralta, etc. v. Peralta, C.A.-G.R. No. L-25083-R, February 13, 1961.

[53] Inzon v. Belzunce, 32 Phil. 342 (1915); Dalistan v. Armas, 32 Phil. 648 (1915).

[54] Batarra v. Marcos, 7 Phil. 156 (1906).

ment, the court held the defendant liable for the damages representing the salary which plaintiff should have received if she had not resigned. This decision, however, is not based on breach of contract by the defendant, but on his fault in inducing the plaintiff to resign from her position, or on article 1902 of the old Code on quasi-delict.[55]

We believe that the doctrine laid down in these cases is too broad. The Supreme Court seems to have treated the contract to marry and the carnal intercourse as identical things in these cases. The sexual relations of the parties, however, should be considered apart from the contract itself. Except perhaps in very rare cases, the illicit relation has never been the consideration for a man's promise to marry a woman. The promises to marry are usually reciprocal, each being the consideration of the other. The illicit relation does not constitute the basis of the contract to marry; it follows from the intimacy of the parties produced already by their existing agreement to marry. Therefore, it is possible legally to base an action upon the carnal knowledge of the plaintiff by the defendant, or upon the seduction, as a fact separate from the contract to marry. The promise to marry would only be the means of accomplishing the seduction. If the offended woman has been led to submit to carnal intercourse by the promise of marriage, she should be entitled to damages, not only on the basis of tort or quasi-delict, but under the provisions of Article 21 of the present Code.[56] The answer to the argument that the woman cannot recover damages because she participates in the carnal act, may be found in the following words of an American court:

> Such an engagement brings the parties necessarily into very intimate relations and the advantages taken of these relations by the seducers is as plain a breach of trust in all its essential features as any advantage gained by a trustee, or guardian, or confidential adviser, who cheats a confiding ward or beneficiary or client into a losing bargain. It only differs from ordinary breaches of trust in being more heinous. A subsequent marriage condones the wrong, but a refusal to marry makes the seduction a very grievous element of injury, that cannot be lost sight of in any view of justice.[57]

The essence of the action, therefore, would not be the breach of the contract, but the tortious or wrongful act of seduction accomplished through the deceitful promise.[58] The broad terms of the doctrine laid down by the Supreme Court would penalize a woman for having faith and trust in the word and integrity of a man who in her eyes and heart is to be her future life companion.

Even where there has been no seduction, we believe that under Article 19, damages may, under certain circumstances, be recovered against a

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[55] Garcia v. Del Rosario, 33 Phil. 189 (1916).
[56] Victorino v. Nora, C.A.-G.R. No. L-13158-R, October 26, 1955, 52 O.G. 911 (February, 1956).
[57] Osmun v. Winters, 25 Ore. 260, 35 P. 250 (1894).
[58] Gubern Salisachs, p. 125.

party who repudiates a contract to marry; but the basis of the action cannot be the mere breach of contract itself, but some act constituting an abuse of right.[59] French jurisprudence, for instance, has repeatedly held that a prospective bride or groom who capriciously breaks an engagement without reason, and thereby causes moral and material injury to the other party, is liable for the damages caused, especially if the break occurs just before the wedding, and after a long engagement.[60] As an American judge said: "Where a woman has been wantonly deserted after a long engagement, her disgrace, the result to her feelings, the probable solitude which may result by reason of such desertion after a long courtship, are all matters to be considered.[61]

While it is true that a mere promise to marry has no obligatory force, and the principle of freedom of consent in marriage gives a right to either party to withdraw from the promise, the exercise of that right must not be unjustified and abusive.

Parental Authority.—Parental authority over unemancipated children necessarily includes the direction of the child and vigilance over his relations with others. Parents may open and examine the correspondence of their unemancipated children, intercepting and confiscating, if necessary, the letters written by or to them. The secrecy and inviolability of correspondence does not exist for children under parental authority.

The parents may also prohibit their children from having any dealings or relations with particular individuals, whether strangers or collateral relatives, when such relations are dangerous or unwholesome. But the children cannot be prohibited from seeing or having dealings with their ascendants. Although the law does not expressly provide for the right of grandparents to visit their grandchildren, this should be recognized as an elementary principle of natural law, and as necessary for the maintenance of family solidarity.[62]

In the exercise of their power to direct the lives of their children, parents cannot force them to follow corrupting orders or examples, nor compel them to do acts repugnant to their conscience or their dignity.[63] The parents, for instance, may refuse to give their consent to the marriage of their children below the ages of twenty and eighteen, male and female, respectively; but they cannot force such children to marry against their will. If the parents, in order to force a child to marry against the latter's will, resort to means which cause moral or physical suffering to the child, such parents may be deprived by the courts of their parental authority.[64]

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[59] Silva v. Peralta, G.R. No. L-13114, November 25, 1960, 61 O.G. 145 (1965).
[60] GASPERI, 472.
[61] McPherson v. Ryan, 59 Mich. 33, 26 N.W. 321 (1886).
[62] 2-I COLIN & CAPITANT, *op. cit.*, 25; PLANIOL & RIPERT, *op. cit.*, 348-349; 3 ANTOKOLETZ 136, citing Argentine decision.
[63] DE BUEN; 2-I COLIN & CAPITANT 73.
[64] Salvaña v. Gaela, 55 Phil. 680 (1931).

The power to correct and punish the children in moderation is inherent in parental authority. This power, however, should be exercised only to keep the prestige of the parental authority, and to carry out the objective of properly directing the education and conduct of the children. It should never exceed the limits of prudence, moderation, and human sentiments. The moderateness and reasonableness of the punishment is generally determined by custom; and the means and manner of punishment, not exceeding these limits, are within the direction of the parents. Modern educational systems ban the use of corporeal or physical punishment. Parents cannot confine children in "private prisons," but must resort to the procedure provided by law for the detention of the children. When the parents abuse this power, and from mere correction they pass to the realm of cruelty in inflicting punishment, they may become criminally liable and their parental authority may be terminated or suspended under Article 332.[65]

Husband and Wife.—The exercise of personal conjugal rights of husband and wife generally fall within the internal regime of the family, in which the courts generally refuse to interfere. The internal aspect of the family is commonly known as sacred and inaccessible to the courts. Nevertheless, when there is an abuse in the exercise of rights, the matter goes outside the internal regime of the family and the courts may afford the appropriate relief or remedy under the circumstances of the case.

