PHILIPPINE LAW ON PRODUCTS LIABILITY

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I. INTRODUCTION

The free enterprise system provides for the direction and consumption of goods through the medium of prices, with minimum direction from outside authority, like the government. However, free competition by itself fails to provide adequate protection in certain cases where most of the consumers are indifferent or ignorant. Where the consumers cannot tell the quality of goods, there is a constant temptation on the part of the manufacturer and its privies to adulterate or cut the quality, lest he suffer by being outsold by his competitors.[1]

Moreover, there are certain forms of activity that cannot be left to individual initiative, for the reason that while collectively important, there is no particular incentive for the individual to perform them, i.e., police protection and education for a great mass of citizens.[2] In addition, it has been found desirable to formulate certain rules of the game to which those who chose to engage in business activity must adhere. Similarly, these justifications for government interference in the economy underlie the court's pronouncements relative to products liability cases. In sum, the International Labor Organization, in its study stated:

> xxxx the concept of simple justice demands that consumers should not be exposed to safety and health risks or unfair commercial practices which they have no defense.

In American jurisprudence, the case law relative to the liability of the sellers of chattels to third persons with whom they are not in privity is placed under the category termed products liability.[4] On the other hand,

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1 WAITE & CASSADY, THE CONSUMER AND THE ECONOMIC ORDER 20, (1949).

2 DUE, GOVERNMENT FINANCES: ECONOMICS OF THE PUBLIC SECTOR 9 (1968).

3 International Labor Organization, "Consumer Protection: A New Field of International Concern", 2 ANG MAMIMILI 8 (February, 1975).

4 PROSSER, TORTS 641 (1971). Prossers' definition presents a legal question. Under American jurisprudence, the liability for defective products extends to mass-produced houses (Avner v. Longride Estates, 272 Cal. App. 2d 607, 77 Cal. Rptr. 633 (1969)), and even to single houses (Hyman v. Gordon, 35 Cal. App. 779, 111 Cal. Rptr. 262 (1972)).

On the other hand, in Philippine law, buildings are classified as real property under the provisions of the Phiippine Civil Code and in the cases of Ladera v. Hodges, C.A.-G.R. No. 80771, September 23, 1952, 48 O.G. 5374 (1952); Trinidad v. Vicencio, G.R. No. 30173, September 30, 1971, 41 SCRA 143 (1971); Lopez v. Orosa, 103 Phil. 98 (1958); Republic v. Ceniza, 90 Phil. 544 (1952); Iya v. Valino, 103 Phil. 972 (1958); Navarro v. Pineda, G.R. No. 18456, November 30, 1963, 9 SCRA 631 (1963); Standard Oil of New Yor v. Jaranillo, 44 Phil. 630 (1922); People v. Daproza, C.A.-G.R. No. 04173-CR, February 25, 1965, 7 C.A. Rep. 2d 270 (1965); Tomines v. San Juan, C.A.-G.R. No. 1477-R, February 13, 1948, 45 O.G. 2935 (July 1949); Evangelista v. Alto Surety & Insurance Co. 103 Phil. 401 (1958); and Evangelista v. Abad (C.A.) 36 O.G. 2913 (1938).

Philippine jurisprudence on products liability exists but it is purely based on the provisions of the Philippine Civil Code and a number of laws which are preventive and regulatory in character.

The developing law on products liability in American jurisprudence has reached its peak in that it has been considered as an enterprise liability akin to the vicarious liability of an employer for acts of employees.[5] Philippine jurisprudence is at variance.

