

# RES IPSA LOQUITUR AND THE PROBLEM OF PROOF IN PRODUCT LIABILITY CASES

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## INTRODUCTION

A bottle of soft-drink suddenly explodes after being taken from a refrigerator, causing injuries to the face and to the eyes of a homeowner. The brakes of a newly bought car suddenly fail on a busy city street. As a result, a pedestrian is run over and killed, and the driver himself is injured as his car rams and damages another car parked on the side of the road.

Many of these incidents happen in today's world where people use products which have been manufactured, mass-produced, assembled and processed by others. Who can be held liable? Can the manufacturer, the assembler and the processor be held liable? If so, how and under what conditions? How does the consumer and the ordinary man in the street go about holding them liable for damages to his person or property?

Given the amount and quantity of the products manufactured today, there are bound to be some defective products. In certain instances, these defective products cause damage or injury. For instance, there is the present controversy regarding the allegedly excessive lead content of our evaporated milk. Despite assurances from the Minister of Trade, and the Food and Drug Administration as to the safety and wholesomeness of such milk, there are still many who remain unconvinced.<sup>1</sup> In the United States, the Firestone Tire and Rubber Company recently had to recall an estimated 7.5 to 10 million tires of its Firestone 500 steel-belted radial series. Findings had shown that these tires were particularly prone to blow-out, blister or crack, and were suspected of being connected with 41 deaths and 65 injuries.<sup>2</sup> And how often do we hear car-owners complain about the defects in their cars manufactured under the Progressive Car Manufacturing Program?

The problem of proof on the part of the injured person can become especially difficult. Much of what happened to make the product defective,

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<sup>1</sup> *Mendoza, Don't Cry Over Spilled (Evap) Milk*, Philippine Panorama, July 9, 1978, p. 6; *Mendoza, The Case of the Lead in Milk, Part 2*, Philippine Panorama, September 24, 1978, p. 16.

<sup>2</sup> *Time*, October 30, 1978, p. 55, col. 1; *Newsweek*, October 30, 1978, p. 49, col. 1.

unsafe or dangerous may have happened before the product ever got into his hands. He may not have the knowledge or the facilities necessary to prove liability on the part of the persons responsible. The different parts of the product may have been manufactured by several producers, and then assembled. How can he know what happened at the factory of the component-part manufacture or at the factory of the assembler? After final manufacture, the product may then have gone to a wholesaler, to a distributor, to a retailer, and finally to the consumer-user. It may also have been used safely for some time until the incident causing the injury happened.

### I. *Product liability in general*

American courts have held the manufacturer<sup>3</sup> liable to the person or persons who have suffered injury under three theories — (1) breach of warranty (2) strict liability in tort and (3) quasi-delict or a tort action for negligence.

Liability in warranty arises where damage is caused by the failure of a product to measure up to express or implied representations on the part of the manufacturer or other supplier.<sup>4</sup> There is a difference of opinion as to whether privity of contract between the manufacturer and the injured party is a pre-requisite to liability.<sup>5</sup> Negligence or negligent conduct is not required. Whether or not such a theory could apply in this jurisdiction is not, however, within the scope of this paper.

Under the theory of strict liability in tort, there is liability for damages or injury caused even though there was no fault or negligence on the part of the defendant. In the products liability field, this doctrine was first adopted in the United States by the California Supreme Court in the case of *Greenman v. Yuba Power Products*.<sup>6</sup> In that case, the manufacturer was held liable when the plaintiff was injured while using its product in a way it was intended to be used, plaintiff's injury arising from a defective condition in the product making it unreasonably dangerous or unsafe. The element of fault or negligence on the part of the manufacturer was held immaterial for the purpose of recovery of damages.

Culpability in the traditional sense of fault or negligence is lacking. The recovery of damages is allowed based on broader moral notions of consumer protection, public policy, and on economic and social grounds.

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<sup>3</sup> By manufacturer here is meant an ordinary manufacturer, or an assembler, component-part manufacturer, processor, or others who at different stages of production have had a direct and substantial part in putting out a product in its final form.

<sup>4</sup> 2 FRUMER & FRIEDMAN, *PRODUCTS LIABILITY*, sec. 16.01 [1] (1973).

<sup>5</sup> *Id.*, at sec. 16.03 and sec. 16.04.

<sup>6</sup> *Greenman v. Yuba Power Products, Inc.*, 59 Cal. 2d 67, 27 Cal. Rptr. 697, 377 P. 2d 897 (1963).

placing the burden to compensate for loss incurred by defective products on the manufacturer, who is best able to prevent the distribution of these unsafe products, which expose members of society to an unreasonable risk of harm. This puts the test of culpability in the quality of the product, rather than in a standard of conduct resulting in the quality of the product. Liability is not dependent on the failure of the defendant to exercise due care in the manufacture, design, sale or placing in the commercial stream of a defective product; rather it is dependent on the fact that defendant manufactured or designed or sold a defective product which, because of its unreasonably unsafe condition, injured the plaintiff or damaged his property when such product, substantially unaltered was put to its intended use.

Another reason for the adoption of the theory of strict liability in tort in product liability cases is the difficulty on the part of the plaintiff of proving a manufacturer's lack of due care.<sup>7</sup>

Thus, an automobile manufacturer who manufactured a car with a defective gas tank was held to be liable for the death of a car-owner due to severe burns caused by burning gasoline, despite the lack of allegations in the plaintiff's cause of action that there was fault or negligence on the part of the manufacturer, upon a mere showing that the deceased's car was defective in manufacture and design, in that the gas tank was located in such a manner as to be immediately and directly available to penetration and puncture, and the shell and bumper were both inadequate to provide any protection to the gasoline tank from an external force.<sup>8</sup> The deceased's car had been struck from behind by another car. The court held that there would be liability although the seller had exercised all possible care in the preparation, manufacture and sale of his product.<sup>9</sup> Similarly, another car manufacturer was held liable for injuries in an automobile accident caused by a defective seat adjustment mechanism, although there was no showing of negligence.<sup>10</sup>

Strict liability in tort, however, cannot be made the basis of product liability in this jurisdiction. Under the system of sources of obligations embodied in the Civil Code, as a general rule there can be liability only when there is an act or omission involving fault or negligence.<sup>11</sup> This would seem to be subject to only one exception, namely, Article 2183,<sup>12</sup> which covers the liability of the possessor of an animal for the damage which it may cause.