Thus, under Article 110, the "husband shall fix the residence of the family." This right of the husband gives him such a predominance as to defeat even some rights of the wife recognized by law. For instance, under Article 117 the wife may engage in business or practice a profession or occupation. But because of the power of the husband to fix the family domicile, he may fix it at such a place as would make it impossible for the wife to continue in business or in her profession.[66] For justifiable reasons, however, the wife may be exempted from living in the residence chosen by the husband. The husband cannot validly allege desertion by the wife who refuses to follow him to a new place of residence, when it appears that they have lived for years in a suitable home belonging to the wife, and that his choice of a different home is not made in good faith.[67]

If he has the means, the husband cannot require the wife to live with him and his parents or in a community dwelling which occasions embarrassment to her, such as when the wife and the mother-in-law cannot get along together,[68] as where the place chosen by him is dangerous to her

[65] 2 MANRESA 22-23; 5 SANCHEZ ROMAN 1140; NAVARRO AMANDI 251; 1 PLANIOL & RIPERT, *op. cit.*, 356; 2-II RUGGIERO, *op. cit.*, 234; 1 OYUELOS 2652-666; 1 VERA 228-229.

[66] 1 BALDASSARRE, 282.

[67] Vosburg v. Vosburg, 136 Cal. 195, 68 Phil. 694 (1902).

[68] Del Rosario v. Del Rosario, 48 O.G. 6122.

life or she is subjected to maltreatment or insults by his relatives or parents at the sacrifice of her comfort, health and happiness, making common life impossible.[69]

Neither can the wife be obliged to live with a husband who carries on a shameless business in his home,[70] or tolerates therein illicit relations between their children respectively had in previous marriages,[71] or who spends his time in gambling, giving no money to his family for food and their necessities, and at the same time insults and lays hands on her.[72]

Although a husband is entitled to sexual relations with his wife, and it is not rape to force the wife to have sexual intercourse against her will, this right is not absolute. The right involves only normal intercourse. The wife, therefore, may refuse sexual intercourse with the husband if the latter resorts to abnormal or unnatural practices, to unchaste and obscene acts, to harmful contraceptives, or to offensive conduct.[73] He cannot compel her to submit when she is not in a condition to do so, as when she is ill; nor when excessive intercourse would endanger her health; nor when he is suffering from venereal disease.

A husband has a right to a reasonable control of his wife's actions. It is generally recognized that a husband may restrain his wife from committing a crime, or adultery, or from interfering with his exercise of parental authority over his children. It is a sickly sensibility which holds that a man may not lay hands on his wife, even rudely, if necessary, to prevent the commission of some unlawful or criminal purpose. But a husband will not be permitted to restrain his wife merley to compel cohabitation with him. Neither can he restrain her from enjoying her own religious opinion, if she does not in her zeal disturb the public peace or rebel against his lawful authority.[74]

In matters which are purely personal to the wife, the husband has no right to command or prohibit her. Thus, he cannot direct her in her relations with her children had in a former marriage, or in her relations with close relatives. He cannot deprive her totally of her social relations. He cannot require her to study or to wear some particular kind of dress, nor prohibit her from smoking or dancing or having legitimate relations with friends.[75]

Although denied by Italian jurisprudence, the right of the husband to intervene in the personal correspondence of the wife is admitted by

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[69] 11 SALVAT 96; Talaña v. Willis, 35 O.G. 1369; Geisinger v. Conners, 130 La. 922, 58 So. 815 (1912); Verret v. Koelmel, 162 La. 277, 110 So. 421 (1926).

[70] 1 MANRESA, *op. cit.*, 329; 3 Borja 338.

[71] Garcia v. Santiago, 53 Phil. 952 (1928).

[72] Parnecio v. Sala, (C.A.) 34 O.G. 1291.

[73] 2 PLANIOL & RIPERT 271-272, citing French decisions; Goitia v. Campos Rueda, 35 Phil. 252 (1916).

[74] MADDEN, PERSONS AND DOMESTIC RELATIOS 150-52.

[75] 4-I ENNECCERUS, KIPP & WOLF, *op. cit.*, 191-193; 2 PLANIOL & RIPERT, *op. cit.*, 288.

French jurisprudence. The exercise by the husband of this right conflicts with the right of ownership of the wife over her letters, and with the principle of inviolability of correspondence. The best rule seems to be to accept this right to the same extent that the husband may control the person of his wife. It should not be abused, but must be exercised reasonably to keep the family solidarity, protect the family honor, and maintain his moral security as the head of the family. The husband cannot exercise this right purely from a spirit of curiosity, and it cannot be allowed to degenerate into tyrannical or indiscreet investigations. Hence, the husband cannot intercept business correspondence of a wife who is legally engaged in a profession, occupation or business. He cannot open her letters to or from close relatives.[76]

With respect to the management of the conjugal properties, abuse of administration by the husband is expressly dealt with by the Civil Code. Under Article 167, "in case of abuse of powers of administration of the conjugal partnership property by the husband, the courts, on petition of the wife, may provide for a receivership, or administration by the wife, or separation of property."

Performance of Duty.—Article 19 is not limited to abuse in the exercise of a right, but applies also to abuse in the performance of a duty; it would cover both private and public duties.

A police officer whose duty it is to enforce the law and apprehend violators, cannot maltreat an offender who offers no resistance when arrested. He cannot unreasonably prevent the arrested person, before being taken away, from talking to members of his family or from leaving them funds for their subsistence.

Employees of the city engineer's office or the Sheriff's office, ordered by the court to demolish squatter's houses on public land or the house of a losing defendant in an ejectment case, must act with justice and "give everyone his due" in complying with the court's demolition order. They should not carry out their order during a storm or very strong rain, or at night, when the occupants would be exposed to the elements or would have no chance to seek other shelter.

A sheriff complying with an attachment or foreclosure order of the court, who attaches or seizes an automoble he finds on the street, forcing the occupants to alight and look for other transportation, exposing them to embarrassment, when they could have been taken by the car to their destination which is not far, would be guilty of abuse in the performance of a duty.

An instance of a private duty which may be abused is the arrangement for funerals. Under Article 305, "the duty and the right to make

[76] 3 CASTAN, *op. cit.*, 503; 2 PLANIOL & RIPERT, *op. cit.*, 288-290.

arrangements for the funeral of a relative shall be in accordance with the order established for support.'

It is ordinarily taken for granted that relatives and friends of the deceased should be free to visit the premises where the corpse lies in state and to attend the funeral for the purpose of paying their last respects. In American jurisprudence, however, it has been said that this is more a matter of common decency and social propriety than of legal right, and persons other than those who have the right to the custody of the corpse and the making of funeral arrangements, have no legal right to be present at the funeral, even if they should be relatives of the deceased.[77]

But under our law, it seems that the persons entitled to the custody of the corpse cannot exclude the friends and other relatives of the deceased; such exclusion, without just cause, would be an abuse of right falling under Article 19.

