

# THE LAW ON BOUNCING CHECKS

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Estafa (swindling) by postdating or issuing a check with insufficient funds is penalized under Article 315, Section 2, paragraph (d), of the Revised Penal Code, but three defenses were recognized: (a) the issuer of the check did *not know* that his funds were insufficient; (b) he informed the payee of such circumstance; and (c) the check was in payment of a pre-existing obligation.<sup>1</sup>

Republic Act No. 4885 expressly eliminated the first two defenses and overruled the third defense of postdating and/or issuing a check in payment of a pre-existing obligation.

The Secretary of Justice in his Circular No. 124, Series of 1976, recognized the defense of "payment of a pre-existing obligation". The Court of Appeals has promulgated conflicting \* decisions —

- (a) the first, follows the legislative intent, purpose and policy in enacting Senate Bill No. 413 into law as Republic Act No. 4885; and
- (b) the second, admits the defense of a pre-existing obligation.

This article is submitted to show that the three (3) defenses, including "in payment of a pre-existing obligation" should no longer be recognized, and that the postdating and/or issuing a check, which is dishonored for lack of or insufficiency of funds, constitutes *estafa*, unless the issuer redeems said check within a period of three (3) days from notice of dishonor.

## I. *Historical background of the law (Art. 315, par. 2(d), Revised Penal Code)* —

The decision in *People v. Fernandez*,<sup>2</sup> gives the historical background of Article 315, par. 2(d) of the Revised Penal Code on "bouncing checks":

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<sup>1</sup> *People v. Lilius*, 59 Phil. 339 (1953).

\* This conflict of Court of Appeals decisions will be resolved by the Supreme Court in banc in G.R. No. L-39309, entitled "*People, et al. v. Hon. Ilustre, et al.*"

<sup>2</sup> 59 Phil. 615 (1934).

"At the time the supposed estafa was committed, Act No. 3313 was in force, amendatory of article 535 of the old Penal Code. In the part here material to be noted said article makes guilty of estafa:

'10. Any person who in his own name or as an officer or member of a corporation, entity, or partnership shall *issue a check* or any other commercial document against a bank established or that may hereafter be established in these Islands *in payment of a debt, or for any other valuable consideration* knowing that he does not have at the time of its issuance sufficient provision of funds in the bank to cover its amount, or, having such funds, shall maliciously and feloniously sign his check differently from the signature registered at the bank as his authentic signature, in order that the bank shall refuse to pay the same; or shall *issue a postdated check* and at the date set for the payment of it, the drawer of the check does not have sufficient deposit in the bank to pay for the check. \* \* \*

"This provision was carried into article 315, No.2(d), of the Revised Penal Code, in the following form:

'ART. 315. *Swindling (estafa)*. — Any person who shall *defraud* another by any of the means mentioned hereinbelow shall be punished by:

\* \* \* \* \*

'2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

\* \* \* \* \*

'(d) By postdating a check, or issuing such check in payment of an obligation, the offender knowing that at the time he had no funds in the bank, or the funds deposited by him in the bank were not sufficient to cover the amount of the check, and without informing the payee of such circumstances.'

"Upon this provision we observed that the word 'such', as used in the first line of subsection (d), is an error in the English translation, and the provision does not apply exclusively to postdated checks, as is suggested in the argument for the appellant. The Spanish original of this provision does not countenance the interpretation suggested, and we are of the opinion that the fraud there contemplated can be committed either upon the issuance and delivery of a *postdated check* or upon the issuance and delivery of *any check*." (People v. Fernandez, 59 Phil. 615, at pp. 618-619)

Act No. 3313, approved 3 December 1926, in its Spanish text, reads:

ARTICULO 1. Por la presente se enmienda el articulo quinientos treinta y cinco delCodigo Penal, *añadiendole*, despues del numero nueve, otro numero que diga lo siguiente:

10. El que, en su nombre o en el de un gestor o miembro de una corporacion, entidad o compañía, firme un *cheque* o cualquier otro documento comercial contra un banco establecido o que de hoy en adelante se establezca en estas Islas, *en pago de una deuda, o a cualquier otro titulo oneroso, sabiendo* que al tiempo de expedirlo no tenia suficientes fondos en el banco para satisfacer su importe, o que, *teniendo dichos fondos, firme maliciosa y criminalmente su cheque de manera diferente de la registrada en el banco como firma autentica suya, con objeto de que el banco se niegue a satisfacerlo; el que libre un cheque posfechado, y, en la fecha señalado para el pago, no posea un deposito suficiente en el banco para la satisfaccion del cheque, y el que endose en su nombre o en el de un gestor o miembro de una corporacion, entidad o compañía, cheques o cualquier otro documento comercial pagadero a la vista o en cualquier otra fecha ulterior, sabiendo que el librador del documento no posee fondos suficientes en el banco contra el cual se haya librado.*

Administrative Order No. 94 of the Department of Justice dated October 18, 1927, created a Code Committee, composed of Justice Anacleto Diaz as Chairman and as members, Mssrs. Quintin Paredes, Guillermo B. Guevarra, Alex Reyes, and Mariano H. de Joya,<sup>3</sup> to prepare the Revised Penal Code which took effect on January 1, 1932.<sup>4</sup>

The Penal Code of Spain, which took effect in the Philippines on July 14, 1887<sup>5</sup> did *not* contain any specific article on issuance of checks. The Code Committee, in revising the Spanish Penal Code on *estafa* inserted the provision of Act No. 3313 as paragraph (d) under section 2 of Article 315 of the Revised Penal Code.

The clause "*en pago de una deuda, or a cualquier otro titulo oneroso*", translated as "*in payment of a debt, or for any other valuable consideration*" in Act No. 3313, was *simplified* by the Code Committee and *substituted* with the phrase "*in payment of an obligation*".

## II. Decisions under Art. 315, Sec. 2, par. (d)

In *Ang Tek Lian v. Court of Appeals*,<sup>6</sup> the Supreme Court held that issuing a check payable to cash with insufficient bank deposit to cover the same is *estafa*.

"It appears that, knowing he had no funds therefor, Ang Tek Lian drew on Saturday, November 16, 1946, the check Exhibit A upon the China Banking Corporation for the sum of P4,000, payable to the

<sup>3</sup> 1 PADILLA, REVISED PENAL CODE ANNOTATED, p. 2 (1974)

<sup>4</sup> Act No. 3815 (1932), art. 1.

<sup>5</sup> U.S. v. Tamparong, 31 Phil. 321 (1915).

<sup>6</sup> 87 Phil. 383 (1950).

order of 'cash'. He delivered it to Lee Hua Hong in exchange for money which the latter handed in the act. On November 18, 1946, the next business day, the check was presented by Lee Hua Hong to the drawee bank for payment, but it was *dishonored for insufficiency of funds*, the balance of the deposit of Ang Tek Lian on both dates being P335 only". (p. 384)

"Article 315, paragraph (d), subsection 2 of the Revised Penal Code, punishes *swindling* committed 'By postdating a check, or issuing *such check in payment of an obligation* the offender knowing that at the time he had no funds in the bank, or the funds deposited by him in the bank were not sufficient to cover the amount of the check, and without informing the payee of such circumstances.'

"We believe that under this provision of law Ang Tek Lian was properly *held liable*. In this connection, it must be stated that, as explained in *People vs. Fernandez* (59 Phil. 615), *estafa* is committed by issuing either a *postdated* check or an *ordinary* check to accomplish the deceit." (p. 385)

"It is significant, and conclusive, that the form of the check Exhibit A was totally unconnected with its dishonor. The Court of Appeals declared that it was returned unsatisfied *because the drawer had insufficient funds* — not because the drawer's indorsement was lacking." (p. 387)

In *People v. Isleta and Topacio Nueno*,<sup>7</sup> the Supreme Court held that "negotiating a bad check" in partial payment of a debt is *estafa* —

"Appellant alleges that the check was given to him in *payment*, in part, of a *debt* of P30 which he had to pay to cover a check issued by Isleta without then having funds in the bank. In spite of this fact, appellant would have this court believe that he readily accepted the check now in question from Isleta in good faith and without being aware of the fact that the latter had no funds. In the normal course of things appellant would have first ascertained whether Isleta had funds in the bank *before negotiating* it, for the reason that appellant knew that Isleta had previously drawn a check without funds. Again, if it is true that he had no guilty knowledge, it is indeed surprising why he did not attempt to *pay his obligation* to the offended party after he was informed that the check had been dishonored. And if it is true, also, that appellant acted in good faith, he should have been the first to denounce Isleta before the proper authorities.