<sup>7</sup> *Ibid*; *Atkins v. American Motors Corp.*, 355 So. 2d 134, 138-139 (1976).

<sup>8</sup> *Atkins v. American Motors Corp.*, *supra*, note 7.

<sup>9</sup> *Ibid.*, at 141.

<sup>10</sup> *Kirkland v. General Motors Corp.*, Okl., 521 P. 2d 1353 (1974).

<sup>11</sup> CIVIL CODE, arts. 1157, 2176.

<sup>12</sup> CIVIL CODE, art. 2183.

Article 2187<sup>13</sup> of our Civil Code provides: "Manufacturers and processors of foodstuffs, drinks, toilet articles and similar goods shall be liable for death or injuries caused by any noxious or harmful substances used, although no contractual relation exists between them and the consumers." This would seem to be the only article in our Civil Code which deals specifically and unequivocally with the problem of product liability. Sangco is of the opinion that Article 2187 imposes liability without either contractual relation or negligence.<sup>14</sup> The better view, however, would seem to be that of Jarencio who is of the opinion that the same article dispenses only with the need for a contractual relation, but not with the requirement of negligence (in this case, in the preparation and manufacture of the products mentioned), as a pre-requisite to liability.<sup>15</sup> A reading of Article 2187 itself would support this. Nowhere is there a clear or unequivocal provision for strict liability in said article. The general rule being that there can be liability only with fault or negligence, such rule should be followed in the absence of a clear exception. Furthermore, the first American decision holding a manufacturer strictly liable in tort<sup>16</sup> came out in 1963, while the new Civil Code in which Article 2187, a new article, was incorporated, took effect in 1950. If, as Jarencio points out, the framers of the New Civil Code based Article 2187 on the rule then obtaining in most states of the United States to the effect that a consumer may recover damages against a manufacturer for the negligent preparation or manufacture of food irrespective of any contractual relation between the parties,<sup>17</sup> then strict liability in tort could not have been contemplated.

What we will therefore discuss is the liability of a manufacturer under the theory of quasi-delict or tort<sup>18</sup> for negligence, and the role of the doctrine of *res ipsa loquitur* in such a theory. Under our law, "whoever by act or omission causes damage to another, there being fault or negligence is obliged to pay for the damage done."<sup>19</sup> If a manufacturer is negligent, and a person is injured thereby, he should, like any other person, be held liable for the consequential damages.

In the United States, the accepted rule is that a manufacturer can be held liable in tort for a defective product which causes injury, there being

<sup>13</sup> CIVIL CODE, art. 2187.

<sup>14</sup> SANGCO, PHILIPPINE LAW ON TORT AND DAMAGES 210 (2nd ed., 1976).

<sup>15</sup> JARENCIO, TORTS AND DAMAGES IN PHILIPPINE LAW 90 (1977).

<sup>16</sup> *Greeman v. Yuba Power Products, Inc.*, *supra*, note 6.

<sup>17</sup> JARENCIO, *op. cit.*, *supra*, note 15 at 90.

<sup>18</sup> The word "tort" in this discussion will be used in the concept of *quasi-delict* as defined in Article 2176 of our Civil Code, unless otherwise indicated, as in "strict liability in tort."

<sup>19</sup> CIVIL CODE, art. 2176.

negligence on his part, even without privity of contract. This rule was first enunciated in the leading case of *MacPherson v. Buick Motor Co.*,<sup>20</sup> where the manufacturer of an automobile was held liable for injuries caused by a defective wheel, where it was negligent in not making reasonable tests which would have disclosed the defect. The court held that, "if the nature of a thing is *reasonably certain* to place life and limb in peril when *negligently* made, it is then a thing of danger,"<sup>21</sup> and the manufacture will be held liable for not exercising its duty of care and vigilance, which it owes not only to the immediate purchaser, but also to others who might use the product. All American courts that have considered the question have adopted the MacPherson rule, with the exception of Mississippi.<sup>22</sup>

Prior to MacPherson, the rule had been that a manufacturer was not liable to consumers or users of a product when they were not in contractual privity with the manufacturer. To this, certain exceptions developed with regard to products which were considered "imminently dangerous," like poisons or explosives.<sup>23</sup>

Who can be held liable? The manufacturer of a finished product may be held liable for its negligent construction<sup>24</sup> as well as for his failure to exercise reasonable care in planning or designing<sup>25</sup> it so that it is reasonably safe for the purposes for which it was intended. The manufacturer of a component part may also be held liable for negligence.<sup>26</sup> The manufacturer-assembler on the other hand must reasonably inspect and test component parts so as to disclose discoverable defects.<sup>27</sup> He must exercise reasonable care which would consist in making the inspections and tests during the course of manufacture and after the article was completed which the manufacturer should recognize were reasonably necessary for the production of

<sup>20</sup> *MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050 (1916).

<sup>21</sup> *Id.*, at 1053.

<sup>22</sup> 1 FRUMER & FRIEDMAN, PRODUCTS LIABILITY, sec. 5.03 [1] (1973).

<sup>23</sup> *Id.*, at secs. 5.01, 5.02; *Winterbottom v. Wright*, 10 M & W 109, 11 L.J. Ex 415, 152 Eng. Rep. 452 (1842) as cited in 1 FRUMER & FRIEDMAN, *op. cit.*, *supra*, note 22 at sec. 5.01; *Husset v. J.I. Case Threshing Machine Co.*, 120 F. 865, 61 L.R.A. 303 (1903).

<sup>24</sup> 1 FRUMER & FRIEDMAN, *op. cit.*, *supra*, note 22 at sec. 7.01 (1).

<sup>25</sup> *Carpini v. Pittsburgh and Weirton Bus Co.*, 216 F. 2d 404 (1954); *Hyatt v. Hyster Co.* 106 F. Supp. 676 (1952); *Moran v. Pittsburgh-Des Moines Steel Co.*, 183 (1950); *Noel v. United Aircraft Company*, 219 F. Supp. 556 (1963).