Legitimate Use of Right.

Where a person merely uses a right pertaining to him, without bad faith or intent to injure, the fact that damages are thereby suffered by another will not make the former liable.[78]

It has thus been held that there is no abuse of right in the following cases: (1) The victim of theft denounces some suspects to the police authorities, (2) A person who believes he has a right which has been violated, sues the defendant who, however, is absolved from the complaint. (3) A merchant puts up a store near the store of another and in this way attracts some of the latter's patrons. (4) An investigating agency gives unfavorable reports of the credit of a merchant, based on gathered data. (5) An employer dismisses an employee who has grown old in the service, because he has become slow and inefficient.[79]

There are certain rights which are considered as absolute, and their exercise can never be the basis of liability. An example of these is the right of parents to refuse or deny their consent to the marriage of a minor child.[80] Aside from this, the following have been considered as absolute: (1) the right to deprive one's legal heirs of an inheritance by giving all the property of the testator to others, so long as the legitime is not impaired; and (2) the right to set up the nullity of contracts, legal presumptions, and prescription of obligations.

There are, therefore, certain rights whose "abuse" will not give rise to liability. The motives of the party who exercises such rights cannot be inquired into.

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[77] Seaton v. Commonwealth, 149 Ky. 498, 149 S.W. 871 (1912).
[78] 6 VON TUHR 264.
[79] 3 COLIN & CAPITANT, *op. cit.*, 834-835.
[80] 1 VALVERDE, *op. cit.*, 580-583; 1 CAMMAROTA, *op. cit.*, 144-145.

Sanctions and Remedies.

Article 19 lays down a rule of conduct in human relations without stating the remedy or remedies available in case it is violated. Generally, an action for damages under Article 20 or 21 would be proper.

Aside from damages, other appropriate remedies or relief may be given by the court. Where the abuse is continuing and irreparable damage may be suffered by the aggrieved party, an injunction may be issued by the court to stop the abuse.

A civil action for relief should be without prejudice to criminal and administrative actions whenever proper.

Acts similar to "abuse".

There are some acts amounting to an abuse of rights which are expressly banned by the Civil Code under the chapter on human relations.

Thoughtless extravagance.—Article 25 provides: "Thoughtless extravagance in expenses for pleasure or display during a period of acute public want or emergency may be stopped by order of the courts at the instance of any government or private charitable institution."

Generally, a person has the right to use his property and even consume it, provided he does not injure others. This article, however, imposes a limitation upon that right. When the rich indulge in thoughtless extravagance or display during a period of acute public want or emergency, they may unwittingly kindle the flame of unrest in the hearts of the poor who thereby become more keenly conscious of their privation and poverty and who may rise against the obvious inequality. Such display of pomp and frivolity tends to demoralize the suffering masses, and weaken the very structure of the social group.

Unfair Competition.—Article 28 provides: "Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or high-handed method shall give rise to a right of action by the person who thereby suffers damage."

Democracy becomes a veritable mockery if any person or group of persons by any unjust or high-handed method may deprive others of a fair chance to engage in business or earn a living.[81] This provision seeks to preserve competition in a wholesome and free atmosphere, so that neither in capital nor in labor may there be a monopoly through unjust means.

The individualistic philosophy of capitalistic society adopts as one of its basic premises the desirability of free competition in trade and business. Right or wrong, the commercial and industrial order is organized on the

[81] MALOLOS & MARTIN, *supra*, note 1 at 31.

assumption that the welfare of society is best advanced by the elimination of unnecessary restrictions on competition. This proposition, however, has led to grievous and manifold wrongs to individuals; hence, there is a clear and earnest movement to protect individuals from the evils which result from unrestrained competition. The problem has been to adjust matters so as to preserve the principle of competition and yet guard against its abuse.

Prohibited Competition.—So long as fair and legitimate means are used, competition is proper. Thus, rival manufacturers may lawfully compete for the patronage of the public in the quality and price of their goods, in the beauty and appeal of their packages or containers, in the extent of their advertising, and in the employment of agents.[82] In other words, competition affords a privilege to interfere with prospects of advantageous economic relations of others (1) so long as the defendant's purpose is a justifiable one, and (2) so long as he employs no means which are not sanctioned by law.

The law prohibits unfair competition. In order to qualify the competition as "unfair", it must have two characteristics: (1) it must involve an injury to a competitor or trade rival, and (2) it must involve acts which are characterized as "contrary to good conscience," or "shocking to judicial sensibilities," or otherwise unlawful; in the language of our law, these include force, intimidation, deceit, machination or any other unjust, oppressive or high-handed method. The public injury or interest is a minor factor; the essence of the matter apears to be a private wrong perpetrated by unconscionable means.[83]

What is known as "cut-throat competition," for instance, is considered as unfair. To attract to oneself the customers of a business rival by offer of goods at lower prices, is, in general, justifiable as fair competition. But when a person starts an opposing place of business, not for the sake of profit to himself, but regardless of loss and for the sole purpose of driving his competitor out of business so that later on he can take advantage of the effects of his malevolent purpose, he is guilty of wanton wrong. "To call such conduct competition is a perversion of the term. It is simply the application of force without legal justification, which in its moral quality may be no better than highway robbery."[84]

The concept of "unfair competition" under Article 28 is very much broader than that under Republic Act No. 166, in which it is understood as the act of passing or attempting to pass off upon the public the goods, business, or services of one person as and for the goods, business, or

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[82] Coat v. Merrick Thread Co., 149 U.S. 562, 13 S.Ct. 966, 37 L.Ed. 847 (1893).

[83] Miller, Unfair Competition, p. 19; cited by the Court of Appeals in Davao Stevedore Terminal Co., Inc. v. Fernandez, C.A.-G.R. No. L-15561-R, November 27, 1957, 54 O.G. 1433 (March, 1958).

[84] Tuttle v. Buck, 107 Minn. 145, 119 N.W. 946 (1909).

services of another who has acquired a goodwill in his goods, business, or services. Under the present article, which follows the extended concept of "unfair competition" in American jurisdiction, the term covers even cases of discovery of trade secrets of a competitor, bribery of his employees, misrepresentation of all kinds, interference with the fulfillment of a competitor's contracts or any malicious interference with the latter's business.[85] This trend was, however, already reflected in Republic Act No. 166, under which "any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another," is guilty of unfair competition.