The development of the case law in products liability in American jurisprudence has been explained in the light of the economic development reached by an industrialized nation. Thus, views have been expressed that industrialization is the key factor in imposing enterprise liability on defective products on the premise that the one who should know that his activity, even though carefully prosecuted, may harm others, should treat this harm as a cost of his activity; that if the activity is a business enterprise, this cost then will influence pricing and will be passed to the consumers; that actors can normally control this cost item by getting liability insurance — the concept based on the superior risk bearer.[6] A similar view has been expressed that the great expansion of the manufacturer's liability marked the transition from the industrial revolution to a settled industrial society.[7] Further, Justice Traynor added:

> x x x the obligation of the manufacturer becomes what in justice it ought to be — an enterprise liability, and which should not be denied upon the intricacies of the law of sales. The purpose of such liability is to insure that the cost of injuries or damage, either to the goods sold or the other property, resulting from defective products, is borne by the maker of the products who put them in the channels of trade rather then the injured or damaged persons who ordinarily are powerless to protect themselves.

American commentators are unanimous in ascribing the rapid growth of the products liability field to the complexities of modern manufacturing set-up of the American society.[8]

It is, thus, the thesis of this paper that the degree of economic development, together with the socio-cultural forces in a society affect to a certain extent the jurisprudence on products liability. Hence, a statement on the Philippine social and economic background is in order.

A colony of Spain for almost four hundred years and an American territory for more than forty years, the Philippine economy has been com-

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[5] MORRIS, HAZARDOUS ENTERPRISE AND RISK BEARING CAPACITY, 61 YALE L.J. 1172 (1952).

[6] *Ibid.*, p. 1172.

[7] Traynor, *The Ways and Meanings of Defective Products and Strict Liability*, 32 TENN. L. REV. 363 (1965).

[8] SEDGWICK, PRODUCTS LIABILITYS IMPLIED WARRANTIES 3 (1964); Jackson, *Wrestling With Strict Liability* 1966 INS. LAW J. 133 (1966); Chait, *Continuing the Common Law Response to the New Industrial Liability to Consumer Service*, 22 UCLA L. REV. 418 (1974).

partmentalized into two: a modern export-oriented economy in Manila and other urban areas of the country, and an agricultural economy in the rural areas. The co-existence of the two economies is explained by the fact that colonialism promoted investments mainly for export products, while the domestic industrial sector was left open to fend on its own. At the countryside, traditional agriculture was geared towards subsistence level — with low labor productivity, primitive technology, unfavorable land-labor ratio, and non-commercial attitude.[9] In the latter, the small farmer is more concerned on what to produce, how to produce, to whom and how to offer his produce. Like any modernizing economy in the Third World with its semi-subsistence agriculture where production is mainly to feed the farm family, with a small surplus for sale or exchange the crops produced,[10] would there be a reason to sue the manufacturer, the retailer, the dealer or the seller for a defect of the product bought? On the other hand, the complex economic structural set-up of the American industrial sector demands the ease to impose liability on the manufacturer and its privies.

Morever, the facility to run against the manufacturer of a defective product is impeded by the fact that the manufactured products were imported, even as late as 1965. It was reported that:[11]

> Manufactured products comprise the bulk of Philippine imports, which are procured mostly from the United States. By commodity groups, textile yarn, fabrics, and make-up articles accounted for about 17% of all imports; mineral fuels, lubricants, and related materials, 11%; machinery and parts except electrical, 9%; base metals, 7%; dairy products, eggs, and honey, 5%; transport equipment, 5%; manufactured metals, 4%; rubber and manufactures, 4%; and tobacco, 3%.

Presently, while the Philippines has a predominantly agricultural economy,[12] manufacturing occupies a significant place in the economy. It accounts for two-thirds of the industrial activity, predominantly private-owned, large-scale and vertically integrated.