<sup>26</sup> *Edison v. Lewis Manufacturing Company*, 168 Cal. App. 2d 429, 336 P. 2d 286 (1959); *Noel v. United Aircraft Company*, 219 F. Supp. 556 (1963); *Spencer v. Madsen*, 142 F. 2d 820 (1957).

<sup>27</sup> *MacPherson v. Buick*, *supra*, note 20. *Sheward v. Virtue*, 20 Cal. 2d 410, P. 2d 345 (1942); *Philips v. Ogle Aluminum Furniture*, 106 Cal. App. 2d 650, 235 P. 2d 857 (1951); *Yecny v. Eclipse Fuel Engineering Co.*, 210 Cal. App. 2d 192, 26 Cal. Rptr. N.W. 2d 627; *Alexander v. Nash-Kelvinator Corp.*, 261 F. 2d 187 (1958); *Courtois v. General Motors Corp.*, 37 N.J. 525, 182 A. 2d 545 (1962).

a safe article.<sup>28</sup> The processor of a product has also been held liable.<sup>29</sup> It is not the denomination of the person performing the operation, that is whether he is a manufacturer or processor, but the probability of harm resulting from negligent manufacturing or processing that gives rise to plaintiff's cause of action.<sup>30</sup>

For example, a manufacturer-assembler of cars uses defective tires produced by a tire manufacturer, in the cars which he makes. If the former failed to perform the necessary tests and to make reasonable inspection so as to discover the defects in the tires, he would be liable for any injury or damage caused by his cars because of the defective tires. The tire-manufacturer himself would also be liable for lack of care in the design or manufacture of such tires. Each would be liable for his own specific acts of negligence.

Who are the persons entitled to recover damages? Any foreseeable user of the product,<sup>31</sup> as well as one who is injured although he may not have been using the product at the time of his injury, so long as he was within the range or vicinity of the probable use.<sup>32</sup> Thus, as in our first example, a pedestrian who is injured as a result of being bumped by a car with defective brakes may have a cause of action against the car manufacturer.

## II. *Requisites for recovery of damages in an ordinary negligence action; in product liability cases*

For the recovery of damages in an ordinary suit for tort or quasi-delict, the following requisites must concur — (1) a *negligent* act or omission on the part of the defendant, (2) damage or injury to the plaintiff, (3) that such negligent act or omission must have been the proximate cause of the damage or injury,<sup>33</sup> and (4) the foreseeability of the harm or injury caused.<sup>34</sup>

The requisites for recovery in a product-liability suit based on quasi-delict or a tortious action for negligence are substantially and essentially

<sup>28</sup> *Smith v. Peerless Glass Co., Inc.*, 259 N.Y. 292, 181 N.E. 576 (1932).

<sup>29</sup> *Block v. Urban*, 166 F. Supp. 19 (1958).

<sup>30</sup> *Id.*, at 20-21.

<sup>31</sup> *I. FRUMER & FRIEDMAN, op. cit., supra*, note 22 at sec. 5.03 (1) c.

<sup>32</sup> See *Gaidry Motors v. Brannon*, Ky. 268 S.W. 2d 627 (1954).

<sup>33</sup> *Bataclan v. Medina*, 102 Phil. 181 (1957); *MERALCO v. Remoquillo*, 99 Phil. 117 (1956); *Subido v. Custodio*, G.R. No. L-210512, 17 SCRA 1088 (1966); *Teague v. Fernandez*, G.R. No. L-29745, 51 SCRA 181 (1973); *Vda. de Gregorio v. Go Chong Bing*, 102 Phil. 556 (1957).

<sup>34</sup> CIVIL CODE, Art. 1174. "Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen were inevitable."

the same. They are: (1) the plaintiff must show that he was injured by the product or suffered damages thereby, (2) he must present proof that the product was defective and unreasonably unsafe, (3) that the injury or damage suffered was proximately caused by the defect in the product, (3) such defect existed when the product left the hands of the defendant,<sup>35</sup> and (5) the defective condition of the product was the result of negligence or lack of due care in the manufacturing process or that the manufacturer or seller knew or should have known of the defective condition.<sup>36</sup> The first four requisites are enough for recovery of damages in an action based on strict liability in tort. For recovery, however, in a suit for quasi-delict, all five must concur. Proof that a defect in the product caused the injury is a pre-requisite to recovery and the defect must be the actual or proximate cause of the injury.<sup>37</sup> Plaintiff ordinarily must show that there was a defect traceable to the manufacturer, that the harm was caused by the product and by some defect therein at the time of manufacture.<sup>38</sup> The existence of a defect in the product may however, be proven by both direct and circumstantial evidence,<sup>39</sup> as well as expert testimony.

Even if the defect was the result of the manufacture's negligence, and the injury was caused thereby, the manufacturer's negligence obviously must still be the proximate or legal cause of the injury.<sup>40</sup>

Furthermore, the injury must have been foreseeable. The manufacturer should have been negligent, where danger is to be foreseen as a natural and probable result<sup>41</sup> of his act or omission.

There is, however, a significant difference between Philippine and American law that would in certain cases result in a Philippine court not imposing liability when faced with similar circumstances in a tort action for negligence involving product liability. For the theory of liability in our

<sup>35</sup> *Rigby v. Beech Aircraft Corp.*, 548 F. 2d (1977); *Marko v. Stop and Shop, Inc.*, 169 Conn. 50, 364 A. 2d 217; *Gillespie v. R.D. Werner Co., Inc.*, 404 Ill. App. 3d 947, 357 N.E. 2d 1203 (1976); *Holloway v. General Motors Corp.*, 399 Mich. 617, 250 N.W. 2d 736 (1977); *Kirkland v. General Motors Corp.*, Okl. 521 P. 2d 1353 (1974); *Duncan v. Rockwell Manufacturing Company*, 56 P. 2d 936 (1977); *Barich v. Ottenstror*, 550 P. 2d 395 (1976).

<sup>36</sup> *Browder v. Pettigrew* 541, S.W. 2d 402 (1976); *Rainbow v. Albert Ella Building Co., Inc.*, 373 N.Y.S. 2d 928 (1975); *Ulwelling v. Crown Coach Corp.*, 23 Cal. Rptr. 631 (1962).