Although Article 28 merely recognizes "a right of action by the person who thereby suffers damages," without stating what specific remedies are available to him, it may be said that he would be entitled to all the appropriate remedies available to a person aggrieved by an abuse of right by another.

IV. UNJUST ENRICHMENT

Not New as a Principle

Article 22 provides: "Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

Although this is a new article in the Civil Code, and did not exist in the old Code, the principle it enunciates has been applied in this jurisdiction long before the enactment of the present Code.

In *Perez v. Pomar*,[86] where defendant was made to pay for the services of the plaintiff as interpreter notwithstanding the absence of an agreement as to compensation, the Court held, besides ruling that an implied innominate contract existed, that —

"If it is a fact sufficiently proven that the defendant, on various occasions consented to accept an interpreter's services, rendered in his behalf and not gratuitously, it is but just that he should pay a reasonable renumeration therefor, because it is a well-known principle of law that no man should be permitted to enrich himself to the damage of another."

In *Bonzon v. Standard Oil Co.*,[87] it was held:

> In this jurisdiction under the general principle that one person may not enrich himself at the expense of another, a judgment creditor would not be permitted to retain the purchase price of land sold as the property

[85] MILLER, UNFAIR COMPETITION 17.
[86] 2 Phil. 682 (1903).
[87] 27 Phil. 141 (1914).

> of the judgment debtor after it has been made to appear that the judgment debtor had no title to the land and that the purchaser had been evicted therefrom.

Thus, even if the doctrine was not expressly consecrated in positive law, it had for a long time been accepted and followed as a general principle. In the Roman law, for instance, there were several actions based on this principle. One action was open to the party who, by mistake or otherwise, had paid or given the party something that was not due him (condictio indebiti). Another was available to the party who had performed in anticipation of a counter-performance by the other party which did not follow (condictio causa data non secuta). Still another remedy allowed the recovery of property from a party who had obtained it without legal grounds (sine causa); and, finally, there was the action to recover property obtained on grounds not worthy of protection by law (ex injustia causa) or obtained for an immoral purpose (turpis causa).

In the French civil code, followed by the Spanish Code in 1889, the principle was not provided, but provisions on quasi-contracts were based on the doctrine. The German and the Swiss codes, however, pioneered in stating the principle as a general formula. The Mexican and the Soviet codes followed the idea. Our new Civil Code has adopted the formula in Article 22.

In justifying the inclusion of this provision, the Code Commission said: "It is most needful that this ancient principle be clearly and specifically consecrated in the Civil Code to the end that in cases not foreseen by the lawmaker, no one may unjustly benefit himself to the prejudice of another."[88]

Relation to Quasi-Contract.

Modern writers designate the action for recovery of what has been paid without just cause as the *accion in rem verso*. This is a departure from the classical viewpoint of considering the payment of what is not due as a quasi-contract. Our code still follows the classical criterion, inasmuch as it has a separate chapter on quasi-contracts; but there has been a substantial modification, in the sense that the new Civil Code recognizes that quasi-contract is based on the principle of unjust enrichment.[89] Nothwithstanding the formal preservation of the concept of quasi-contracts, however, there has been practically a merger of the principle of unjust enrichment and that of quasi-contract in the new Code. The Code could have been more systematic and logical if Article 22 and those on quasi-contracts had been grouped under a single chapter, as was done in the German and Mexican codes.

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[88] *Supra*, note 1 at 41.

[89] Quasi-contracts are governed by the present code in Chapter 1, Title XVII of Book Four (Articles 2142 to 2175).

Article 2142, the first article under the chapter on Quasi-Contracts, provides: "Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another."

There are various theories as to the basis of quasi-contracts. Some consider that it is based on the tacit or presumed consent of the person obligated. However, this is criticized on the ground that the obligation arises without, and sometimes even against, the will of the obligor. Others consider it as based on the principles of justice, to prevent unjust enrichment at the expense of another. This view, however, has been criticized by Giorgi and Castan, on the ground that not all quasi-contractual obligations arise from unjust enrichment, and not all obligations arising from unjust enrichment constitute quasi-contract.[90] The obligations of the *gestor* in *negotiorium gestio,* for instance, do not presuppose any enrichment on his part. Modern writers, however, believe that no single theory can form a sufficient basis for all the various kinds of quasi-contract. Modern codification, as shown by the German, Swiss and Brazilian codes, gives special consideration to the principle of unjust enrichment.[91]

Article 2142, further, provides: "The provisions for quasi-contracts in this chapter do not exclude other quasi-contracts which may come within the purview of the preceding article." The concept of quasi-contract would thus include any juridical relation, even if not expressly defined or provided in the Chapter on Quasi-Contracts, so long as its purpose is that "no one shall be unjustly enriched or benefited at the expense of another."

Article 22, based on the same principle, imposes the obligation to return what has been acquired or received at the expense of another without just or legal cause or consideration.

Similar provisions from the Swiss, Mexican, German, and Soviet codes stress this duty of restitution.

The German Code (Article 812) provides: "He who by means of a prestation, or by any other means, obtains something without just cause and at the expense of another, shall be obliged to return the same to the latter."

The Mexican code (Article 1882) states: "He who enriches himself without cause to the prejudice of another, is obliged to indemnify for the injury caused, to the extent of his enrichment."

The Soviet code (Article 399) provides: "Whoever has been enriched at the expense of another, without sufficient ground provided by law or contract, must restore that which he has groundlessly received."

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[90] CIVIL CODE, art. 22.
[91] 2 BONET, *op. cit.*, 197-198; 3 CASTAN, *op. cit.*, 411-413.

The quasi-contract of *solutio indebiti* is provided in two articles of the Code:

Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

Article 2155. Payment by reason of a mistake in the construction or application of a doubtful or difficult question of law may come within the scope of the preceding article.

Among Spanish writers, including Sanchez Roman, Manresa, Scaevola, and Valverde, the general opinion is that a mistake of law does not give rise to the quasi-contract of *solutio indebiti*. More recent writers, however, like De Buen, Perez and Alguer, agreeing with Enneccerus, Giorgi, and Ruggiero, sustain the view that all mistakes, whether of fact or of law, will give rise to this quasi-contract, because Article 2154 makes no distinction as to the kind of mistake.[92]

Our Code seems to lean towards the latter view, but with the qualification that the question of law must be "doubtful or difficult." We submit, however, that whether the question is "doubtful or difficult" or not, must be determined by the actual knowledge of law of the person who made the payment. Even if the law would be very clear to a lawyer, but is actually unknown to the payor, then the payee would still derive an unjust enrichment and should return what he has received.