Like any modernizing economy in the Third World, the Philippines is faced with the problem to expand the modern monetized economy in the urban areas in order to bring into its sphere the ultimate integration of the backward rural economy.[13] The efforts to solve this problem was not entirely fruitless. Already in 1969, it was stated:[14]

> Not only have incomes increased, the structure of the economy has changed and continues to change. New avenues of livelihood are opening up. Modern production technology are replacing traditional ones. New business institutions are growing in importance. For example, in 1950,

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9 VREELAND, AREA HANDBOOK FOR THE PHILIPPINES 254 (1978).
10 UNITED NATIONS, ECONOMIC AND SOCIAL SURVEY OF ASIA AND PACIFIC 96 (1975).
11 PHILIPPINE INFORMATION AGENCY, THE PHILIPPINES 464 (1965).
12 Sison, "Population Laws of the Philippines", in LAW AND POPULATION IN THE PHILIPPINES 62 (1974).
13 CORPUZ, THE PHILIPPINES 10 (1965).
14 ROXAS, *The Philippine Economy: Portrait of An Unguided Democracy*, TRENDS IN THE PHILIPPINES 58 (1972).

> corporate incomes amounted to 124 million pesos. In 1960, they rose to 480 million pesos, and in 1970, 2,141 million pesos more.
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> In 1969, the 1,000 largest corporations had total sales of 17.26 billion pesos, accounting for about 40% of all sales both to final demand sectors and intra-business sales in the economy in that year. The business lines of the firms varied greatly, but the largest group was engaged in manufacturing (comprising 407 of the 1,000 largest) and in trade (with 334 firms). The largest average sales were those of petroleum refineries, with average sales of 230 million pesos per firm, the next largest group were soap and cosmetic manufacturers and also beverage manufactures, with average sales of about 70 million pesos per firm. The fourth largest companies were in mining with average sales of 63 million pesos per firm. Firms in tobacco, vegetable/animal oils, grain milling, automotive industries, and utilities had average sales ranging from about 40 million pesos to 20 million pesos each. The largest 1,000 corporations also included thirteen firms in agriculture with average sales of 5.4 million pesos each. There were firms engaged in sugar, bananas, and other agricultural export products.

The existing dominant relationship in Philippine society has been characterized as dyadic relationship[15]— that is, the relationship is purely based on personal basis rather than institutionally, between two persons of unequal status. It reinforces the notion that liability for an injury should be on a *quid pro quo* basis, subject however to some instances where a relationship is imposed by fiction of law. The dyadic relationship is fostered by feelings of personal loyalty and obligation and is predicated on the expectation of mutual benefit, especially between the landlord and the tenant in the rural areas. Thus, the tenant-farmer would look to his landlord as a patron who could provide him not merely with land to work, but with loans of rice or cash in times of need and personal assistance at other times in exchange for deference, loyalty, personal service, votes and other tangible benefits.[16]

The lag in the development in the adoption of the principles prevalent in products liability cases in American jurisprudence is best explained by the International Labor Organization in this wise:[17]

> Lack of education and information make it difficult for the rural masses to understand the importance of adequate standards of product safety and quality and to defend themselves against adulteration of goods, lack of infrastructure and of resources and of fragmentation of production makes it difficult for the authorities to enforce and maintain such standards, particularly in rural areas, inadequate distribution system renders the sale of manufactured consumer goods very expensive. Higher cost of consumer goods can also be an important factor and element in the spread of credit sales and in the vicious circle of farmer indebtedness.
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> In urban areas, the consumer-oriented environment is often geared to the needs of higher income groups. Urban workers with their limited income, face purchase inducement far beyond their means and are more subject to consumption pressures than the rural population.

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[15] VREELAND, *supra*, note 9 at 100.
[16] *Ibid.*, at 100.
[17] International Labor Organization, *supra*, note 3 at 12.

With the socio-economic and cultural background, Philippine law and jurisprudence on products liability may be understood in a proper perspective.

II. Existing Jurisprudence on Products Liability

Under Philippine law and jurisprudence, an action against a seller may lie on the basis of warranty, negligence and violation of statutory standards.