<sup>37</sup> *Wilcheck v. Doonan Truck and Equipment, Inc.*, 220 Kan. 230, 552 P. 2d 938, 942 (1976).

<sup>38</sup> 1 FRUMER & FRIEDMAN, *op. cit.*, *supra*, note 22 at sec. 11.01 [11].

<sup>39</sup> *Shafer v. Honeywell, Inc.*, 249 N.W. 2d 251 (1976); *Browder v. Pettigrew*, *supra*, note 36; *Trowbridge v. Abrasive Co. of Philadelphia*, 190 F. 2d 825 (1951).

<sup>40</sup> 1 FRUMER & FRIEDMAN, *op. cit.*, *supra*, note 22 at sec. 11.02.

<sup>41</sup> *MacPherson v. Buick Motor Co.*, *supra*, note 20 at 1053; *Ulwelling v. Crown Coach Corp.*, 23 Cal. Rptr. 631 (1962); *Gaidry Motors v. Brannon*, Ky. 208 S.W. 2d 627 (1954).

Civil Code is in contrast to the American doctrine of *respondeat superior* where the negligence of the employee is conclusively presumed to be the negligence of the employer.<sup>42</sup> It would seem then that even if negligence were proved, the employer-manufacturer could still avoid liability by proving due diligence in the selection and supervision of his employees.<sup>43</sup>

III. *Burden of proof in ordinary negligence cases; where res ipsa loquitur comes in*

Each party in a case must prove his own affirmative allegations. The burden of proof lies on the party who would be defeated if no evidence were given on either side.<sup>44</sup> The person claiming damages has the burden of proving the existence of the fault or negligence causing the damage. The fact of negligence must be affirmatively established by competent evidence.<sup>45</sup>

The general rule, therefore, is that the plaintiff has the burden of proving the existence of *all* the requisites previously mentioned in order to recover damages in a product liability action based on negligence. All the requisites must concur and must be proved. The proven existence of one requisite cannot be used as an argument for saying that another requisite exists. The plaintiff must show that it was defendant's product that caused the injury.<sup>46</sup> The existence of a defect in the product must be proved.<sup>47</sup> From the mere fact of injury, there can be no inference of negligence.<sup>48</sup> The mere fact of accident does not prove the existence of a defect in the product.<sup>49</sup> It cannot also be presumed that a product was defective at the time it was under the control of a manufacturer or distributor, from a mere showing that a product may have been defective at the time of the accident.<sup>50</sup> The defect must have been in existence at the time it left the defendant's possession.<sup>51</sup> Even if there was a defect traceable to the

<sup>42</sup> *Bahia v. Litonjua and Leynes*, 30 Phil. 624 (1915).

<sup>43</sup> CIVIL CODE, art. 2180.

<sup>44</sup> RULES OF COURT, Rule 131, sec. 1.

<sup>45</sup> *Novo & Co. v. Ainsworth*, 26 Phil. 380, 386 (1913); *Barcelo v. Manila Electric*, 29 Phil. 351, 359 (1915).

<sup>46</sup> *Shields v. United Gas Pipe Line Company*, 220 So. 2d 881 (1959); *Holloway v. Skelly Oil Co.*, 68 F. Supp. 129 (1946); *Emigh v. Andrews*, 191 P. 2d 901 (1948); *Brocato v. Standard Oil Company of California*, 331 P. 2d 111 (1958).

<sup>47</sup> *Springer Corp. v. Dallas and Mavis Forwarding Co., Inc.* 90 N.M. 48, 559 P. 2d 846 (1977); *Dapp v. Bob Sullivan Chevrolet Co.*, 234 Ark. 395; 353 S.W. 2d 5 (1962); *United States Rubber Co. v. Bauer* 319 F. 2d 463 (1963); *Miszczak v. Maytag Chicago Co.*, 11 Ill. App. 2d 496, 138 N.E. 2d 52 (1956).

<sup>48</sup> *Haynes v. Coca-Cola Bottling Co. of Chicago*, 39 Ill. App. 3d 3a, 350 N.E. 2d 20, 25 (1976).

<sup>49</sup> *Smith v. Michigan Beverage Co., Inc.*, 495 F. 2d 754 (1974).

<sup>50</sup> *Barich v. Ottenstror*, 350 P. 2d 395 (1976).

<sup>51</sup> *Trolli v. Triple X Stores*, 19 Conn. Supp. 293, 112 A. 2d 507 (1954); *Ford Motor Co. v. McDavid*, 259 F. 2d 261 (1968).



manufacturer, there, of course is still the question of negligence.<sup>52</sup> The presence of a defect is not direct or specific evidence that the manufacturer or other supplier negligently constructed, inspected or tested his product, unless it can be said, as it cannot, that a defective product cannot be turned out in the absence of negligence.<sup>53</sup>

For example A, is driving his two-year old car on the Pan-Philippine Highway. Suddenly, it goes out of control, and falls into a drainage ditch on the side of the road. He suffers injuries and his car is a total wreck. He decides to bring an action against the car-manufacturer on *quasi-delict*. From the mere fact of his having suffered injury, no negligence on the part of the manufacturer can be inferred, so as to allow the recovery of damages. He has the burden of proving a defect in the car. If he does that, as for instance by proving that the steering mechanism was defective, he must still prove that such defect existed when the car left the control of the manufacturer. He may prove, for example, that the nature of the defect is such that it could only have been produced by defective design or manufacture, and not by extraneous events supervening between the time of manufacture and of the accident. After proving the existence of a defect in the steering mechanism at the time of manufacture, he must still prove negligence on the part of the manufacturer, in constructing, inspecting or testing the car. Furthermore, such negligence must be the proximate cause of the injury. The defendant manufacturer may have been negligent and the car may have been defective, but if the proximate cause of the injury was the fact that the plaintiff was driving his car at an excessive rate of speed on a road which was very wet and slippery because of heavy rain, then there can be no recovery of damages.

All these things which plaintiff has the burden of proving, he may prove through direct or circumstantial evidence, expert testimony, inference and the like, according to the rules of evidence.