The doctrine of *solutio indebiti* is applied only (1) where a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment, and (2) the payment is made through mistake, and not through liberality or some other cause.[93] Thus, where a person makes a payment not due, with knowledge of the existence of an error in the calculation on which it is based, and is induced to effect it by the urgency of the case in view of an emergency created by war, the payment is not made by mistake, and he cannot recover it under Article 2154.[94]

Where the lessor erroneously received rents corresponding to the last months of the year, when the lease expired in June of said year, it was held that the rents constitute payment of what is not due, and the lessor is obliged under this article to return what has been paid to him by mistake.[95] Where the parties to various contracts or loan never intended that interests shall be paid, and when payments were made, they were

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[92] 3 CASTAN 415.

[93] Hoskyn & Co. v. Goodyear Tire Co., 40 O.G. Supp. 245; Velez v. Balzarza, 73 Phil. 630 (1942); DE BUEN: 3 COLIN & CAPITANT, *op. cit.*, 943.

[94] People v. Acevedo, 65 Puerto Rico, 444.

[95] Yanson v. Sing, C.A.-G.R. No. 1181, February 26, 1938, 38 O.G. 2438 (September, 1940).

intended by the borrowers to be applied to the principal, whatever excess amounts paid to and received by the lenders must be returned to the borrowers.[96]

Broad Scope of Article 22

The obligation to return what has been paid by mistake would exist, even without the provisions on *solutio indebiti,* because of Article 22. In fact, Article 22 would impose that obligation even if there were no mistake in the payment, so long as the receipt of what was given was without just or legal cause. Thus, a payment which could not be recovered under Article 2154, as in the Porto Rico case above, may be recovered under Article 22.

In short, the scope of Article 22 is much broader and includes even more than *solutio indebiti.* The concept of *solutio indebiti* could have been omitted from the Code, without affecting the state of the law.

There are several other specific remedies provided in the Code which embody the principle of unjust enrichment. Most noteworthy are the provisions on implied trusts.

Article 1448 provides: "There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest in the property. The former is the trustee, while the latter is the beneficiary."

A resulting trust arises in favor of one who pays the purchase money of an estate and places the title in the name of another, because of the presumption that he who pays for thing intends a beneficial interest therein for himself.[97] Thus, where A pays the purchase money and the title is conveyed by absolute deed to B, who is legally a stranger to A and who makes no express promise, a typical instance of a resulting trust is presented.[98] The trust is said to result in law from the acts of the parties.

The trustee holds the title for the benefit of the beneficiary; the former cannot claim the property as his as against the latter. In other words, the trustee cannot unjustly enrich himself at the expense of the beneficiary.

When a person receives property for another under a relation of confidence, unjust enrichment through a violation of the confidence reposed in him may be prevented by the recognition of an implied trust.[99] Thus, it has been held that where a husband, at the instance of his wife, who trusted him, acquired in his own name certain properties belonging to her separate estate, he cannot personally or through his successors in interest,

[96] Velez v. Balzarza, *supra,* note 93.
[97] Larisey v. Larisey, 93 S.C. 450, 77 S.E. 129 (1913).
[98] See Uy Aloc v. Cho Jan Jing, 19 Phil. 202 (1911).
[99] Ruiz v. Ruiz, 61 Porto Rico 794; Garcia v. Rexach, 65 Porto Rico 493.

and taking advantage of the confidential relation, unjustly enrich himself at her expense by claiming ownership of the properties.[100]

Other cases of implied trusts provided by the Code are:

Article 1449: "There is also an implied trust when a donation is made to a person but it appears that although the legal estate is transmitted to the donee, he nevertheless is either to have no beneficial interest or only a part thereof."

Article 1450: "If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the person to whom the money is loaned or for whom it is paid. The latter may redeem the property and compel a conveyance thereof to him."

Article 1451: "When land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner."

Thus, where a wife, who has acquired certain properties by inheritance, causes them to be transferred to the name of her husband, she is entitled upon his death to claim them as belonging to her separate estate.[101]

Likewise, where through fraudulent representations or by pretending to be the sole heir of the deceased, an heir succeeded in having the original title of the land in the name of the deceased cancelled and a new one issued in his name thereby enabling him to possess the land and get its produce, there is created a constructive trust in favor of the defrauded heirs.[102]

Article 1452: "If two or more persons agree to purchase property and by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion of the interest of each."

Thus, where several Chinese merchants contributed money to buy a parcel of land and house for use as their clubhouse but they registered the title to said property in the name of one of the members, who collected rentals for the said property without accounting for them to the other members, although the legal title is registered in the name of only one of the members, the beneficial title remains with the members of the club, and the member in whose name the property is registered is a mere trustee of the other members of the club, and he is duty bound to account for the income of said property.[103]

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[100] Ramirez v. Ramirez, 65 Porto Rico 510.

[101] *Ibid.*

[102] Baysa v. Baysa, G.R. No. L-16048-R, June 27, 1957, 53 O.G. 7282 (October, 1957).

[103] Uy Aloc v. Cho Jan Jing, *supra*, note 98.

Article 1453: "When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated."

Thus, where a father, trusting the relation of confidence existing between himself and his oldest daughter, purchased a farm for all his children and procured the vendor to convey it to the daughter, upon her promise that as her brothers attained majority, she would convey title to them of their respective shares, as if the property appeared in equal shares in the names of all his children, but after the death of the father she refused to deliver the shares of the brothers who reached the age of majority, it was held that there was an existing trust in favor of the brothers who became of age.[104]

And a person who, before consolidation of ownership in the purchaser under a contract of sale with pacto de retro, agrees with the vendors to buy the property and administer it until all debts constituting an incumbrance thereon shall have been paid, after which the property shall be turned back to the original owners, is bound by such agreement; upon buying the property under these circumstances, such person becomes in effect a trustee and is bound to administer the property in this character.[105]

Article 1455: "When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong."

It is an elementary rule that a trustee should not profit out of the handling of a trust estate. This rule springs from the duty of the trustee to protect the interests of the beneficiary and not to permit his personal interest to conflict with his duty in this respect.[106] In all his acts, he must display complete loyalty to the interests of his *cestui que trust*.[107]

It is, therefore, well-settled that where money held upon trust is misapplied by the trustee and traced into an unauthorized investment in property of any nature, the investment thus made, in the absence of a bona fide ownership by a third person, may be treated by the *cestui que trust* as made for his benefit. The consideration for the investment is trust money and the *cestui que trust* becomes the equitable owner of the property purchased therewith.[108] There is an equitable right to follow and reclaim

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104 Ruiz v. Ruiz, *supra*, note 99.