Warranty

The most patent basis to hold a seller liable for a defective product is Article 1546 of the Civil Code[18] which provides that the seller may be held liable of his affirmation of fact or promise relating to a thing if it had a natural tendency to induce the buyer to purchase the thing sold and if the buyer purchases the thing relying on the affirmation or promise. However, a statement made by the seller purporting to be a statement of the seller's opinion shall not be construed as warranty.[19]

In *Gochangco v. Dean*,[20] the Supreme Court ruled that a mere statement of a belief which is not a deliberate violation of the truth is not a warranty as to make the seller liable for a breach of warranty. While this case involves a contract of exchange and does not hold a seller liable for a defect of a thing sold, it shows the extent to which a seller may be held liable for statements made relating to the thing sold on the basis of warranty.

In *Pormentilla v. Ambray*,[21] a contract of sale was ordered rescinded under Article 1191 of the Civil Code, which provides that the Court shall decree rescission where one of the obligors fail to comply with what is incumbent upon him. In this case, the seller failed to build roads and install the light and water facilities for which he represented to the buyer. The appellate court applied the provisions of Article 1546 and in effect ruled that express warranty includes all warranties which are derived from express language — whether the language is in the form of a promise or a representation and that the buyer relied on the assurances of the seller.

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[18] Rep. Act No. 386 (1950).

[19] Article 1546 was taken from Section 2 of the Uniform Sales Act of the United States. The Code Commission was of the opinion that the Spanish Civil Code of 1889 which remained effective until 1949 in the Philippines failed to regulate many aspects of delivery and acceptance of goods, of warranty of title and against hidden defects and that it is probable that considerable portion of foreign trade of the Philippines will continue for many years between the Philippines and the United States and in order to lessen misunderstanding between the merchants on both sides of the Pacific, their transactions should be as far as possible be governed by the same rules. Report of the Code Commission on the Proposed Civil Code (1951).

[20] 47 Phil. 687 (1925).

[21] CA-G.R. No. 24713-R, July 20, 1966, C.A. Rep. 2d 72 (1966).

However, where the buyer had ample opportunity to appraise the condition of the land to be sold, and the seller did nothing to prevent the former to make an investigation on the property to be conveyed and the buyer himself investigates and proceeds with the performance of his obligation on the contract of sale, he shall be bound to his contract.[22]

In *Songco v. Sellner*,[23] the buyer of sugar cane standing on the field sought to avoid the contract of sale he entered into with the defendant-seller, on the ground that the latter made an exaggerated statement concerning the probable yield of sugar from said cane. The Supreme Court, speaking through Justice Street, ruled in favor of the seller on the ground that the law allows a considerable latitude to the seller's statements or dealer's talk. The Court rejected the buyer's claim that the seller's representations be considered as warranty, by holding that assertions concerning property which is the subject of a contract of sale or in regard to its qualities and character are the usual and ordinary means used by sellers to obtain a high price and in no case shall be construed by the buyer to omit inquiries on his part.

In an early case,[24] decided under the Spanish Civil Code of 1889, the seller sold to the buyer a certain quantity of tobacco, without specification as to quality. The buyer examined the tobacco at the time of the sale and admitted at the trial that he was not fraudulently induced to enter into a contract of sale. In fact he made a partial payment for the price of the tobacco sold to him by the plaintiff. Seller (plaintiff) sought to recover the balance of the price which the buyer refused to pay on the ground that the tobacco sold was not of a good quality. The Supreme Court gave a restrictive view of warranty and held that the vendor only warranted the legal and peaceful possession of the thing sold. There being no hidden defects on the tobacco sold, the defendant-buyer was declared liable for the price.

In *McCullough v. Aenlle*,[25] the Supreme Court refused the application of Article 1474 (on implied warranty on the quality of tobacco) where the agreement between the seller and the buyer gave the buyer an obligation to take all the tobacco in a certain building and to pay the price stated in the agreement. The Supreme Court ruled that the obligation to pay for the price resulting from the agreement was absolute and does not depend on the quality of the tobacco or its value in spite of the fact that there were statements made as to the quality of the tobacco in the inventory subsequently drawn by the parties.