"Another circumstance which tends to show appellant's *bad faith* is the fact that, although he had sufficient time within which to cash the check himself in the bank, he did not do it. Instead he elected to *negotiate it* to the Chinese victim at a time when it was not possible to verify from the bank whether the check was good." (p. 385)

<sup>7</sup> 61 Phil 332 (1935)

However, in the cases of *People v. Lilius*,<sup>8</sup> *People v. Quesada*,<sup>9</sup> and *People v. Fortuno*,<sup>10</sup> the Supreme Court in applying the portions of Article 315, Section 2(d), which were *eliminated* by Republic Act No. 4885, namely:

"\* \* knowing that at the time \* \*"

"\* \* without informing the payee of such circumstance"

"\* \* the deceit did not precede the defraudation" (*Lilius*)

"\* \* the payee must be defrauded by the act of the offender"  
(in issuing the check) (*Quesada*)

"\* \* the check was intended as payment of a pre-existing obligation"  
(*Fortuno*)

*People v. Lilius*, 59 Phil. 339 (1933)

The accused was a guest at the Luneta Hotel and he issued three checks without sufficient funds. The check (Exh. A) was "issued in exchange for cash which he received from the complainant. \* \* He was asked by the cashier whether he had sufficient funds in the bank to cover the amount thereof to which he replied that he was *not sure*". It was held that: Exhibit A was not issued fraudulently and complainant, in accepting the same, "was fully aware of the possibility that the appellant might not have funds in the bank on date of the issuance thereof".<sup>11</sup>

It is submitted that this ruling is no longer correct, because Republic Act No. 4885 *eliminated* the words "knowing that at the time" and "without informing the payee of such circumstances".

Checks (Exhs. B and C) were "issued in payment of his debt at the hotel for board and lodging. Appellant testified that "he received nothing in exchange<sup>12</sup> for the check and it was issued in payment of his debt at the hotel". The *Lilius* decision further held:

"Appellant *obtained nothing* under said checks. His *debts*, for the payment of which said checks were issued, had been *contracted prior* to such issuance. Hence the deceit, if there was any in the issuance

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<sup>8</sup> *Supra*, note 1

<sup>9</sup> 60 Phil. 515 (1934).

<sup>10</sup> 73 Phil. 407 (1941)

<sup>11</sup> *Supra*, note 1 at 341.

<sup>12</sup> The check is "in payment of a debt or for any other valuable consideration" (Act No. 3313), that is, "in payment of an obligation" (Art. 315, Sec. 2[d]). The issuer of the check, the debtor-obligor, need not receive something from his creditor-obligee in exchange for the check, which was issued "in payment of an obligation"

of the questioned checks, did *not precede*<sup>13</sup> the defraudation. On the other hand, the record does not show that the debt had been contracted through fraud." (p. 342)

Lilius would still be liable for estafa under Article 315, Section 2, paragraph (c).

In *People v. Quesada*,<sup>14</sup> the check of ₱500 issued December 3, postdated December 7, was dishonored, as his account had been previously closed. Appellant contended that—

"\* \* it was agreed that the check would not be presented to the bank for payment until the deed was *registered* in the office of the register of deeds, and that he would then make a deposit in the bank to cover the check". (p. 518)

"\* \* The deed was not registered. The amount of damage, if any, sustained by her is not shown. The most that could be said is that she was *disturbed*<sup>15</sup> in her property rights". (p. 518)

It was held that:

"The payee or the person receiving the check *must* be defrauded by the act of the offender (article 315, No. 2 [d], Revised Penal Code). To defraud is to deprive<sup>16</sup> of some right, interest, or property by a deceitful device, and No. 2 of article 315 provides that the false and pretenses or fraudulent acts therein mentioned *must* be executed prior to or simultaneously with the commission of the fraud." (p. 520)

"\* \* the check itself showed that it was *postdated*. \* \* the person taking the check *agreed* to hold it for *four days* to allow the defendant to deposit the funds to cover the check. This clearly implied that the defendant did not have sufficient funds in the bank to cover the check when he issued it, and the parties undoubtedly *so understood* it." (pp. 520-521)

*People v. Fortuno*, 73 Phil. 407 (1941) —

Defendant rented a room in the Crystal Arcade, and issued a check for ₱60 in payment of the rental. It was held that:

<sup>13</sup> The *defraudation* does not refer to the creation of an obligation unless "the debt had been contracted thru fraud" (Lilius, p. 342). Estafa is committed by defrauding another. When the check issued in *payment of an obligation* is actually dishonored by the bank due to lack of funds, and despite notice of dishonor, and lapse of three (3) days, the issuer does not make good his check, the defraudation is already consummated, for all the elements necessary for its execution and accomplishment are present (Art. 6, par. 2, Revised Penal Code). The issuance of the bouncing check did *precede* the defraudation.

<sup>14</sup> *Supra*, note 9.

<sup>15</sup> Any disturbance in property rights is sufficient damage (U.S. v. Goyonechea, 8 Phil. 117 (1907); *People v. Santiago*, 54 Phil. 814 (1930); U.S. v. Malong, 36 Phil. 821 (1917)).

<sup>16</sup> The payee was deprived of the amount of the

"The issuance of a check with *knowledge* on the part of the drawer that he has no funds to cover its amount and *without informing* the payee of such circumstance, does not constitute the crime of estafa if the check was intended as payment of a pre-existing obligation."<sup>17</sup> \* \* The reason for this rule is that deceit, to constitute *estafa*, should be the efficient cause of the defraudation and as such should either be prior to, or simultaneous with, the act of fraud." (*Lilius, Quesada*) (p. 408)

### III. Two elements of estafa —

The two essential elements of estafa are (1) fraud or deceit and (2) damage or injury.

"*People v. Abana*, 76 Phil. 1 (1946). — In order that the accused might be convicted of this offense, the two essential requisites (1) fraud or deceit, and (2) damage or injury must be sufficiently established by competent evidence."

"*People v. Yabut*, 76 SCRA 624 (1977). — The estafa charged in the two informations involved in the case before us appears to be transitory or continuing in nature. *Deceit* has taken place in Malolos, Bulacan, while the *damage* in Caloocan City, where the checks were dishonored by the drawee banks there. Jurisdiction can, therefore, be entertained by either the Malolos court or the Caloocan court." (at p. 629)

"*Galvez v. Court of Appeals*, 42 SCRA 278 (1971). — \* \* Estafa is a continuing crime and the *receipt* by the accused of the check in Pasay City and his *cashing* of the same shortly thereafter in Manila form part of the events that make up the body of the offense.<sup>18</sup> The rule that a criminal prosecution shall be instituted in the place where the offense or any of its essential ingredients was committed is thereby satisfied."<sup>19</sup>

#### 1. Fraud, deceit or bad faith:

In the case of *Firestone Tire & Rubber Co. of the Philippines v. Ines Chaves & Co., Ltd.*,<sup>20</sup> the Supreme Court, in resolving the following query:

"Applied to the present case, did the *issuance of check which was subsequently dishonored* amount to bad faith on the part of appellants?"

held:

<sup>17</sup> Both provisions of Art. 315, sec. 2(d) — original and amended — say in "payment of an obligation." Act No. 3313 says "in payment of a *debt*, or for any other valuable consideration." "Knowledge and informing" were expressly eliminated by Rep. Act No. 4885 (1967).

<sup>18</sup> REV. RULES OF COURT, Rule 110, sec. 14.

<sup>19</sup> U.S. v. Santiago, 27 Phil. 408 (1914).

<sup>20</sup> G.R. No. L-17106, October 19, 1966, 18 SCRA 356 (1966).

"Appellants' contention in this appeal is that the lower court erred in finding them guilty of *bad faith* and, in consequence, ordering them to pay attorney's fees. The claim is made that when the check was issued the appellee *knew* that there were *no funds* to back it up and that appellants expected that such funds would be available when the check became due. This fact had been relayed and made *known* to the plaintiff (appellee) who had *agreed* to the same," it is asserted.

"Of course, if appellee agreed to accept the check, *knowing* that it was not covered by adequate funds in the bank, *no finding of bad faith* can be made against the appellant. We held in a number of cases that where a person issues a *post dated check* without funds to cover it and *informs the payee of this fact*, he cannot be held guilty of estafa because there is *no deceit* (People v. Villapando, 56 Phil. 31; People v. Lilius, 59 Phil. 339).

"But here there is nothing in the record to show that appellee *knew* that there were no funds in the bank when it accepted the check from the appellants, much less that appellee 'agreed' to take the check with knowledge of the lack of funds. There is nothing to show that appellants even hinted to the appellee at the lack of funds when the check was issued. On the contrary by *issuing the check*, appellants in effect represented to the appellee that there were funds in the bank for its payment. We think the lower court correctly found appellants' conduct wanting in good faith. The award of attorney's fees is warranted."