When does the doctrine of *res ipsa loquitur* come in? *Res ipsa loquitur* (trans. the things speaks for itself), is nothing but a species of circumstantial evidence that points to the existence of negligence.<sup>54</sup> It can be properly applied only *after* the four other requisites for recovery mentioned have already been proved by competent evidence. Thus the plaintiff must first prove that he was injured by the product or suffered damage thereby, that the product was defective and unreasonably unsafe, that the injury was proximately caused by the defect in the product, and that such defect

<sup>52</sup> 1 FRUMER & FRIEDMAN, *op. cit.*, *supra*, note 22, at sec. 11.01 (1).

<sup>53</sup> *Id.*, at sec. 12.03 [9].

<sup>54</sup> *Stewart v. Ford Motor Co.*, 553 F. 2d 130 (1977); *Harke v. Haase*, 75 S.W. 2d 1001 (1934); *Sweeney v. Erving*, 228 U.S. 233, 33 Sup. Ct. 416 (1913).

existed when the product left the hands of the defendant, before he can avail of *res ipsa loquitur* to infer the existence of negligence so as to be able to recover damages, and then only under certain conditions. Whether or not *res ipsa loquitur*, when properly applied, raises a mere inference of negligence, or a presumption of negligence, or shifts the burden of proof to the defendant is a question that will be discussed later.

Thus the doctrine of *res ipsa loquitur* may only be used to prove the existence of one of the requisites for recovery — that of negligence on the part of the manufacturer. It cannot be used to prove the existence of the four other requisites for recovery of damages, which as we have already mentioned, are themselves even pre-conditions for the application of the doctrine itself.

The doctrine of *res ipsa loquitur* permits an inference that the known act which produced the injury was a negligent act but, there is no inference as to what act produced the injury, and no foundation is laid for the application of the doctrine where the physical act or the thing which caused the injury is not disclosed or identified.<sup>55</sup> Neither can it be used to prove that the product caused the injury.<sup>56</sup> Such product must first be shown to have caused the injury.<sup>57</sup>

The maxim (*res ipsa loquitur*) does not go to the extent of implying that you may, from the mere fact of an injury infer what physical act produced the injury; but it means that when the physical act has been shown, or is apparent, and is not explained by the defendant, the conclusion that negligence superinduced may be drawn, as a legitimate deduction of facts. Negligence manifestly cannot be predicated on any act until you know what the act is.<sup>58</sup>

*Res ipsa loquitur* has also no application to proximate cause, and does not dispense with this requirement.<sup>59</sup> Neither is it a substitute for proof of defect. Proof of defect causing injury must first be proved before *res ipsa* can be invoked.<sup>60</sup>

Our previous example was that of a car going out of control on the Pan-Philippine Highway. *Res ipsa loquitur* cannot be applied on a mere showing that the car went out of control. It cannot be used to prove that a defect existed in the car, causing damage and injury to the plaintiff.

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<sup>55</sup> *Shields v. United Gas Pipe Line Company*, 110 So. 2d 881 (1959); *Emigh v. Andrews*, 191 P. 2d 901 (1948).

<sup>56</sup> *Holloway v. Skelly Oil Co.*, 68 F. Supp. 129 (1946).

<sup>57</sup> *Bracato v. Standard Oil Company of California*, 331 P. 2d 111 (1958).

<sup>58</sup> *Champlin Refining Co. v. George*, Okl. 76 P. 2d. 895 (1938).

<sup>59</sup> *Emigh v. Andrews*, *supra*, note 55.

<sup>60</sup> *Browder v. Pettigrew*, *supra*, note 36.

Without relying on the doctrine of *res ipsa loquitur*, plaintiff must first show the existence of a specific defect in the car, such as a faulty steering mechanism. He must then prove that such defect was the proximate cause of the damage or injury. Again, in this respect, *res ipsa loquitur* cannot be availed of.

What is its importance in product liability cases? *Res ipsa loquitur* has particular importance in the products liability area because the plaintiff is often unable to prove negligence in the manufacturing process by direct evidence or proof of specific acts. The more recent American cases indicate increasing acceptance of the doctrine in the products liability area.<sup>61</sup>

#### IV. *Res ipsa loquitur* explained; the requisites for its applicability; its application in the Philippines

The doctrine of *res ipsa loquitur* has been adopted and applied in this jurisdiction. It was first applied in the case of *Africa v. Caltex*,<sup>62</sup> and subsequently in *Republic v. Luzon Stevedoring*.<sup>63</sup>

As previously stated, *res ipsa loquitur* is but a species of circumstantial evidence that raises an inference of negligence. The essential conditions for its application are the following: (1) the accident must be of a kind which ordinarily does not occur in the absence of someone's negligence (2) the accident must be caused by an agency or instrumentality within the control of the defendant (3) the accident must not have been due to any voluntary action or contribution on the part of the plaintiff.<sup>64</sup> In the absence of an explanation by the defendants, the doctrine of *res ipsa loquitur* affords reasonable evidence that the accident arose from want of due care.<sup>65</sup> It has also sometimes been stated that an additional requirement for its application is that the defendant must have superior knowledge of the cause of the accident.<sup>66</sup> As we shall see later, this does not seem to be the better view.

These requirements, translated in terms of product liability are again essentially the same — (1) the apparatus must be such that in the ordinary instance no injurious operation is to be expected unless from a careless

<sup>61</sup> 1 FRUMER & FRIEDMAN, *op. cit.*, *supra*, note 22, at sec. 12.03 (1).

<sup>62</sup> *Africa v. Caltex (Phil.)*, Inc., G.R. No. L-12986, March 31, 1966, 16 SCRA 448 (1966).

<sup>63</sup> *Republic v. Luzon Stevedoring*, G.R. No. L-21749, September 29, 1967, 21 SCRA 279 (1967).

<sup>64</sup> This is the traditional doctrine as enunciated in *Scott v. London and St. Katherine Docks. Co.*, 3 H & Co. 596 (1865) as cited in JAPENCIO, *op. cit.*, *supra*, note 15 at 159; 1 FRUMER AND FRIEDMAN, *op. cit.*, *supra*, note 22 at sec. 12.03 [1].