105 Martinez v. Graño, 42 Phil. 35 (1921).

106 Magruder v. Drury, 235 U.S. 106, 35 S.Ct. 77, 59 L. Ed. 151 (1914).

107 Barker v. First National Bank of Birmingham, DC Ala., 20 F. Suppl. 185 (1937).

108 Massachusetts Bonding & Ins. Co. v. Josselyn, 224 Mich. 159, 194 N.W. 548 (1923); Brizuela v. Vargas, C.A.-G.R. No. L-9820-R, January 23, 1957, 53 O.G. 2822 (May, 1957).

his property which has been wrongfully appropriated by another so long as he can find the property, or its substantial equivalent if its form has been changed, upon the grounds that such property, in whatever form, is impressed with a trust in favor of the owner.[109]

The right of the innocent party to an illegal or unlawful contract to recover what he has given, under Articles 1411 and 1412, is also a manifestation of the principle of unjust enrichment. So is the right of the repudiatinig party under Article 1414, which provides:

> "When money is paid or property delivered for an illegal purpose, the contract may be repudiated by one of the parties before the purpose has been accomplished, or before any damage has been caused to a third person. In such case, the courts may, if the public interest will thus be subserved, allow the party repudiating the contract to recover the money or property."

Where the parties to an illegal contract are not equally guilty, and where public policy is considered as advanced by allowing the more excusable of the two to sue for relief against the transaction, relief is given to him. Thus, where a wife was induced by another to transfer properties to him, through fraudulent misrepresentation that her husband was going to sue for such properties, and for the purpose of preventing the husband from recovering them, it was held that the wife is entitled to recover the properties so transferred, because although she was a party to a fraudulent contract, she was not in *pari delicto* with the other party, and justice would be served by allowing her to be placed in the position in which she was before the transaction was entered into.[110]

But if the parties are in *pari delicto*, the rule in our Code is that there can be no recovery by one from the other, but the court will leave them where they are. But when payment is made on an illicit or immoral obligation, it is a payment of what is not legally due; hence, it is without just or legal grounds. Under Article 22, it is recoverable. But Articles 1411 and 1412 prevent recovery of what has been given under such a contract when both parties are guilty or at fault.

Article 22 is the product of a trend towards equity; but the preservation of Article 1411 and 1412 is an adherence to a rule formulated by the Roman jurisconsults, which deny judicial intervention, even when one of the parties is unjustly enriched at the expense of another. The rule in Article 1411 and 1412 consolidates the situation created by the fulfillment of an illicit or immoral contract; it protects a guilty party who has been quick enough to demand immediate performance from the other, but denies equity to one who has been faithful to his promise. Those articles preserve a rule which is contrary in principle to that established in Article 22.

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[109] Slater v. Oriental Mills, 18 R. I. 352, 27 A. 443 (1893).
[110] Bough v. Cantiveros, 40 Phil. 209 (1919).

However, being specific provisions, they are controlling in cases falling under their terms.

They should have been modified so as to harmonize with the rule of justice enunciated in this article. Foreign jurisprudence, including the French, has already discarded the theory of absolute judicial non-intervention which our code has still preserved Articles 1411 and 1412.[111] The Mexican code (Article 1895), following this modern trend, provides: "That which has been delivered for the realization of a purpose which is illegal or contrary to good customs, shall not be kept by him who received it. One-half shall be given to public charity, and the other half may be recovered by him who delivered it."

Another provision on unjust enrichment may be found in Article 719, which provides that whoever finds personal property which is not treasure, must return it to its previous possessor. The taking of property left, forgotten, hidden or misplaced by its owner, and the refusal to return it to the latter, constitutes unjust enrichment.[112]

The "accion in rem verso"

Requisites for Action.—The action under Article 22, known as *accion in rem verso*, seeks to take away the benefit from the party unjustly enriched and to return it to the party prejudiced. In order that the *accion in rem verso*, may prosper, the following conditions must concur: (1) that the defendant has been enriched, (2) that the plaintiff has suffered a loss, (3) that the enrichment of the defendant is without just or legal ground, and (4) that the plaintiff has no other action based on contract, quasi-contract, crime, or quasi-delict. (This fourth requisite is not considered essential by Planiol & Ripert, Colin & Capitant, Castan, and Camus.)

The restitution must cover the loss suffered by the plaintiff, but can never exceed the amount of unjust enrichment of the defendant if this is less than the loss of the plaintiff. The ultimate purpose of the action is the restitution of the patrimonial benefit obtained without cause, giving due consideration to the good or bad faith of the defendant and the nature of the object which constitutes the patrimonial benefit.[113]

Enrichment of Defendant.—Article 22 seems to be limited to cases where the defendant "acquires or comes into possession of something" at the expense of the plaintiff; in other words, it seems to be limited to the delivery or acquisition of things, because the acceptance of benefits from services rendered by the plaintiff is not expressly provided for. The other

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111 See 7 PLANIOL & RIPERT, *op. cit.*, 42-47.

112 Sovern v. Yoran, 16 Ore. 269, 20 P. 100 (1888); State v. Courtsol, 89 Conn. 564, 94 A. 973 (1915); Silcott v. Louisville Trust Co., 205 Ky. 234, 265 S.W. 612 (1924); Livermore v. White, 74 Me. 542, 43 Rep. 28 (1924).

113 7 SALVAT 174-175; 2 GASPERI 370; 3 COLIN & CAPITANT 935; 3 CAMUS 544; 3 CASTAN 425-426.

codes which contain the general formula of the principle of unjust enrichment are phrased in such broad terms as to include both things and services. It is submitted, however, that notwithstanding the implied limitation contained in the present article, the principle of unjust enrichment can be applied under our Code of the same extent that it is applied in other modern codes. This is due to the extension of the concept of quasi-contract under the present Code. An unjust enrichment, not due to the acquisition or delivery of "something" may still be recovered by the application of the provisions of Articles 2142 and 2143 of the Code.

Enrichment of the defendant consists in every patrimonial, physical, or moral advantage, so long as it is appreciable in money. It may consist of some positive pecuniary value incorporated into the patrimony of the defendant, such as: (1) the enjoyment of a thing belonging to the plaintiff; (2) the benefits from service rendered by the plaintiff to the defendant; (3) the acquisition of a right, whether real or personal; (4) the increase of value of property of the defendant; (5) the improvement of a right of the defendant, such as the acquisition of a right of preference; (6) the recognition of the existence of a right in the defendant; and (7) the improvement of the conditions of life of the defendant.