## 2. *Damage or injury:*

As early as March 22, 1907, the Supreme Court held that "*disturbance*" in property rights "*constitutes real and actual damage*" —

(a) *U.S. v. Govenechea*, 8 Phil. 117 (1917) —

The defense claimed that the typewriter having been recovered, the complainant suffered no damage or loss.

*Held:*

"It is enough to say that it was by reason of the *act* of appropriation and the execution of said act by the accused that the typewriter was *first seized* by the police and afterwards *taken into court*, and, lastly, that throughout the entire trial of the case McCullough & Co. was placed in a doubtful position as to its right in and to the typewriter; and that McCullough & Co. only *recovered* the typewriter after a claim for the same had been presented and formally supported by the agent or manager of the American Loan Company; all of which are facts duly brought out in the case and which show conclusively that McCullough & Co. at least *suffered disturbance in its property rights in the said typewriter and in the possession thereof*. This fact, by itself, and without it being necessary to deal with any other considera-



tions of material fact herein, always constitutes *real and actual damage*, and is positive enough under rule of law to produce *one of the elements constituting the offense*, the crime of *estafa*. Therefore, the allegation and claim of the defense is completely without foundation."

(b) *U.S. v. Malong*, 36 Phil. 821 (1917) —

"\* \* admitting that according to the settled jurisprudence, the essential elements of the crime of *estafa* are: (1) the *deceit* employed to *defraud* another, which we have discussed, and (2) the *injury* caused thereby (*U.S. v. Berry*, 5 Phil. 370 [1905]), are we justified in finding that the complainants have suffered damage? Surely, there was *at least disturbance in the property rights of the complainants*. In the leading case of *U.S. v. Goyenechea*, 8 Phil. 117 (1907), it was said that, 'this fact, by itself, and without it being necessary to deal with any other considerations of material fact herein, always constitutes *real and actual damage*, and is positive enough under rule of law to produce one of the elements constituting the offense, the crime of *estafa*.'" (at p. 823)

(c) *People v. Santiago*, 54 Phil. 814 (1930)—

"The appellant contends that as the check was *not cashed* by the Bank of the Philippine Islands, and no attempt was made to cash it, no crime has been committed. The check issued to the defendant by the offended party was payable to 'cash' and therefore, *negotiable*. While the defendant had said check in his possession, the offended party could *not dispose* of the amount for which it was made out, and this was, at least, *temporary prejudice* sufficient to constitute *estafa* (*U.S. v. Goyenechea*, 8 Phil. 117; *U.S. v. Malong*, 36 Phil. 821)".

#### IV. Legislative Intent, Purpose and Policy:

The legislative intent, purpose and policy of Senate Bill No. 413 (Republic Act No. 4885) appear in the Congressional Records of the Senate.<sup>21</sup>

The *explanatory note* of Senate Bill No. 413 reads:

"The issuance of checks as negotiable instruments has been *abused* by persons who have no bank deposits or have insufficient funds to cover the amounts of said checks. This bad practice has been utilized by drawers of checks to *defraud* innocent payees or indorsees. It disturbs banking transactions. It impairs the negotiability of checks. It is true that a check may be dishonored without any fraudulent pretense or fraudulent act of the drawer. Hence, the drawer is given three

<sup>21</sup> SEN. CONG. RECORD Vol. II, No. 37, 932-933 (1967).

days to make good the said check by depositing the necessary funds to cover the amount thereof. Otherwise, a *prima facie* presumption will arise as to the existence of fraud, which is an element of the crime of *estafa*.

"The public interest, particularly the regularity of commercial payments thru checks, would justify the immediate approval of this bill."

In his brief sponsorship speech, Senator Ambrosio Padilla stated:

"Mr. President, the present provision of the Revised Penal Code, Article 315, Section 2, paragraph (d), provides:

'By postdating a check, or issuing *such* check in payment of an obligation the offender *knowing* that at the time he had no funds in the bank, or the funds deposited by him in the bank were not sufficient to cover the amount of the check and *without informing* the payee of such circumstances.'

"Under the present provision, Mr. President, it has been held that if the issuer or drawer of the check would give some information to the payee that he is not certain of the amount of his deposit, he can no longer be prosecuted for *estafa* for having issued a bad check or what is commonly known as a bouncing check or rubber check.

"In the same vein, it has been held that if the *check is used in payment of an existing obligation*, it can not be considered as *estafa*, even if the obligor had the fraudulent intent of issuing a check without funds and he knows that his check will be dishonored by the drawee bank. Now, this practice of issuing bouncing checks has had a very deleterious effect on our *commercial transaction(s)*. As a matter of fact, even *tax obligations are being paid* by taxpayers whose checks are not good. And it has been reported once that even the Bureau of Internal Revenue has received a number of checks amounting to substantial amounts which are covered by *bad checks*, and the drawers of these checks are really animated by fraudulent intent to deceive the payee, to disturb *banking transactions* and to impair the *negotiability and acceptability* of checks as negotiable instruments.

"I was paying once certain fees to the City of Manila with my check, thru a messenger and I was informed that my check, or other checks of the same import, would not be acceptable because the fees should be paid in cash. I believe that this is not a good practice, because we should encourage the use of checks. However, if the use of checks can be abused and misused without any liability on the part of the drawer and to the great prejudice of the payee, then this *obnoxious* practice of not accepting checks even in the *payment of taxes and fees* may become the rule.

"So, Mr. President, I submit that public interest, particularly the regularity of commercial payments by checks, would justify the amendment of Article 315, Section 2, paragraph (d) of the Revised Penal Code as proposed in this bill." (No. 37, p. 932)

"The intention precisely is to discourage persons from making use of this devise of issuing checks — *not to pay their just obligations* but to embarrass the payee as well as commercial transactions." (at p. 935)

During the Senate discussion of Senate Bill No. 413, Senator Tolentino, who interpellated the sponsor did not propound any question on the defense of "in payment of a pre-existing obligation".

"Senator Tolentino: I have, for instance, the experience sometimes of paying to a college for the *matriculation fees of my children*."

The questions of Senator Tolentino and the answers of Senator Padilla, are as follows:

"Senator TOLENTINO. Am I correct in my appraisal of the bill as stated in the amendments proposed that it would no longer be necessary that the issuer of the check, the drawer, should *know at the time* of issuing the check that he had no funds \* \*.

"Senator PADILLA. That is correct, your Honor. As a matter of fact, the bill would *eliminate* that phrase 'knowing that at the time he' \* \*.

"Senator TOLENTINO. On line 11, why is the phrase 'and without *informing* the payee of such circumstances' being eliminated? Would not the drawer of the check be able to avoid this criminal responsibility if he notifies actually the payee that he has no funds?

"Senator PADILLA. No, that is one of the situations, Your Honor, which this bill would want to avoid because under the present law whenever the drawer makes a manifestation that he is *not sure* whether his deposit will cover the amount of his check he is already relieved of any criminal responsibility because he *informed the payee* that he may not have sufficient funds.

"Senator TOLENTINO. That is what I am after now. If he has *informed* the payee that he may not have sufficient funds, how will there be any presumption of deceit there?

"Senator PADILLA. Precisely, Your Honor, we are *eliminating* that phrase, so that we would not want to make this criminal responsibility dependent upon whether he *informs* or he does not inform the payee.

"Senator TOLENTINO. So, in other words, *whether he informs or he does not inform the payee* that he may not have sufficient funds he would be criminally responsible here.

"Senator PADILLA. Yes, Your Honor. At any rate, he is given the opportunity to make good his check." (pp. 932-933, Senate Congressional Record, Vol II, No. 37)

Presidential Decree No. 818, issued on October 22, 1975, entitled "Amending Article 315 of the Revised Penal Code by *Increasing* the Penalties

for *Estafa Committed by Means of Bouncing Checks*", contains the following "whereases":

"WHEREAS, reports received of late indicate an upsurge of *estafa* (swindling) cases committed by means of *bouncing checks*;

"WHEREAS, if not checked at once, these criminal acts would *erode the people's confidence* in the use of negotiable instruments as a medium of commercial transaction and consequently result in the *retardation of trade and commerce* and the *undermining of the banking system* of the country;

"WHEREAS, it is vitally necessary to *arrest and curb* the rise in this kind of *estafa* cases by increasing the existing penalties provided therefor."

and *increased* the penalties for *estafa* committed by bouncing checks.