<sup>65</sup> *Scott v. London and St. Katherine Docks. Co.*, *supra*.

<sup>66</sup> 1 FRUMER & FRIEDMAN, *op. cit.*, *supra*, note 22 at sec. 12.03[1].

construction, inspection, or user; (2) both inspection and user must have been at the time of the injury in the control of the party charged and (3) the injurious condition or occurrence must have happened irrespective of any voluntary action at the time by the party injured.<sup>67</sup>

In the leading case of *Zentz v. Coca-Cola Bottling Co. of Fresno*,<sup>68</sup> the requisites for the applicability of the doctrine of *res ipsa loquitur* were enunciated thus —

As a general rule, *res ipsa loquitur* applies where the accident is of such a nature that it can be said, in the light of past experience that it probably was the result of negligence by someone and that the defendant is probably the person who is responsible. In determining whether such probabilities exist with regard to a particular occurrence . . . (the courts have considered) . . . the extent of control exercised by the defendant, the plaintiff's own conduct, the likelihood of negligence by some third person, and, in some situations, evidence that the defendant is better able than the plaintiff to explain what happened. All of these matters have been treated as aids in determining whether the accident was of such a nature that the injury was more probably than not result of defendant's negligence.

The doctrine of *res ipsa loquitur* then, is a matter of probabilities. When the requisites for its application concur, liability is imposed because the probabilities preponderate in favor of the defendant's negligence as being the cause of the accident.

It must first be established (assuming that the four other requisites for liability or recovery of damages are present) that because of the circumstances under which the accident happened and the evidences presented, that the probabilities preponderate in favor of the existence of negligence, such negligence being the cause of the accident. This is the purpose of the first requisite that the accident must be of a kind which ordinarily does not occur in the absence of someone's negligence. Secondly, it must then be established that again, because of the circumstances and the evidences presented, the probabilities preponderate in favor of a conclusion that the negligence was that of the defendant. This is the purpose of the second and third requirements — that the accident must be caused by an agency or instrumentality within the control of the defendant,<sup>69</sup> and that the accident must not have been due to any voluntary action or contribution on

<sup>67</sup> 9 WIGMORE, EVIDENCE, sec. 2509 (3rd ed., 1940).

<sup>68</sup> *Zentz v. Coca-Cola Bottling Co. of Fresno*, 39 Cal. 2d 436, 247 P. 2d 344, 349-350 (1952).

<sup>69</sup> *Escola v. Coca-Cola Bottling Co. of Fresno*, 24 Cal. 2d 453, 150 P. 2d 436 (1944).

the part of the plaintiff.<sup>70</sup> If there is already a strong inference that the accident was the result of negligence, and then plaintiff reasonably excludes his own conduct as a cause of the accident, as well as proves that the accident was caused by an instrumentality (product) in defendant's control, then the next logical inference is that the defendant was negligent and therefore liable for causing the accident.

If other causes are as equally plausible as negligence on the part of the defendant as a cause of the accident then the plaintiff cannot recover on the theory of *res ipsa loquitur*.<sup>71</sup>

Thus there is an application of *res ipsa loquitur* where the probabilities preponderate in favor of defendant being guilty of the negligence in favor of the existence of which the other probabilities preponderate, such negligence being the cause of the accident. Probabilities based in the main on circumstantial evidence are used to make an inference of negligence and the consequent liability, in the absence of direct evidence of such negligence.

An illustrative example would be the following. A buys a car direct from the manufacturer thereof. An hour after delivery of the car to him, while driving the car at a moderate speed and under normal driving conditions, the engine explodes, causing injury to him. Within the hour, the car was handled in a normal manner. Assuming that the four other requisites are present, there is a strong case for *res ipsa loquitur*.

There is a strong inference of negligence. In the absence of negligence, car engines do not usually explode while being driven at a moderate speed and under normal driving conditions. The probabilities also preponderate in favor of the negligence being that of the manufacturer. The element of exclusive control by the defendant is present, the car having been with plaintiff only for an hour while being handled normally. Defendant's conduct as a cause of the accident has been reasonably excluded. The car was being driven at a moderate speed and under normal driving conditions.

#### V. *The requisite for the applicability of res ipsa loquitur as applied in product liability cases*

Common knowledge or experience has been held sufficient to determine that *someone* was negligent when a foreign substance caused a cigarette to explode;<sup>72</sup> when a refrigerator transmitted electric current through its

<sup>70</sup> 1 FRUMER & FRIEDMAN, *op. cit.*, *supra*, note 22, at sec. 12.03 [4].

<sup>71</sup> *Leggieri v. Philadelphia Coca-Cola Bott. Co.*, 171 F. Supp. 749 (1959); *Perrere v. Bank of New Orleans & Trust Co.*, 334 So. 2d 710 (1976); *Pan v. D.H. Holmes*, 311 So. 2d 463 (1915).

<sup>72</sup> *Liggett & Myers Tobacco Co. v. De Lape*, 109 F. 2d 598 (1940).

handles so as to severely shock and injure plaintiff;<sup>73</sup> when an automobile tire exploded when inflated in the process of being mounted in the usual and customary manner upon a wheel designed to receive it;<sup>74</sup> and when a gas burner exploded although operated on principles entirely similar to burners on ordinary gas ranges.<sup>75</sup>

The requirement of exclusivity of control by the defendant has been interpreted to mean control and possession at the time of the injury. In consonance with this view, *res ipsa loquitur* has not been applied in products liability cases, if at the time of the accident a defendant-manufacturer did not have exclusive control of the product.<sup>76</sup>

The better view, it seems, and the view that has been followed by the more recent decisions is that *res ipsa loquitur* "may be applied upon the theory that defendant had control at the time of the alleged negligent act, although not at the time of the accident, provided plaintiff first prove that the condition of the instrumentality has not been changed after it left defendant's possession."<sup>77</sup> Exclusivity of control does not mean that the instrumentality be in the physical possession of the defendant at the time of the occurrence of the accident itself.<sup>78</sup> Considering the rationale for the application of the doctrine of *res ipsa loquitur*, the fact that it is but a species of circumstantial evidence, and the difficulty of proof on the part of the plaintiff in product liability cases, we should adopt this second view.