The enrichment may also take the form of the avoidance of expenses and other indispensable reductions in the patrimony of the defendant. It may include the prevention of a loss or injury, such as the extinguishment of a debt of the defendant or the release of a burden on his property, or the extinguishment of a fire threatening the defendant's property.[114]

It is necessary that the enrichment exist at the time of the filing of the action, unless the defendant has made a fraudulent alienation of the property received by him.[115] Even when there is no express provision to this effect in the law, it is generally held that the enrichment may be recovered from a party who acted in good faith only if it still exists at the time when it is claimed.[116] However, if he has alienated the thing for valuable consideration, he may be required to deliver such consideration or assign the action to recover it.[117]

The incapacity of the defendant to enter into contracts does not bar the *accion in rem verso,* so long as he has been unjustly enriched. Thus, a teacher who has given lessons to a pupil who is a minor, may exercise the action against the pupil himself, who has been morally and intellectually enriched. The same right is recognized in a person who has incurred expenses for the treatment of an insane, who thereby recovers reason.[118] This is the

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[114] 2-II ENNECCERUS, KIPP & WOLF 569-671; 7 PLANIOL & RIPERT 54-55; 2 GASPERI 371-372.

[115] 2 GASPERI 372.

[116] 2 GSOVSKI 203-204.

[117] CIVIL CODE, art. 2160.

[118] 2 GASPERI 371-372.

same view sustained by the Soviet Supreme Court, which held that property improperly received by an incompetent person may be taken away from him and restored under the provision against unjust enrichment (Article 399 of Soviet code).[119]

Expenses of Plaintiff.—The enrichment of the defendant must have a correlative prejudice, disadvantage, or injury to the plaintiff. This prejudice may consist, not only of the loss of property or the deprivation of its enjoyment, but also of non-payment of compensation for a prestation or service rendered to the defendant without intent to donate on the part of the plaintiff, or the failure to acquire something which the latter would have obtained.

The injury to the plaintiff, however, need not be the cause of the enrichment of the defendant. It is enough that there be some relation between them, that the enrichment of the defendant would not have been produced had it not been for the fact from which the injury to the plaintiff is derived. But if there is no connection whatsoever between the defendant's enrichment and the plaintiff's injury, the *accion in rem verso* does not lie.[120]

The acquisition by the defendant from the plaintiff must have been immediate, even if indirect. It is not essential that the individual who made the payment be the same who is entitled to recover, so long as the former is merely a representative or intermediary of the latter. Neither is it necessary that the defendant be the individual to whom the plaintiff has paid, so long as the person who received the payment is a representative or intermediary of the defendant.

But where the intervening party is not a mere representative or intermediary of the plaintiff or the defendant, but is an independent party in himself, who made an acquisition or transfer through a new and independent act from the plaintiff or to the defendants, there is no immediate relation between plaintiff and defendant which is required for an action under this article.[121]

Without Just Cause.—Just or legal cause is always presumed; the plaintiff has the burden of proving its absence.[122] The circumstances under which an acquisition may constitute an unjust enrichment may generally be classified into the following groups:

1. Enrichment through the act of the injured party. This includes all cases where there has been a prestation or performance by the plaintiff, such as: (a) payment of a debt which does not exist, (b) payment for a definite purpose, in such manner that the person receiving it acted against

119 2 GSOVSKI 206.
120 2 GASPERI 372-374; 2-II ENNECCERUS, KIPP & WOLF, *op cit.*, 571-573; 7 PLANIOL & RIPERT 57.
121 2-II ENNECCERUS, KIPP & WOLF, *op. cit.*, 573-577.
122 2 GASPERI 374.

some legal prohibition or against good customs, such as payments above controlled prices, (c) payment by virtue of a contract which is void or inexistent, (d) payment for a definite future purpose, which is not attained, or which disappears, such as payments of salary in advance and the payee does not render services.

2. Enrichment without the will of the injured party. This includes: (a) enrichment by the act of defendant, as when he steals the plaintiff's property or takes it in a manner contrary to law, (b) enrichment by the act of a third person, such as when the debtor pays in good faith to the old creditor after the credit has been assigned, or pays to the bearer of a negotiable instrument who has no right to said instrument, in which cases the party who is legally entitled to the payment can recover from the party who received the same.[123]

These classification and example are not exclusive. Under Article 22, the enrichment may be by "any other means," and this phrase is sufficiently broad to cover a multitude of circumstances not foreseen by the lawmaker.

Payment of a natural obligation, however, would not fall under this article. Under Article 1423, "natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof." A natural obligation, therefore, constitutes a sufficient cause, and a payment of such obligation does not constitute an enrichment without cause, and cannot be recovered under Article 22.

Permissible Enrichment.—The provisions of Article 22, are, in a way, exceptional, because one cannot say that the law generally forbids enrichment at the expense of another. On the contrary, enrichment in one form or another is a legitimate purpose of many legal transactions. The article prohibits only such enrichment which is without just or legal ground.[124]

The rule that no person should unjustly enrich himself at the expense of another should not be extended beyond its legitimate scope. It does not prohibit a person from deriving benefits from expenses incurred by another. The enrichment must cause injury to another to be within the rule. The following cases, therefore, do not constitute unjust enrichment:

(1) Juan makes improvements on his tenement, and the adjoining tenement of Pedro increases in value because of such improvements.

(2) Juan builds a wall along the bank of a river to protect his land from the current, and the land of Pedro, which is downstream, is likewise made secure against the waters.

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[123] 2-II ENNECCERUS, KIPP & WOLF, *op. cit.*, 580-586.
[124] 2 GSOVSKI 202.

(3) Juan occupies property belonging to Pedro as a usufructuary, and places thereon improvements which cannot be removed without destroying the property in usufruct. At the termination of the usufruct, the improvement shall belong to Pedro, who is thereby benefited, under Article 579.

In all these cases, the enrichment by Pedro is not unjust, because it occasions no injury to Juan, and is not without cause.[125]

Extent of Recovery.—The recovery must restore the loss suffered by the plaintiff, but as a rule cannot exceed the amount by which the defendant was unjustly enriched. However, the good faith or the bad faith of the defendant may be taken into account. If by reason of such bad faith damages are suffered by the plaintiff, justice requires that he should be compensated for such damages.