V. *Amendments introduced by Republic Act No. 4885* —

Republic Act No. 4885 introduced four (4) amendments to Article 315, Section 2(d) and a *prima facie* presumption, to wit:

(a) The clause by "postdating a check or issuing *such* check in payment of an obligation" was amended to read:

"By postdating a check, or issuing *a* check in payment of an obligation".

pursuant to the decision in *People v. Fernandez*,<sup>22</sup> which observed that the word "such" is "an *error* in the English translation" and held that the fraud "can be committed either upon the issuance and delivery of a *post-dated* check or upon the issuance and delivery of *any* check". (p. 619);

(b) Republic Act No. 4885, *eliminated* from Article 315, Section 2(d), Revised Penal Code, the phrase "*knowing* that at the time";

(c) Republic Act No. 4885 *eliminated* the clause —

"\* \* without informing the payee of such circumstances";

"\* \* The failure of the drawer of the check to deposit the amount

and

(c) Said Republic Act added the *prima facie* presumption —

"\* \* The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act."

<sup>22</sup> *Supra*, note 2

## VI. *Duty of Courts:*

The fundamental duty of courts is not to interpret but to apply the clear, explicit and unambiguous provisions of law —

*"People v. Mapa, 20 SCRA 1164 (1967). — The first and fundamental duty of courts is to apply the law. 'Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them.'"* (Lizarraga Hermanos v. Yap Tico, 24 Phil. 504, 513)

*"Quijano v. Development Bank of the Philippines, 35 SCRA 270 (1970). — This Court has steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible. (Pacific Oxygen and Acetylene Co. v. Central Bank, 22 SCRA 917). No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. Where a requirement or condition is made in explicit and unambiguous terms, no discretion is left to the judiciary."*

*"Commissioner of Internal Revenue v. Limpan Investment Corporation, 34 SCRA 148 (1970). — It is a cardinal rule of statutory construction that where the terms of the statute are clear and unambiguous, no interpretation is called for, and the law is applied as written (Luzon Stevedoring Corp. v. CTA, 18 SCRA 436; POACO v. CBP, 22 SCRA 917), for application is the first duty of courts, and interpretation, only where literal application is impossible or inadequate (De Quito v. Lopez, 22 SCRA 1352)."*

*"Vda. de Macabenta v. Davao Stevedore Terminal Co., 32 SCRA 553 (1970). — Our conclusion likewise finds support in the fundamental principle that once the policy or purpose of the law has been ascertained, effect should be given to it by the judiciary (Sarcos v. Castillo, 26 SCRA 853)' Even if honest doubts could be entertained, therefore, as to the meaning of the statutory provisions, still respect for such a basic doctrine calls for a rejection of the plea of the Davao Stevedore Terminal Company. We have never deviated from our constant holding from Ty Sue v. Hord (12 Phil. 485), a 1909 decision, that, assuming a choice is necessary between conflicting theories, that which best conforms to the language of the statute and its purpose should prevail. Again, as far back as United States v. Toribio (15 Phil. 85), decided the next year, we made unmistakable our view that no construction is to be adopted that would tend 'to defeat the purpose and object of the legislator'. We made use of an expression almost identical in Riera v. Palmaroli (40 Phil. 105) with our warning against so narrowly interpreting a statute 'as to defeat the manifest purpose of the legislator'." (at pp. 557-558)*

*"Litex Employees Association v. Eduvala, 79 SCRA 88 (1977). —* Thereby its *purpose* becomes crystal-clear. As is quite readily discernible, where it concerns the promotion of social and economic rights, the active participation in the *implementation of the codal objective* is entrusted to the executive department. There is no support for any allegation of jurisdictional infirmity, considering that the *language* employed is well-nigh all-inclusive with the stress on its 'original and exclusive authority to act.' If it were otherwise, its *policy* might be rendered futile. That is to run counter to a basic postulate in the canons of statutory interpretation. Learned Hand referred to it as the proliferation of *purpose*. As was emphatically asserted by Justice Frankfurter: 'The generating consideration is that legislation is more than composition. It is an active instrument of government which, for purposes of interpretation, means that *laws have ends to be achieved*. It is in this connection that Holmes said, 'words are flexible.' Again, it was Holmes, the last judge to give quarter to loose thinking or vague yearning, who said that 'the general *purpose* is a more important aid to the meaning than any rule which grammar or formal logic may lay down.' And it was Holmes who chided courts for being 'apt to err by sticking too closely to the words of a law where those words import a *policy* that goes beyond them.' (Frankfurter, Of Law and Men, 59-60 (1965). *What is intended by the framers of code or statute is not to be frustrated*. Even on the assumption that by some strained or literal reading of the language employed, a doubt can be raised as to its scope, the interpretation should not be at war with the end sought to be attained. It cannot be denied that if through an ingenious argumentation, *limits* may be set on a statutory power which should not be there, there would be a failure to effectuate the statutory *purpose and policy*. That kind of approach in statutory construction has never recommended itself." (at pp. 91-92, Italics supplied)

VII. *Opinion of Secretary of Justice:*

The letter of the Secretary of Justice, dated July 1, 1976, to the City Fiscal of Bacolod City states that —

"Under the two provisions, the postdating or issuing of the check must be in *payment of an obligation*. The amendment merely established a *prima facie presumption of deceit* in case the drawer fails to make good the check within three days from notice of dishonor thereof. The consistent ruling under the *original provision* is that the obligation *must be contracted at the time of the issuance and delivery of the check*, that the offended party is defrauded by reason of such issuance and the deceit or fraudulent act, which must be executed *prior to or simultaneously* with the commission of the fraud, should be the efficient cause of the defraudation (People v. *Lilius*, 59 Phil. 339; People v. *Quesada*, 60 Phil. 515; People v. *Fortuno*, 73 Phil. 407). In other words, if the check is issued in payment of a *pre-existing*

*obligation*, there is no estafa. This is so because the payee, in such case, suffers *no damage* or prejudice, an indispensable element in all kinds of estafa, by reason of the issuance of the bouncing check. The drawer obtained nothing because of the check. The payee is in no worse position than before he was issued the check. Verily, had it been intended, by the amendment, to include the issuance of a check in payment of pre-existing obligation, it should have expressly stated."

The cases of *Lilius*, *Quesada*, *Fortuno*, cited and relied upon by the Secretary of Justice are erroneous decisions based on the original provision of Article 315, Section 2(d), *before* the amendment of Republic Act No. 4885. (*ante*, pp. 6-8)

The letter of Senator Ambrosio Padilla to the Secretary of Justice, dated November 5, 1976, commented on and criticized the above-quoted letter of the Secretary of Justice:

"Your opinion on Republic Act No. 4885 which amended Article 315, par. 2(d) of the Revised Penal Code relies on 'the consistent ruling under the *original provision* (is) that the obligation must be contracted, at the time of the issuance and delivery of the check.' It also states that 'the deceit or fraudulent act, which must be executed prior to or simultaneous with the commission of the fraud, should be the efficient cause of defraudation. (*People v. Lilius*, 59 Phil. 339; *People v. Quesada*, Phil. 515; *People v. Fortuno*, 73 Phil. 407).' Under the former provision of Art. 315, par. 2(d), two (2) *defenses* were recognized as available, to wit: (1) the check was issued in payment of a pre-existing obligation, or (2) the drawer of the check *informed* the payee that his funds deposited in the bank may not be sufficient to cover the amount of his check. Said two (2) defenses which were available under the original provision have practically *nullified the penal sanction of estafa* thru issuance of bouncing checks. Precisely, said two (2) defenses convinced me as incumbent Senator to file Senate Bill No. 413, which is now Rep Act No. 4885. The *very purpose and legislative intent* of the amendatory law is to *eliminate those two (2) defenses*. The defense of 'payment of a pre-existing obligation' was *not sustained* in *People v. Ang*, CA-G.R. No. 15333-CR, prom. Jan. 21, 1976 (72 O.G. 10070), and the defense of 'informing the payee that the drawer may not have sufficient funds' was *rejected* in *People v. Bool, et al.*, 18 C.A. Rep. 741 (70 O.G. 5998). Republic Act 4885 considers the act of 'issuing a check *in payment of an obligation*' to be estafa by means of false pretense or fraudulent act. In fact, the amendatory law provides for a *prima facie* presumption of *deceit* constituting false pretense or *fraudulent act* based on the failure of the drawer of the dishonored check to cover the amount thereof within three (3) days from notice of dishonor (*People v. Teodorico*, (CA) 68 O.G. 9677).