If we adopted the first view, then *res ipsa loquitur* would not apply in the majority of products liability cases. For accidents involving products usually occur after they leave the particular manufacturer's or supplier's possession. Under the second and better view, the control requirement is satisfied if the product has not been improperly handled or tampered with from the time it left the actual physical possession and control of the manufacturer until the time it caused the injury,<sup>79</sup> such that the product

<sup>73</sup> Ryan v. Zweck-Wollenberg Co., 266 Wis. 630, 64 N.W. 2d 226 (1954).

<sup>74</sup> Baker v. B. F. Goodrich, 115 Cal. App. 2d 221, 252 P. 2d 24 (1953).

<sup>75</sup> Reynolds v. Natural Gas Equipment, 184 Cal. App. 2d. 724, 7 Cal. Rptr. 879 (1960).

<sup>76</sup> 1 FRUMER & FRIEDMAN, *op. cit.*, *supra*, note 22, at sec. 12.03 [31].

<sup>77</sup> Escola v. Coca-Cola Bott. Co. of Fresno, *supra*, note 69 at 438; Zentz v. Coca-Cola Bott. Co. of Fresno, 39 Cal. 2d 436, 247 P. 2d 344 (1952); Baker v. B.F. Goodrich Co., 252 P. 2d 24 (1955).

<sup>78</sup> Gierach v. Snap-On Tools Corp., 79 Wis. 2d 47, 255 N.W. 2d 465 (1977); Ryan v. Zweck-Wollenberg Co., 266 Wis. 630, 64 N.W. 2d 266 (1954).

<sup>79</sup> Royal Crown Bott. Co. v. Ward, 520 S.W. 2d 797 (1975); Steele v. Royal Crown Cola Bott. Co., 335 So. 2d 586 (1976); Groves v. Florida Coca-Cola Bott. Co., 40 So. 2d 128 (1949); Allagood v. Coca-Cola Bott. Co., 135 S.W. 2d 1056 (1934); Morse v. Riverside Hospital, 44 Ohio App. 2d 422, 339 N.E. 2d 846 (1974).

has not undergone any substantial change since leaving the manufacturer's custody.<sup>80</sup> In this way, the possibility of an intermediate act or agency causing the injury is eliminated.<sup>81</sup> It is not necessary, however, that plaintiff eliminate every remote possibility of injury after defendant loses control, and the requirement is satisfied if there is evidence permitting a reasonable inference that it was not accessible to extraneous harmful forces and that it was carefully handled by plaintiff or any person who may have moved or touched it.<sup>82</sup>

These rules apply with particular force to products which come in sealed packages, like soft-drinks and tobacco,<sup>83</sup> and to products with non-moving parts. Thus in a case<sup>84</sup> involving a defective refrigerator whose mechanism was in a sealed unit, the court held that *res ipsa loquitur* could still apply although three years had already lapsed since the time of manufacture because "defendant's original exclusive control of the sealed unit carried over to the time of the accident even though its physical possession thereof had ended at the time of shipment."<sup>85</sup>

The rule would not be the same if what were involved were a product with moving parts, and a considerable or substantial length of time had intervened since the delivery of the product. Thus —

If the refrigerator were a machine or appliance, such as an automobile or sewing machine, the moving parts of which are capable of being operated by the user, defendant's point would be well taken. In case of injury resulting from the use of such a machine the inference would be just as strong that the defect causing the injury occurred as the result of the operator's use as would the inference that the same was due to some defect in manufacture, and therefore the principle of *res ipsa loquitur* would not be applicable.<sup>86</sup>

An illustrative example would be the following — X, a housewife, buys a case of soft-drinks from a neighboring *sari-sari* store. The next day, she decides to open one of the bottles of soft-drinks. It explodes while she is opening it, causing injuries to her face and her eyes. She brings a suit based on *quasi-delict* for damages against the manufacturer-bottler of

<sup>80</sup> *Abernathy v. Coca-Cola Bott. Co. of Jackson*, 370 S.W. 2d 175 (1963); *Barbeau Jr. v. Roddy Manufacturing* 431 F. 2d 989 (1970); *Payne v. Rome Coca-Cola Bott. Co.* 73 S.E. 1087 (1912).

<sup>81</sup> *Honea v. Coca-Cola Bott. Co.*, 183 S.W. 2d 968 (1944); *Hankins v. Coca-Cola Bott. Co.*, 151 Tex. 303, 249 S.W. 2d 10081 (1952).

<sup>82</sup> *Escola v. Coca-Cola Bott. Co. of Fresno*, *supra*, note 69 at 438; *Gordon v. Aztec Brewing Co.*, Cal. 2d 524; 203 P. 2d 522 (1949).

<sup>83</sup> *Liggett & Meyers v. Wallace*, 69 S.W. 2d 857 (1934).

<sup>84</sup> *Ryan v. Zweck-Wollenberg, Co.*, 266 Wis. 630, 64 N.W. 2d 226 (1954).

<sup>85</sup> *Id.*, at 234.

<sup>86</sup> *Id.*, at 231.

the soft-drink. Before X may avail of the doctrine of *res ipsa loquitur* (assuming that the other requisites for recovery are present), she must prove that the soft-drinks were carefully handled by herself and the members of her family while the soft-drinks were in her house, by the *sari-sari* store owner, and by any other person or persons who might have had occasion to handle the soft-drinks from the time such product left the possession and control of the manufacturer-bottler or its agents. X must show that after the bottle left the possession of the bottler, it was not subjected to any unusual atmospheric changes or changes in temperature such as might have been reasonably calculated to render the bottle defective, or otherwise to cause an explosion, and that it was not handled improperly from the time it left the possession of the bottler up to the time of explosion. In this way, the possibility of an intermediate act or agency causing the injury is eliminated.