Liability for implied warranty does not attach to a sheriff auctioneer, mortgagee, pledgee, or other persons professing to sell by virtue of an

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[22] Azarraga v. Gay, 52 Phil. 599 (1928).
[23] 37 Phil. 254 (1917).
[24] Chang Yok Tek v. Santos, 13 Phil. 52 (1909).
[25] 3 Phil. 285 (1904).

authority in fact or law for the sale of a thing which a third person has a legal or equitable interest.[26]

In the case of *Ruiz v. Fieldman's Insurance Co.*,[27] it was held that the buyer in execution sales cannot bring suit to protect its subsequent transferee against a mortgagee who exercised his right to redeem the mortgaged property sold in execution sales. One of the grounds cited to deny the buyer's intervention in the suit was that implied warranty under Article 1547 does not attach against a sheriff, auctioneer, mortgagee, pledgee or other persons professing to sell by virtue of authority in fact or law for the sale of the thing in which a third person has a legal or equitable interest.

Liability of the seller for hidden defects of the good or thing sold stems from the Roman law concept of liability for redhibitory defects. It formerly applied only to the sale of animals, but later in the course of development of the law, the concept was extended as well to sale of goods.[28] The concept for liability for hidden defects is provided by Article 1561 of the Civil Code.[29] Said provision holds the seller liable for warranty against hidden defects or incumbrance should the defects render the thing unfit for the use for which it is intended or should the defects diminish its fitness to the extent that if the buyer was aware of the defects, he would not have acquired it or he would give a lower price for it. However, the vendor's liability does not attach if the buyer is an expert so that he should have easily discovered the hidden defects by reason of his trade or profession.

In *Peralta v. Jordana Enterprises Inc.*,[30] the Court of Appeals construed the term "hidden defects" in Article 1561. In this case, the defendant corporation was a buyer of two used dump trucks on installment basis. A partial payment was made by the defendant corporation through its vice-president. This suit was instituted to recover the balance of the price of the trucks. Defendant raised the defense that the trucks had defective engines and therefore his case was governed by Article 1561, and as a consequence, it was entitled to a proportionate reduction of the price. The defect upon which the defendant relied upon was established by an alleged expert mechanic who pointed to the misalignment or distortion of the main bearing bone of the cylinder block. The defect, however, was shown to have been corrected by the use of metal shims. The Court of Appeals rejected the defendant's excuse for non-payment of the price by holding that the alleged defect did not fall within the purview of Article 1561 since the hidden defect referred to in the said Article is an imperfection or defect of such important nature. The Court added that an imperfection or defect of little consequence does not come under the term

[26] Art. 1547, last par.; Government v. Adriano, 41 Phil. 112 (1921).
[27] CA-G.R. No. 36787-R, January 28, 1966, 9 C.A. Rep. 2d 105 (1966).
[28] 10 MANRESA, COMMENTARIOS DE CODIGO CIVIL 242 (1911).
[29] This is a carry-over from Article 1484 (a) of the SPANISH CIVIL CODE of 1889.
[30] CA-G.R. No. 29252-R, August 25, 1965, C.A. Rep. 2d 270 (1965).

redhibitory defect that is, when the thing subject of the sale has positively certain defects, citing Manresa's comments. Furthermore, the Court relied on its findings that the defendant's vice-president who represented the defendant corporation in the transportation business should have been aware that used or second-hand trucks have been subjected to stresses of wear and tear. Moreover, the Court found the trucks were inspected by the corporation's chief mechanic. The Court also found that the distortion or misalignment of the main bearing bore was not a factory or construction defect but one caused by the wear and tear of the machine itself; that at the time the trucks were bought, the defect had been corrected and the trucks could be used for the purpose for which they were purchased; and that the breakdown was directly caused by the deterioration of the shims, not of the misalignment of the main bearing bore. Another important holding laid down by the *Peralta* case is that as a general rule, there is no implied warranty in the sale of second-hand goods, citing *Hysko v. Morawski* decided by the Illinois Court of Appeals. The Court also adverted to the rule that the seller shall be liable only if he made misrepresentations or has been shown to have acted in bad faith.