"Your opinion states that if a check is in payment of a pre-existing obligation, the payee suffers *no damage or prejudice*, an indispensable element in all kinds of estafa'. This conclusion is *not correct because* as early as the decision of *U.S. v. Goyenechea*, 8 Phil. 117 (March 22, 1907) which refers to the recovery of a typewriter appropriated by the accused, the Hon. Supreme Court, thru Justice Mapa held that any '*disturbance of property right is sufficient damage*' —

' . . . McCullough & Co. at least *suffered disturbance* in its property rights in the said typewriter and in the possession thereof. This fact, by itself, and without it being necessary to deal with any other considerations of material fact herein, always *constitutes real and actual damage*, and is positive enough under rule of law to produce *one of the elements* constituting the offense, the crime of estafa.' (*U.S. v. Goyenechea*, 8 Phil. 117, at p. 118)

Likewise in *People v. Santiago* (August 6, 1930; 54 Phil. 814), the offended party could not dispose of the amount of the check payable to cash and the Hon. Supreme Court held that 'there was at least *temporary prejudice* sufficient to constitute estafa.'

'The appellant contends that as the check was not cashed by the Bank of the Philippine Islands, and no attempt was made to cash it, no crime has been committed. The *check* issued to the defendant by the offended party was payable to 'cash' and therefore, negotiable. While the defendant had said check in his possession, the offended party could *not dispose of the amount* for which it was made out, and this was, at least, *temporary prejudice sufficient to constitute estafa* (*U.S. v. Goyenechea*, 8 Phil. 117; *U.S. v. Malong*, 35 Phil. 821).' (*People v. Santiago*, 54 Phil. 814, at p. 816; Revised Penal Code Annotated by Ambrosio Padilla, Book Two, Vol. III, 1972 Ed., at p. 261).

"Your opinion relies on previous decisions based on the *original provision* of Art. 315, par. 2(d), citing the cases of *People v. Lilius*, 59 Phil. 339; *People v. Quesada*, 60 Phil. 515 and *People v. Fortuno*, 73 Phil. 407, and states that 'the obligation *must be contracted at the time of the issuance and delivery of the check*' and 'the offended party is defrauded by reason of such issuance.' This is the opinion of CA Justice Luis B. Reyes expressed in the Court of Appeals' decisions, among them — *People v. Legaso*, CA-G.R. No. 09416-CR, Sept. 23, 1974; *People v. Gloria and Cabarles*, CA-G.R. No. 15490-CR, July 15, 1975. With due respect to said view, which is based on the *old provision*, in disregard of the amendatory Act, I do not concur with said decisions, for in truth, Rep. Act 4885 does *not provide* that to constitute estafa the check must be issued and delivered at the precise time that the obligation is contracted."



VIII. *Conflicting decisions of Hon. Court of Appeals —*

In *People v. Ang*,<sup>23</sup> and *People v. Chua*,<sup>24</sup> the Court of Appeals, in affirming the judgments of conviction, quoted approvingly our comments on Republic Act No. 4885:<sup>25</sup>

*"Defense that check was issued in payment of a pre-existing obligation can no longer be sustained —*

*"People v. Ang, (C.A. 72 O.G. 10070 (Oct. 25, 1976). — The assigned errors have raised the principal issue of whether or not the accused should be held criminally liable for issuing the check in the amount of P967.60 in favor of the complainant and which was dishonored for non-payment when duly presented to the drawee bank. The main argument of the accused is that he should not have been found criminally liable by the Court a quo because he issued said check in payment of a pre-existing obligation. He contends he should only be civilly liable. In support of his argument the accused in his brief cited several decisions which, however, were promulgated prior to the approval on June 17, 1967 of Republic Act No. 4885, which amended paragraph 2(d) of Article 315 of the Revised Penal Code. \* \* Held: It is clear from the foregoing that that defense of the herein accused can no longer be sustained. Thus, even if we assume as true this allegation that he had issued the check in question in payment of a pre-existing obligation to the complainant he would nevertheless be guilty of estafa under the above-mentioned paragraph 2(d) of Article 315 of the Revised Penal Code, as amended. This is true specially so that the accused as drawer had failed to deposit the amount necessary to cover his dishonored check thereby giving rise to a prima facie evidence of deceit constituting false pretense or fraudulent act characteristic of estafa under paragraph 2."*

*"People v. Bustamante, (C.A.) 74 O.G. 4091 (April 27, 1978). — The defendant was not prosecuted for false pretenses or fraudulent acts in connection with the issuance of postdated checks which bounced when presented for payment. She was prosecuted under paragraph 1(b) of Article 315 of the Revised Penal Code (at p. 4094) \* \* The original transaction appears to be a civil one. If checks were issued under the representation that they were good checks, it is the false pretense accompanying the issuance of the checks and not the purchase of the jewelries with the checks that would constitute the criminal act. As earlier emphasized, however, the appellant was convicted not for connivance in the issuance of checks without funds but for misappropriating goods received in trust or commission under any other obligation involving the duty to return them (at p. 4095) "*

<sup>23</sup> C.A.-G.R. No. 15233-CR, January 21, 1976, 72 O.G. 10070 (Oct. 25, 1976)

<sup>24</sup> C.A.-G.R. Nos. 15803 to 15805-CR. (unpublished)

<sup>25</sup> PADILLA, CRIMINAL LAW REVISED PENAL CODE 337-338 (1972 ed.); see 366-382 (1977 ed.)

"*People v. Santos Victa*, (C.A.) 74 O.G. 4589 (June 12, 1978). — We have not overlooked the fact that the view expressed by Senator Padilla, which had been upheld in the decisions of the Court of Appeals cited above, is *disputed in some quarters* which share the opinion of the Solicitor General that the fact of the check being issued in *payment of a pre-existing obligation* is still a valid defense to estafa of the crime herein involved (Reyes, L.B. The Revised Penal Code, 1975 edition, Book II, p. 700; dissenting and concurring opinion of Justices L.B. Reyes and Ericta in *People v. Garcia*, *supra*). This continued adherence to the doctrine laid down in the case of *People v. Lilius*, *supra*, is sought to be justified by calling attention to the fact that in the opening sentence of Paragraph 2 of Article 315 of the Revised Penal Code, the requirement that the false pretense or fraudulent act *must be executed 'prior to or simultaneously* with the commission of the fraud' still remains. We fail to see how this provision would continue to require that the issuance of a bouncing check in order to constitute estafa must not be in payment of a pre-existing obligation. Under the amendment, *the act penalized is the issuance of a check in payment of an obligation* which check is not covered up by sufficient funds in the bank. The fraud is not in the contracting of the obligation in payment of which the check was issued, but the very issuance of the check itself. This is clearly inferred from the provision that the failure of the drawer to deposit the necessary amount to cover the check within three days from notice of dishonor 'shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act. This is the very *intendment* of the amendment, and to disregard the same would be to set at naught the *reason* for the enactment of Republic Act No. 4885."

However, other decisions of the Court of Appeals *reversed* the judgments of conviction on the ground "that the *obligation must be contracted* at the time of postdating or issuing the check." "The accused *must have* obtained the goods because of the check."<sup>26</sup>

In *People v. Teodorico*,<sup>27</sup> complainant delivered 2 drums of lobe oil and 1,570 liters of industrial diesel fuel to Teodorico on February 8, 1968 and it was the *day following* that the bunkering or refuelling of the ship was actually done. The accused issued a *postdated* check when he requested for 30 days within which to pay the goods (pp. 845-846). It was held that:

"If the issuance of the check in question is on account of charge invoices or *charge account* then there can be no estafa in the case when said check has been dishonored for alleged lack of funds. For

<sup>26</sup> 2 REYES, COMMENT ON THE REVISED PENAL CODE 664 (1971)

<sup>27</sup> C.A.-G.R. No. 11423-CR, June 29, 1972, 17 C.A. Rep. 843 (1972).

estafa to exist under the aforementioned provision of Republic Act No. 4885, it is necessary that (1) the accused has postdated or issued a check in payment of an *obligation contracted at the time* of the issuance of the check<sup>28</sup>; (2) that he postdated<sup>29</sup> or issued the check *knowing*<sup>30</sup> *at the time that he had no funds in the bank, or the funds deposited by him in the bank were not sufficient to cover the amount of the check.* (Comments of the Revised Penal Code by Justice Luis B. Reyes, 1970 Edition, p. 664). In the present case it is clear from the record that the collection<sup>31</sup> of payment was made *a day after delivery* of the fuel not at the time of delivery. So it could not be payment anymore of an *obligation contracted at the time of the postdating of the check.* The fact the accused-appellant was given thirty days<sup>32</sup> within which to pay the account when he issued same was in payment of an already *existing* obligation and not an obligation *contracted only at the time the postdated check was issued.*" (p. 848)

"Besides when accused-appellant issued the postdated check he *informed*<sup>33</sup> Rolando Santos that he did not have the funds in the bank." (pp. 848-849)

The clause "*contracted at the time of the postdating of the checks,*" which is emphasized in the comments on the Revised Penal Code by Court of Appeals Justice Luis B. Reyes, does *not* appear in the law (Article 315, Section 2[d]), particularly as amended by Republic Act No. 4885, which provides "*in payment of an obligation*", whose source was Act No. 3313 "*in payment of a debt, or any other valuable consideration*". (ante, p. 1) The defense that the issuer of the postdated check *informed* the payee that he did not have the funds in the bank was expressly *eliminated* by Republic Act No. 4885.