The Code does not provide for the effects of unjust enrichment with respect to accessions, improvements, and determinations of the thing unjustly acquired. Other codes provide for these. The Soviet code, for instance, provides in its Artcile 400:

> Whoever has been unjustly enriched must restore or compensate for all profits which he gained or ought to have gained out of the unjustly acquired property from the time when he has learned or ought to have learned that such enrichment has been unjust. From the same time, he shall be liable for letting or causing the property to deteriorate. Until that time, he shall be liable only for intentional acts and gross negligence. On the other hand, he may claim reimbursement for necessary expenses for the property incurred by him from the beginning of the period for which he must restore profits.

Similar rules are found in our Code in the chapter on quasi-contracts. It is submitted that such rules are applicable to an *accion in rem verso,* because the very basis of our present concept of quasi-contract is unjust enrichment. The provisions of the following articles are, therefore, in point:

Article 2159. Whoever in bad faith accepts an undue payment, shall pay legal interest if a sum of money is involved, or shall be liable for fruits received or which should have been received if the thing produces fruits. He shall furthermore be answerable for any loss or impairment of the thing from any cause, and for damages to the person who delivered the thing, until it is recovered.

Article 2160. He who in good faith accepts an undue payment of a thing certain and determinate shall only be responsible for the impairment or loss of the same or its accessories and accessions insofar as he has thereby been benefited. If he has alienated it, he shall return the price or assign the action to collect the sum.

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[125] 3 COLIN & CAPITANT, *op. cit.*, 930-931.

Article 2161. As regards the reimbursement for improvements and expenses incurred by him who unduly received the thing, the provisions of Title V of Book II shall govern.

Liability Without Fault.—Corollary to Article 22 is Article 23, which provides: "Even when an act or event causing damage to another's property was not due to the fault or negligence of the defendant, the latter shall be liable for indemnity if through the act or event he was benefited."

This article is based on equity. An involuntary act, because of its character, cannot generally create an obligation; but when by such act its author has been enriched, it is only just that he should indemnify for the damages caused, to the extent of his enrichment.[126] The indemnity does not include unrealized profits of the injured party, because defendant's enrichment is the limit of his liability. The plaintiff has the burden of proving the extent of the benefit or enrichment of the defendant.[127]

The Code Commission gives this example: Without A's knowledge, a flood drives his cattle to the cultivated highland of B. A's cattle are saved, but B's crop is destroyed. True, A was not at fault, but he was benefited. It is but right and equitable that he should indemnify B.[128]

V. EXTENDED LIABILITY FOR DAMAGES

General Sanction

Article 20 provides: "Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same."

This article furnishes the general sanction for all other provisions of law which do not especially provide their own sanction. It is broad enough to cover all legal wrongs which do not constitute violations of contracts.

Moral Negligence.—A person is required to act with prudence towards others, but not with charity; the law imposes diligence, and not altruism. Hence, the failure to make sacrifices, or egoism, does not constitute a source of liability. There is no civil responsibility for moral fault or negligence. Thus, a person who fails to render assistance to a drowning person or to the victim of an accident, cannot be held liable for damages,[129] unless he is an officer falling under the provisions of Article 27 and 34.

Acts Not Contrary to Law

Article 21 provides: "Any person who wilfully causes loss or injury to another is a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

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[126] 2 SALVAT 127.
[127] 3 LLERENA 422.
[128] PHILIPPINE CODE COMMISSION, *supra*, note 1 at 41-42.
[129] 3 COLIN & CAPITANT, *op. cit.*, 826.

Under this article liability may arise from acts which are in themselves legal or not prohibited, if such acts are contrary to morals or good customs, public order or public policy. This article is based on the principle contained in Article 19, with which it is very intimately related, that a person, even in the exercise of a formal right, cannot with impunity intentionally cause damage to another in a manner contrary to good morals or public policy.[130]

With this article, combined with Articles 19 and 20, the scope of our law on civil wrongs has been very greatly broadened; it has become much more supple and adaptable than the Anglo-American law on torts. It is now difficult to conceive of any malevolent exercise of a rights which could not be checked by the application of these articles.

The present article fills countless gaps in the statutes, which leave so many victims of moral wrongs helpless, even though they may have actually suffered material and moral damages. It affords adequate legal remedy for that untold number of moral wrongs which it is impossible for human foresight to provide for specifically in the statutes. In justifying the incorporation of this article in our law, the Code Commission said:

> But, it may be asked, would not this article obliterate the boundary line between morality and law? The answer is that, in the last analysis, every good law draws its breath of life from morals, from those principles which are written with words of fire in the conscience of man. If this premise is admitted, then the proposed rule is a prudent earnest of justice in the face of the impossibility of enumerating, one by one, all wrongs which cause damage. When it is reflected that while codes of law and statutes have changed from age to age, the conscience of man has remained fixed to its ancient moorings, one cannot but feel that it is safe and salutary to transmute, as far as may be, moral norms into legal rules, thus imparting to every legal system that enduring quality which ought to be one of its superlative attributes.
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> Furthermore, there is no belief of more baneful consequences upon the social order than that a person may with impunity cause damage to his fellow-men so long as he does not break any law of the State, though he may be defying the most sacred postulates of morality. What is more, the victim loses faith in the ability of the government to afford him protection or relief.[131]

Loss or Injury

The injury suffered by the plaintiff may refer to any determinate right or property; it may even refer to honor or credit. So long as the requisites of willfulness and contravention of morals or public policy are present, it is immaterial whether the injury has been caused by a positive act or by an omission.

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130 2-II ENNECCERUS, KIPP & WOLF, *op. cit.*, 647.
131 PHILIPPINE CODE COMMISSION, *supra*, note 1 at 40-41.

The act is within this article only when it is done willfully.[132] The act is willful if it is done with knowledge of its injurious effect; it is not required that the act be done purposely to produce the injury. The act need not be committed against the person injured; it may be directed against another. Thus, when the defendant burns the house of X, for the purpose of prejudicing an insurance company, the latter can recover damages from such defendant.[133]

Contributory Negligence

In the Mexican Code (Article 1910), an exception to the rule laid down in this article is provided. The actor is not liable if the damage are produced as a consequence of the inexcusable fault or negligence of the victim. Can this be read into our law? We believe so, because in the case contemplated by the present article, the actor must have caused the loss or injury in order to be liable. The doctrine of proximate cause must therefore apply. Hence, if the loss or injury is due to the plaintiff's own inexcusable fault or negligence, he should not be allowed to recover.

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[132] 6 VON TUHR 269.
[133] 2-II ENNECCERUS, KIPP & WOLF, *op. cit.*, 648.