In *Hahn v. Hercules Steel Works*,[31] the plaintiff and defendant entered into a contract where it was stipulated that the defendant shall manufacture and install a steel door on the plaintiff's building. Plaintiff, a week later after the installation of the steel door in its building, complained of certain defects on the door. Repairs were made by the defendant's employees. A suit was instituted by the plaintiff-contractee praying that the defendant should be ordered to refit the door to its best possible condition or to declare the contract made by the plaintiff and defendant rescinded, if the defendant fails to repair the installed door. While the suit was pending, defendant made a new plan for the door, and when the new door was ready to be installed in the plaintiff's building, plaintiff refused to accept the new door. The trial court declared that the plaintiff could not unjustifiably refuse the installation of the new door and should pay for the remaining balance for the price of the installation and manufacture of the door. On appeal, plaintiff claimed that the defect of the steel door in question was hidden and falls within the contemplation of Article 1561, 1562 and 1599[32] of the Civil Code. The Court of Appeals respected plaintiff's claim and ruled that:

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[31] G.R. No. 31041-R, February 7, 1964, 5 C.A. Rep. 2d 118 (1964).

[32] Article 1562 provides: In a sale of goods, there is an implied warranty or condition as to the quality or fitness of the goods as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller, the particular purpose for which the goods are acquired, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose;

(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

Art. 1599 provides:

> For warranty against hidden defects to be enforceable, it is essential that the defect be hidden or unknown or could not have been known upon examination even by the employment of a third person. The thing in question is, as stated by the lower court, a steel door with transparent glass frames; which has no hidden parts nor intricate mechanism that could not have been seen by the plaintiff by means of a cursory examination at the time of its delivery. So that if said steel door had any defect, it could not be hidden within the contemplation of implied warranty against hidden defects, but rather patent and visible for which the defendant is not answerable pursuant to Article 1561. The record shows that the first complaint of defect of the steel door was due to the fact that the door was used before the cement placed to secure its anchor clips had hardened thereby completely loosening the steel frame, and, subsequently, the breakage of glass panels was due to extraordinary force occasionally applied in closing the door or to the hard blow of the wind. There is no showing that the proximate cause of the glass breakage was some defect in the steel door itself. For the period of about 2 years, the glass panels broke only four times, which indicates that the breakage was not due to any defect in the door.

In *Bernardo v. de Guzman*,[33] the Court rejected the claim made by the lessee that the machine leased had hidden defects on the ground that the alleged defect was patently noticeable. The Court distinguished the legal effects between fraud exercised on the lessee to enter into a contract

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Where there is a breach of warranty by the seller, the buyer may at his election:

(1) Accept or keep the goods and set-up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price;

(2) Accept or keep the goods and maintain an action against the seller for damages for breach of warranty;

(3) Refuse to accept the goods, and maintain an action against the seller for damages for the breach of warranty;

(3) Refuse to accept the goods, and maintain an action against the seller for damages for the breach of warranty;

(4) Rescind the contract of sale and refuse to receive the goods or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted, without prejudice to the provisions of the second paragraph of Article 1191.

Where the goods have been deivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods without protest, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the ownership was transferred to the buyer. But if the deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

Where the buyer is entitled to rescind the sale and elects to do so, he shall cease to be liable for the price upon returning or offering to return the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the payment of any portion of the price which has been paid, and with the remedies for enforcement of such lien allowed to an unpaid seller by Article 1526.

(5) In the case of breach of warranty of quality, such loss in the absence of special circumstance showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

[33] C.A.-G.R. No. 31803-R, October 27, 1964, 6 C.A. Rep. 2d 722 (1964).

of lease (which allegation was not established by the evidence presented by the lessee) and fraud exercised in the performance of the contract. In the first case, the contract may be annulled under Article 1309 of the Civil Code but in the second case, "all that can be granted in favor of the injured party is what is prescribed in Article 1561 in relation to Article 1653 of the same Code," that is, to make him responsible for damages to the lessor, where the defects of the machine leased are known to the lessee, then the remedies provided by Article 1561 shall not be availed of.