*People v. Herrera (C.A.) 18 C.A. Rep. 123 (1973) —*

In payment of truck tires purchased from complainant, accused issued 3 checks, all *postdated*. Accused said that "they were being given 90

<sup>28</sup> The clause "contracted at the time of the issuance of the check" is *not* provided in the law, neither in the original provision nor in the amendatory law (Rep. Act No. 4885).

<sup>29</sup> By postdating a check in payment of an obligation is expressly penalized in Sec. 2(d) of Art. 315, before and after the amendment by Rep. Act No. 4885.

<sup>30</sup> Knowledge of the issuer of the check that he had no funds has been eliminated by Republic Act No. 4885.

<sup>31</sup> Collection of payment on maturity of postdated check is not relevant, except to prove *damage*.

<sup>32</sup> Issuing a *postdated* check pursuant to accused's request for extension of 30 days is *expressly penalized*, and should not relieve her of criminal liability. It is further evidence of issuer's false pretense and/or fraudulent act.

<sup>33</sup> "Without informing the payee of such circumstances" was expressly eliminated by Rep. Act No. 4885.

days but was prevailed to issue and she issued postdated checks with precisely the 90 day postdating" (pp. 124-125). It was held that:

"\* \* If one issues a check but in his issuance, he does *not* deceive, he does not commit estafa; now of course, if one buys, and instead of paying cash knowingly<sup>34</sup> issues a check without sufficient funds, that is *estafa*, because that is deception; it may happen however that he did *not* know that his funds were not enough, that is why the law as amended gives him the chance to show his good faith by giving him 3 days from receipt of dishonor of his check to make good his check, if he does not, that is clear showing that he had right at the beginning<sup>35</sup> intended to deceive his seller; but this discussion is not very material except to show that even as amended, the essence of the crime set forth in Article 315, paragraph 2, d, has *not* changed, the essence is fraud." (at pp. 126-127)

The statement that the essence of the crime has not changed is only true with regard to the two requisites of (1) fraud and (2) damage. But the defenses of (a) in payment of a pre-existing obligation; (b) knowing that he had no funds and (c) "without informing the payee of such circumstances" have been *eliminated* by Republic Act No. 4885.

In *People v. Cua*,<sup>36</sup> the check for ₱10,000.00 was issued on May 23, 1970, postdated June 4, 1970, "with instruction *not to deposit* it without prior advice"; and Barreto (payee) violated the instruction by depositing the check with the bank without his "go-signal" (p. 3183). The check of ₱10,000.00 was issued as *partial payment* of ₱50,000.00 loan<sup>37</sup> previously granted to the accused by the corporation (p. 3183). Justice L.B. Reyes restated his comment in his book that the obligation "*must be contracted at the time of postdating or issuing a check*". Held: "The offender must be able to *obtain*<sup>38</sup> money or other property from the offended party because of the issuance and delivery of a check, whether postdated or not, that is, the latter would not have parted with his money or other property were it not for the issuance of check" (p. 3184). It was further held —

<sup>34</sup> "Knowing that at the time" (he had no funds) was also *eliminated* by Rep. Act No. 4885).

<sup>35</sup> "Deceit at the time of contracting the obligation" is the view of Justice Pacifico de Castro in *People v. Garcia*, 73 O.G. 624, which is meritorious.

<sup>36</sup> C.A.-G.R. No. 16841-CR, March 2, 1976, 72 O.G. 3182 (March 22, 1976)

<sup>37</sup> The Legislative intent and purpose (*ante*, pp. 12-14) of postdating or issuing a check in payment of an obligation is to cover all payments by check of taxes, fees, debt, loan and/or any obligation

<sup>38</sup> The issuance of the check is not to obtain money or other property, but is in "payment of an obligation". Payment as the first mode (Art. 1231, No. 1) of *extinguishing* an obligation (Art. 1156) logically refers to an *existing* obligation, that is, *obligation precedes payment*.

"The *prima facie* presumption of fraud for failure to deposit the necessary funds to cover the amount of the check within three (3) days from notice has *no relevance* in this case, because admittedly the check of the accused-appellant was *postdated in payment of a pre-existing obligation*<sup>39</sup>, a circumstance which negates fraud." (Relied on Teodorico and Herrera)

*People v. Villase, (C.A.) 74 O.G. 3324 (April 24, 1978)*

The information alleged the provision *prior* to its amendment "*knowing* that her account with the bank was already closed and *without* informing the offended party of such circumstance". The check of ₱2,200.00 was an accommodation loan in the rice business. The check was dishonored because the account had been *closed*. Complainant testified that she *knew* the accused lack sufficient funds. The law applied was the amendatory law, Republic Act No. 4885, approved June 17, 1967, but again quoting from the books of Justice L.B. Reyes, it held that the check in payment of an obligation "*must have been contracted at the time of the issuance of the check*"; that the check was not for cash;<sup>40</sup> and the accused dealt with the complainant in good faith.<sup>41</sup>

It is respectfully submitted that the law does not require that the issuance of a check be in exchange for cash, for it is "in payment of an obligation". The "good faith" to rebut the *prima facie* resumption of deceit, should consist of bank deposits to make good the check within three days after advice that it was dishonored. The word "obligation" is *generic* and covers any valid and enforceable obligation, and does not exclude a *debt*, whether arising from a simple loan, an agreed purchase price, a sale on credit or "for any other valuable consideration". (Act No. 3313; *ante*, pp. 1, 2)

"*People v. Lagura, (C.A.) 74 O.G. 3324 (April 24, 1978)*. — In the case of *People v. Obieta, 52 O.G. 5224*, the accused had purchased motor cars from complaining witnesses and gave postdated checks in payment of the price. The accused in said case were acquitted of

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<sup>39</sup> Pre-existing obligation is not mentioned in the law (original or amended). In fact, Act No. 3313 provided that the check is "in payment of a *debt* or for any other valuable consideration". A pre-existing obligation is being *paid* by post-dating or issuing a check, and therefore can not negate "fraud". Republic Act No. 4885 provides for a "*prima facie* evidence of deceit"

<sup>40</sup> The law does not require that the check be in exchange for cash. It is in payment of an obligation or in payment of a *debt*, and applies to any check, whether postdated or not.

<sup>41</sup> Assuming that the obligation is valid and enforceable, good faith of the issuer of the check should be "to deposit the amount necessary to cover the check" (Rep. Act No. 4885)

the charge, with this court holding that the postdated checks were in effect in the nature of *promissory notes*.<sup>42</sup> We share that view and, applying the same to the instant case, we believe that Lagura should be acquitted.

"It is true that in the Obieta case, this Court had made a finding that 'said checks were not intended by the parties to be such, but only a promissory note, and that the complainants knew<sup>43</sup> the risk they are running'. In Our opinion, proof of what is in the mind of the parties at the time a postdated check is issued by the drawer and accepted by the payee is not necessary. But once goods are sold and purchased, or loans are granted and obtained, with postdated checks being issued by the buyer or borrower, *credit extension*<sup>44</sup> should be deemed granted and civil debt is created. If the obligation is not paid with the dishonor of the postdated checks, no crime is committed. The debt continues to exist as a civil obligation.

"In connection with the acquittal of Lagura, We would like to state the following: Loan sharks, to insure payment of their usurious loans, heretofore have resorted to requiring their debtors to sign documents acknowledging that they have received monies for the purpose of buying a commodity, say a bolt of cloth, with obligation of *delivering*<sup>45</sup> the commodity to the lender by a certain period, or if the commodity was not purchased, to *return* the money received. In other instances, the borrower is made to sign a receipt, for jewelry which he could sell for a certain amount, with the obligation, on a given date, to *return*<sup>46</sup> the jewelry or its price to the lender. Borrowers willing to pay usurious rates are usually in such dire need that they agree to sign the documents which, later on, can be the basis for their criminal prosecution. As the saying goes in the national language: 'Ang nagigipit, kahit sa patalim ay kakapit'." (at p. 4263)

*People v. Garcia*, (C.A.) 73 O.G. 624 (January 24, 1977) —

Sale of abaca mosaic on credit — The check was dishonored but the accused *paid* the complainant the full amount of the check. The check was issued in payment of an obligation already existing —

<sup>42</sup> A postdated check (Sec. 185) is not a promissory note (Sec. 184 — Negotiable Instruments Law).