It is also required that the accident must not have been due to any voluntary action or contribution on the part of the plaintiff. This requirement is satisfied even though the plaintiff has participated in the events leading to the accident so long as the evidence excludes his conduct as the responsible cause.<sup>87</sup> The plaintiff's mere possession of a chattel which injures him does not prevent a *res ipsa loquitur* case when it is made clear that he has done nothing abnormal and has used the thing only for the purpose for which it was intended. The plaintiff need only tell enough of what he did and how the accident happened to permit the conclusion that the fault was not his.<sup>88</sup>

In our previous example of a car engine that exploded, the mere fact that the plaintiff was driving the car at the time of the accident does not preclude the application of the doctrine of *res ipsa loquitur*. It can still be applied if the plaintiff proves that the accident was not due to any voluntary action or contribution on his part, as by showing that he was driving the car at a moderate speed, and under normal driving conditions. It is enough if his conduct is excluded as the cause of the accident.

The better view is that superior knowledge on the part of defendant is not a requisite for the applicability of *res ipsa loquitur*.

The doctrine may be applied even though the defendant is not in a better position than plaintiff to explain what occurred if it appears more probable than not that the injury resulted from negligence on the part of defendant.<sup>89</sup>

<sup>87</sup> *Zentz v. Coca-Cola Bott. Co., of Fresno*, 39 Cal. 2d 436, 247 P. 2d 344, 348 (1952) *Baker v. B. F. Goodrich Co.*, 115 Cal. App. 2d 221, 252 P. 2d 24, 29 (1953).

<sup>88</sup> Prosser, *Res Ipsa Loquitur in California*, 37 CALIF. L. REV. 183, 201-202 (1949).

<sup>89</sup> *Zentz v. Coca-Cola Bott. Co. of Fresno*, *supra*, note 87 at 349.



If the circumstances are such as to create a reasonable inference of the defendant's negligence, it cannot be supposed that the inference will ever be defeated by a showing that the defendant knows nothing about what has happened.<sup>90</sup> And if the facts give rise to no inference, a plaintiff who has the burden of proof in the first instance can scarcely make out a case merely by proving that he knows less about the matter than his adversary.<sup>91</sup>

#### VI. *The evidentiary weight of res ipsa loquitur*

*Res ipsa loquitur* is but a species of circumstantial evidence, and hence can be rebutted by evidence to the contrary that there was no negligence. What is, however, its evidentiary weight? When applicable, does it raise a permissible inference only, or a presumption, or does it shift the burden of proof to defendants? Our own Supreme Court has said that *res ipsa loquitur* is a presumption of negligence.<sup>92</sup> This was however only a very brief statement that was not expounded upon.

If *res ipsa loquitur* were regarded as raising only a permissible inference, then if the only thing relied on by the plaintiff was the doctrine, without adducing any other evidence to prove negligence, there may or may not be a finding of negligence, whether or not defendant gives evidence in rebuttal. It would depend on the strength of the inference under the given circumstances.

If on the other hand, the application of *res ipsa* was to be regarded as resulting in a presumption, then the defendant would have the burden of going forward with the evidence, of introducing enough evidence to rebut the presumption or to equalize its evidentiary weight. Failing in this, the defendant would be found negligent and liable for damages.

If the burden of proof were shifted to the defendant by virtue of the operation of the doctrine of *res ipsa loquitur*, then the defendant would have to prove that he was not negligent by a preponderance of the evidence. If he fails to present any evidence, or else introduces only such evidence so that the evidence does not preponderate in favor of his non-negligence, he would be found negligent and liable.<sup>93</sup>

<sup>90</sup> *Williams v. Field Transp. Co.*, 166 P. 2d 884 (1946).

<sup>91</sup> *Monkhouse v. Johns*, 142 So. 347 (1932); *Galbraith v. Busch*, 267 N.Y. 239, 196 N.E. 36 (1935).

<sup>92</sup> *Republic v. Luzon Stevedoring*, *supra*, note 63 at 282.

<sup>93</sup> *Prosser, The Procedural Effect of Res Ipsa Loquitur*, 20 MINN. REV. 241 (1936).

In products liability cases, some courts have adopted the view that *res ipsa loquitur* only raises a permissible inference of negligence, other courts have held that a presumption arises, still others that the burden of proof is shifted to the defendant.<sup>94</sup>

Prosser's views is to the effect that *res ipsa loquitur* would raise either a permissible inference or a presumption, depending upon the strength of the circumstantial evidence.<sup>95</sup> This seems to be the better view.

When there is specific or direct evidence of negligence presented by the plaintiff, at the least *res ipsa loquitur* should be regarded as an inference of negligence, with independent evidentiary weight as a piece of circumstantial evidence. The case may also be that when taken together with and reinforced by the specific evidence presented, *res ipsa* may become a presumption of negligence. In neither case does the inference of negligence due to the application of *res ipsa loquitur* disappear, because specific evidence of negligence was presented by the plaintiff. It would only disappear if by virtue of all the evidence presented, both by defendant and plaintiff, it should not be applied because such evidence points to some cause other than the negligence of the defendant manufacturer as being responsible for the accident or injury.<sup>96</sup> As a species of circumstantial evidence, *res ipsa loquitur* should have an evidentiary weight which exists independently of the presence or absence of specific or direct evidence of negligence. This is Prosser's view, and again, seems to be the most logical.

#### CONCLUSION

*Res ipsa loquitur*, as we have seen is nothing but a species of circumstantial evidence from which we can infer negligence. It is applicable, however, only in certain cases where the proper requisites have been met. It has been adopted and applied in this jurisdiction to cases wherein recovery of damages has been sought on the theory of quasi-delict. Since a product liability suit can be based on such a theory, there is certainly room for the application of such a doctrine whenever product liability cases based on quasi-delict are brought in the Philippines.

The burden of proof would still be on the plaintiff to show that all the requisites for recovery of damages are present. *Res ipsa loquitur* would only come in to infer negligence in appropriate cases.

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<sup>94</sup> FRUMER & FRIEDMAN, *op. cit.*, *supra*, note 22 at sec. 12.03 [6].

<sup>95</sup> PROSSER, *op. cit.*, *supra*, note 93 at 260-261.

<sup>96</sup> *Id.*, at 262.

*Res ipsa loquitur* may be considered as raising a permissible inference of negligence or giving rise to a presumption. It would all depend on the strength of the circumstantial evidence, and consequently, it has an evidentiary weight independent of the presence or absence of specific evidence of negligence.