The Court refused to grant the remedy invoked by the buyer for the defects of the things sold where it was shown that the buyer had opportunity to examine the goods sold and is guilty of laches for not having objected to the quality of the goods bought, the quantity and the price agreed upon;[34] and where the seller merely stated his belief that there were a certain number of coconut trees on the land and where the buyer had opportunity and in fact examined the land where the coconut trees were planted.[35]

Article 1562[36] of the Civil Code provides for implied warranty of quality or fitness of the goods sold on the part of the seller. It states:

> ART. 1562. In sale of goods, there is an implied warranty or condition as to the quality or fitness of the goods as follows:
>
> (1) Where the buyer, expressly or by implication makes known to the seller the particular purpose for which the goods are acquired, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose;
>
> (2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

The term "quality of goods" include the state or condition of goods.[37] The term "goods" covers only all chattels personal,[38] which includes growing fruits and crops.

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[34] Chang Yong Tek v. Santos, *supra,* note 24 at 52.
[35] Go Changco v. Dean, *supra,* note 20 at 689.
[36] Taken from the Uniform Sales Act, Section 15, pars. 1 and 2.
[37] CIVIL CODE, Article 1636 (1950).
[38] Article 415 of the CIVIL CODE enumerates what are considered in law as real property. It states:

> The following are immovable property:
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> (1) Land, buildings, roads and constructions of all kinds adhered to the soil;
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> (2) Trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable;
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> (3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;
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> (4) Statues, reliefs, paintings, or other object for use, or ornamentation, placed in the buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements;
>
> (5) Machinery, receptacles, instruments, or implements intended by the owner of the tenement for industry or works which may be carried on in a

In *Assanmal v. Universal Trading Co., Inc.*, the Supreme Court applied Article 336 of the Code of Commerce[40] where the merchandise sold was found to be defective in quantity and quality and delivered in bales of packages. The Court construed Article 336 as providing alternative remedies which is as follows: (1) if at the time he receives the merchandise, the buyer examines it and finds it to his satisfaction, he loses his right of action against the vendor based on the defect of the thing sold, or (2) when the purchaser finds that the merchandise is defective in quantity or quality, after an examination, he may bring an action for damages within the period provided for by the Code of Civil Procedure. The purchaser may either rescind the contract or demand its specific performance. The vendor may however avoid the liability if at the time of delivery he demands that an examination be made of the merchandise in order that its quantity or quality may be established to the satisfaction of the parties.

Pacific Commercial Co. v. Ermita Market and Cold Stores[41] deals with a defective product sold by description. Here, the plaintiff contracted to sell to the defendant an automatic refrigerating machines as per description stated in the sales contract. The machine was delivered and by mutual agreement, the vendor installed the machine. Plaintiff brought a suit against

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building or on a piece of land, and which tend directly to meet the needs of the said industry or works;

(6) Animal houses, pigeonhouses, beehives, fishponds, or breeding places of similar nature, in case the owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included;

(7) Fertilizer actually used on a piece of land;

(8) Mines, quarries, and slag dumps, while the matter thereof forms part of the bed, and water either running or stagnant;

(9) Docks, and structures which, though, floating, are intended by their nature and object to remain at a fixed place on a river, lake or coast;

(10) Contracts for public works and servitudes and other real rights over immovable property.

This provision operates under the rule in statutory construction — *Exclusio unius est exlusio alterius.* Hence, the enumeration is exclusive and that by inference, what are excluded from the enumeration in Article 415 shall be considered personal property.

[39] 100 Phil. 414 (1956).