<sup>43</sup> Knowing or not knowing that offender had insufficient funds, was eliminated by Rep. Act No. 4885.

<sup>44</sup> Postdating a check, i.e., issuing the check today but payable next month is a credit extension, expressly penalized by Sec. 2(d), Art. 315, before and after Rep. Act No. 4885.

Credit extension is implied in the issuance and acceptance of a postdated check. So credit extension is *not a defense*, for the act of postdating a check in payment of an obligation is *expressly penalized*.

<sup>45</sup> The decision confuses estafa under Sec. 1(b) with estafa under Sec. 2(d).

<sup>46</sup> This form of estafa is penalized in Sec. 1(b), and the obligation is specified — in trust, or on commission, or for administration, or under any obligation involving the duty to make delivery or to *return* the same.

"It is not disputed that appellant issued a check that was not covered with sufficient funds, and that she failed to deposit the amount necessary to cover her check within three (3) days from receipt of notice that said check has been dishonored for insufficiency of funds. Under the law as above quoted, this fact constitutes a *prima facie* evidence of deceit constituting false pretense or fraudulent act. This means that the appellant is presumed to have committed false pretense or fraudulent act when she contracted the obligation, that is, when she bought goods from the complainant without paying the price thereof. This presumption is rebuttable, as the law says that such evidence of deceit constituting false pretense or fraudulent act is only *prima facie*. It may be overcome by evidence showing that there is actually *no such deceit* constituting false pretense or fraudulent act when the fraud was supposedly committed.

"The deceit of which the issuance of a check in payment of an obligation, which is dishonored and is not made good within three (3) days from receipt of notice of dishonor is a mere *prima facie* evidence, clearly relates to the time the obligation was contracted, that is, when the goods were received by the appellant without the price thereof being paid then, and remains unpaid up to the time of the issuance of the check. It does not refer to the time of the issuance of the check because by its being dishonored, evidence of deceit in reference to the issuance of such a bouncing check is clearly not only *prima facie*. Hence, under the old provision, the act is not expressly considered merely *prima facie* evidence of deceit. With reference to an obligation already existing at the time of the issuance of the check, a *presumption of deceit* has to be created by the law, precisely to satisfy the element of the offense as provided in the opening statement of Sec. 2 of Art. 315 of the Revised Penal Code, to wit: 'By means of any of the following false pretense or fraudulent act executed prior to or simultaneously with the commission of the fraud.'" (at p. 629).

#### IX. Postdating or issuing a check is in payment of an obligation —

A check is defined as "a bill of exchange drawn on a bank payable on demand".<sup>47</sup> Payment by check shall produce the effect of payment,<sup>48</sup> only when it has been cashed.<sup>49</sup>

"ART. 1249. \* \* \* \* The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired."

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<sup>47</sup> Rep. Act No. 2031 (Negotiable Instruments Law) (1911), sec. 185.

<sup>48</sup> CIVIL CODE, arts. 1232-1233.

<sup>49</sup> CIVIL CODE, art. 1249, par. 2.

"*Galvez v. Court of Appeals*, 42 SCRA 278 (1971). — Applying the principles of civil law on payments done thru the use of bills of exchange (Article 1249, 2nd par., Civil Code of the Philippines), the delivery to Galvez of the check on April 24, 1959 in Pasay City had the effect, when the same was subsequently cashed, of transferring as of that date and in that place, the sum covered thereby from the drawer to the payee." (at p. 283)

An obligation is a juridical necessity to give, to do or not to do,<sup>50</sup> and may arise from law, contracts, quasi-contracts, acts or omissions punished by law and quasi-delicts.<sup>51</sup> A check, as a negotiable instrument, is deemed *prima facie* for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value —

"Every negotiable instrument is deemed *prima facie* to have been issued for a *valuable* consideration; and every person whose signature appears thereon to have become a party thereto *for value*."<sup>52</sup>

Payment or performance<sup>53</sup> is the *first* cause of extinguishment of obligations.<sup>54</sup> The extinguishment of an obligation through payment should presuppose the *existence* of a valid and enforceable obligation. The check is "in payment of an obligation"<sup>55</sup> or "in payment of a debt" or "for any other valuable consideration."<sup>56</sup> Therefore, the obligation must *precede* payment, that is, the obligation already *exists* before payment is made. Hence, the word "obligation" should not exclude a "debt" or a "pre-existing obligation".

The phrase invoked by and relied upon by the erroneous decisions of the Court of Appeals — "that the obligation must *be contracted* at the time of the issuance of the check" — does not appear in any text of the law.<sup>57</sup>

The phrase "in payment of a *debt*" or "for any other *valuable* consideration"<sup>58</sup> was substituted with and simplified to read "in payment of an obligation".<sup>59</sup> The word "obligation" is generic and is more comprehensive than the word "debt" and includes "any other valuable consideration."

<sup>50</sup> CIVIL CODE, art. 1156.

<sup>51</sup> CIVIL CODE, art. 1157.

<sup>52</sup> Rep. Act No. 2031 (1911), sec. 24.

<sup>53</sup> CIVIL CODE, ar.s. 1232-1233.

<sup>54</sup> CIVIL CODE, art. 1231, No. 1.

<sup>55</sup> CIVIL CODE, art. 315, sec. 2(d).

<sup>56</sup> Act No. 3313 (1926).

<sup>57</sup> Act No. 3313 (1926); Act No. 3815 (1930), art. 315, par. 2(d); Rep. Act No. 4885 (1967).

<sup>58</sup> Act No. 3313 (1926).

<sup>59</sup> Act No. 3815 (1930), art. 315, sec. 2(d).



Moreover, the Legislative intent and purpose is precisely to eliminate the defense that the check was in "payment of a pre-existing obligation". Why then should a pre-existing obligation which is an existing *debt* or an existing obligation be excluded from the coverage of Republic Act No. 4885? Such a position would, by analogy, be absurd and condemnable, as what was held in *People v. Manayao*<sup>60</sup> —

"It would shock the conscience of any enlightened citizenry to say that this appellant, by the very fact of committing the treasonous acts charged against him, the doing of which under the circumstances of record he does not deny, divested himself of his Philippine citizenship and thereby placed himself beyond the arms of our treason law. For if this were so, his very crime would be the shield that would protect him from punishment." (at p. 727)

X. *Erroneous positions on Republic Act No. 4885:*

1. As the "the word 'debt' in Act No. 3313 was 'eliminated' in Article 315, Section 2(d)", it implies that a check in payment of a debt is no longer covered by the law on estafa. The truth is that the phrase "in payment of a debt or for any other valuable consideration" was *simplified and substituted* with "in payment of an obligation" which is more comprehensive than "in payment of a debt". An obligation<sup>61</sup> is *generic* and covers "a debt or any other valuable consideration".<sup>62</sup>

2. "Republic Act No. 4885 merely makes the prosecution for estafa thru bouncing checks *easier*". The fact is that the amendments introduced by said Republic Act No. 4885 were to *eliminate* the defenses available to a bad and/or fraudulent debtor under the old law who postdates or issues a bouncing check, namely: (a) that he did not know that he had no funds in the bank to cover the check; (b) that he informed the payee of such circumstances; and (c) that the check was in payment of a pre-existing obligation.

3. The payee of the check "must be defrauded at the time he had *parted* with his goods without payment therefor." This position is against the clear provision of law, for the postdating or issuing of a check is "in payment of an obligation". The law covers but is not limited to "purchase and sale" of goods, and the delivery of a check *simultaneous* with the delivery of the goods. There are four (4) points of time involved in postdating or issuing a check in payment of an obligation:

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<sup>60</sup> 78 Phil. 721 (1947).

<sup>61</sup> CIVIL CODE, art. 1156.

<sup>62</sup> Act No. 3313 (1926).

- (1) at the creation of the obligation;
- (2) at the issuance of the check;
- (3) at the dishonor of the check for lack or insufficient funds; and
- (4) at the failure of the drawer of the check to deposit the amount necessary to cover his check.

There is no estafa at the first point of time when the *civil* obligation was contracted, because the two elements of estafa — deceit and damage — are not yet present, although the debtor might have been guilty of fraud in contracting the debt or incurring the obligation.<sup>63</sup> There may be no estafa at point 2, when the check is issued or postdated as a *commercial* act although the issuer of a bad check might have had the fraudulent intent of not ever paying his obligation, even from the beginning.<sup>64</sup> But at point 3, when the check is dishonored, and specially at point 4, when the drawer does not deposit funds to cover his check, the *estafa* is consummated. The defraudation of the payee has been fully accomplished under Article 315, Section 2, paragraph d, Revised Penal Code, as amended by Republic Act No. 4885.

4. There is no estafa if the check "is in payment of a pre-existing obligation." The above statement contradicts the clear language of the penal statute, which provides — *in payment of an obligation*.

5. The fraudulent act must be prior to the commission of the fraud, and the word "prior to" would exclude a pre-existing debt. Article 315 starts with "any person who shall *defraud* another by any of the means \* \*." Section 2 reads:

"(2) By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud."

The last words "commission of the fraud" means the "swindling" (*estafa*) or "*defraudation*" of the victim, who is the payee of the bouncing check (par. d). The word "fraud" does not refer to the "false pretense or the fraudulent act" for that would be redundancy and/or surplusage. The true fact and/or correct logic is that the "false pretense" or "fraudulent act" in "postdating or issuing" a bouncing check fully satisfies Section 2, for the issuance of said check is *prior* to the estafa "swindling", the *defraudation* of the payee, which is realized when the check bounced and its face value

<sup>63</sup> RULES OF COURT, Rule 57, sec. 1, par. d on Attachment.

<sup>64</sup> Court of Appeals decision in *People v. Garcia*, Justice Pacifico P. de Castro, ponente.

is not redeemed by the debtor-issuer of said check. Estafa under Section 2(d) of Article 315 should not be limited to "simultaneously with" or "*kaliwaan*", for the law says "in payment of an obligation" and the false pretense or fraudulent act of postdating or issuing a check is "*prior to*" the defraudation of the payee-creditor, which results when the check is dishonored, and notwithstanding the grace period of three days, the amount necessary to cover the check is not deposited.

The issuance of a check as a negotiable instrument is not a "joke" or a playful act or game, because the postdating or issuing of a check is "in payment of an obligation" —

"\* \* in payment of a debt or for any other valuable consideration".<sup>65</sup> and therefore the debt must be *existing* or pre-existing before payment by check is made to *extinguish* said obligation.

#### XI. *American jurisprudence:*

American law does not exempt from the penalty or sanction of swindling (fraud) the issuance of a bouncing check in payment of a pre-existing debt or obligation.

"\* \* where the statute is drawn so that it is not essential that money or property be obtained, it would appear that the offense may be committed even though the payee takes the check in payment of a *pre-existing debt*, \* \*" <sup>66</sup>

"\* \* where the particular worthless check statute specifies the obtaining of something of value as an element of the offense; in such a situation, the giving of a worthless check in payment of a pre-existing debt is generally held not to be within the ban of the statute. However, some worthless check statutes make it an offense to issue such a check, *even though no money or property is obtained* in return. Under statutes of this type, the offense may be committed by giving a worthless check in payment of a *pre-existing debt*." <sup>67</sup>

#### XII. *Previous defenses are no longer available:*

The defenses available under Article 315, Section 2(d) *before* the amendment by Republic Act No. 4885, namely that —

- (1) issuer of the check did not know that he had no sufficient funds in the bank;

<sup>65</sup> Act No. 3313 (1926).

<sup>66</sup> 32 Am. Jur. 2d, False Pretenses, sec. 77, pp. 223-224.

<sup>67</sup> *Id.*, sec. 78.

(2) he informed the payee of such circumstances; and  
(3) the check was in payment of a pre-existing obligation,  
are *no* longer available after the said provision was amended by Republic Act No. 4885, which expressly *eliminated* the phrases "not knowing that at the time he had no funds" and "without informing the payee of such circumstances". The defense of "pre-existing obligation" was a judicial *error* of interpretation starting from *People v. Lilius*, and other decisions even before the amendment,<sup>68</sup> as the postdating or issuing of a check is "in payment of an obligation".

#### XIII. *Defenses available to issuer of check:*

The elimination by Republic Act No. 4885 of the three (3) defenses previously available to the issuer of a bouncing check, does not preclude *other* defenses which are still available to the accused.

The following defenses may still be available to the debtor-issuer of the check by competent evidence:

(1) to prove that the contracted obligation was neither valid nor enforceable;

(2) to prove that the issuance of the check was "vitiating by mistake, violence, intimidation, undue influence or fraud"<sup>69</sup> as grounds for voidable contracts;

(3) to prove that the dishonor by the bank was erroneous;

(4) to prove his inability in good faith — not refusal — to cover the amount of the dishonored check, due to circumstances beyond his control,<sup>70</sup> or an excuse for non-performance of a contract or non-fulfillment of an obligation, such as the extinguishment thereof;<sup>71</sup> or the bankruptcy of an honest debtor, not a fraudulent debtor, by discharge by the insolvency court.<sup>72</sup>

#### XIV. *Not imprisonment for debt:*

The amendatory law, Republic Act No. 4885, does not violate the constitutional provision against imprisonment for debt. The debtor-issuer or drawer of a bouncing check is not being prosecuted and penalized for

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<sup>68</sup> Rep. Act No. 4885 (1967).

<sup>69</sup> CIVIL CODE, art. 1390, par. 2.

<sup>70</sup> CIVIL CODE, art. 1174.

<sup>71</sup> CIVIL CODE, art. 1231.

<sup>72</sup> Act No. 1956, Insolvency Law secs. 64-65.

not paying his debt. What is penalized is the *defraudation* of the payee by means of postdating or issuing a check without or with insufficient funds to cover the same, constituting as it does a false pretense or fraudulent act of the drawer-issuer, which is *prima facie* evidence of his deceit.

"*People v. Bustamante*, (C.A.) 74 O.G. 4091 (May 22, 1978). — If checks are issued for the purchase of jewelries under the representation that they are good checks, it is the *false pretense* accompanying the issuance of the checks and not the purchase of the jewelries with the checks that would constitute the criminal act".

#### XV. *Not violative of presumption of innocence:*

Presumption may either be (1) conclusive,<sup>73</sup> (2) quasi-conclusive,<sup>74</sup> or (3) *prima facie* or disputable.<sup>75</sup> Republic Act No. 4885, as in Article 217 of the Revised Penal Code, and many other provisions in the Rules of Court, Civil Code, Criminal Law and judicial decisions,<sup>76</sup> does create merely the disputable presumption or "*prima facie* evidence of deceit constituting false pretense or fraudulent act". The settled rule is that "there is no constitutional objection to the passage of a law providing that the presumption of innocence may be overcome by a contrary presumption founded upon the experience of human conduct, and enacting what evidence shall be sufficient to overcome such presumption of innocence".

#### *Presumption of innocence overcome by law providing for a contrary presumption —*

"*People v. Mingoa*, 92 Phil. 856 (1953). — The validity of statutes establishing presumptions in criminal cases is now a settled matter, Cooley, in his work on constitutional limitations, 8th ed., Vol. I, pp. 639-641, says that 'there is no constitutional objection to the passage of a law providing that the *presumption of innocence may be overcome* by a *contrary presumption founded upon the experience of human conduct*, and enacting what evidence shall be sufficient to overcome such presumption of innocence'. In line with this view, it is generally held in the United States that the legislature may enact that when certain facts have been proved they shall be *prima facie* evidence of the existence of the guilt of the accused and *shift the burden of proof* provided there be a rational connection between the *facts proved* and the *ultimate fact presumed* so that the inference of the one from proof of the others is not unreasonable and arbitrary because of

<sup>73</sup> RULES OF COURT, Rule 131, sec. 3.

<sup>74</sup> RULES OF COURT, Rule 131, sec. 4.

<sup>75</sup> RULES OF COURT, Rule 131, sec. 5.

<sup>76</sup> 2 PADILLA, EVIDENCE ANNOTATED, pp 841-844 (1971).

lack of connection between the two in common experience. \* \* \* The same view has been adopted here as may be seen from the decisions of this court in the U.S. v. Tria, 17 Phil. 301; U.S. v. Luling, 34 Phil. 725; and People v. Merilo, G.R. No. L-3489, promulgated June 28, 1951." (at pp. 858-859)

"*People v. Livara*, 94 Phil. 771 (1954). — The presumption provided for in article 217 of the Revised Penal Code is not unconstitutional. There is *no constitutional* objection to the passage of a law providing that the presumption of innocence may be overcome by a contrary presumption founded upon the experience of human conduct, and enacting what evidence shall be sufficient to overcome such presumption of innocence." (at p. 775).