[40] Formerly, the law applicable to sales prior to the enactment of the Philippine Civil Code in 1950, was the Code of Commerce. The Assanmal case was decided in 1956, but yet Article 336 of the Code of Commerce was applied despite the opinion of commentators that the provisions of the Code of Commerce concerning sales were impliedly repealed by the adoption of the Civil Code in 1950.

The CODE OF COMMERCE OF SPAIN was extended to the Philippines by the Royal Decree of August 6, 1888, and became effective as law in the Philippines on December 1, 1888.

Article 336 provides:

"A purchaser shall have the rights of action against a vendor for defects in the quantity or quality of merchandise received in bales or packages provided he brings his action within 14 days and that defect is not due to fortuitous event, inherent vice of the merchandise or to fraud.

In such cases, the purchaser may choose between rescission of the contract, or its fulfillment in accordance with what has been agreed upon but always with the payment of damages he may have suffered by reason of the defects or negligence. A vendor may avoid this claim by demanding, at the time of the making of delivery that the merchandise be examined by the purchaser for his satisfaction with regard to the quantity and quality thereof."

[41] 56 Phil. 617 (1932).

the defendant. The Court held that the fact that the defendant could not use the machine satisfactorily in the three cold stores divisions cannot be attributed to the plaintiff's fault where the machine was strictly in accordance with the written contract between the parties, and the defendant can hardly honestly say that there was any deception by the plaintiff.

In the *McCullough* case,[42] the Supreme Court stated that where an article is sold by a particular deescription, as was the tobacco involved in the case, by which description it is known to the trade, it is a condition precedent to the vendor's right of recovery that the article delivered should answer such description, such words of description being part of the contract. The Court's refusal to declare the seller answerable for breach of warranty was based on the finding made by the Court that the agreement between the parties was that the buyer was to take all the tobacco in a certain building and to pay therefor the price name.

McCullough is an illustrative case where the application of the *caveat emptor* rule was made.

In an action to rescind the contract of sale for failure of the machine to run in satisfactory manner (the failure of the machine to compress and turn the hemp bales into regulation sizes of 12 cubic feet or less in accordance with the requirements of the Fiber Inspection Administration Order),[43] the Court declared that the vendor cannot be expected to presume the particular commodity a customer desires to buy when he goes to his store and makes his own choice and pay for it, and that after the vendor has done his part by delivering the merchandise the purchaser has chosen, it would be unfair to rescind the contract if it turns out not suitable to the purpose the latter has intended.

In a contract of sales of specified article under its patent or other trade mark, there is no warranty as to its fitness for any particular purpose except when there exists an agreement entered into by the parties to the contrary.[44] This should be distinguished from Article 1562 which covers where the buyer makes known to the seller the particular purpose for which the goods are acquired. The Court rejected the buyer's claim that to hold the seller liable under Article 1563 where the buyer was unable to prove the seller's previous knowledge of the brand "Glendale" so as to prove seller's fraud in selling the "Glendale shoes". Moreover, the fact that the defendant-seller devoted his busineess not only to selling shoes which was only part of the goods he sold in his department store, convinced the court that it is less probable that it should have been previously informed where the brand "Glendale" originated.

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[42] McCullough v. Aenlle and Co., supra, note 25 at 205.
[43] Cho Chit v. Hanson, Orth and Stevenson, Inc., 103 Phil. 956 (1958).
[44] CIVIL CODE, Art. 1563 (1950).

Article 1564 of the Civil Code provides that the seller shall be answerable for an implied warranty as to the quality or fitness for a particular purpose where it is established by the usage of trade.[45]

The claim of the buyer of a second-hand tractor to hold the seller liable for an implied warranty for a particular purpose was denied by the Court, taking into consideration the finding that the defendant, having had the experience in the purchase of second-hand tractors as proved by ownership of several of them, should expect imperfection caused by the wear and tear of the second-hand heavy machinery. The rule in the *Peralta* case was applied. The Court noted the circumstances surrounding the purchase of the tractor belie the imputation of bad faith and express warranty on the part of the seller.[46] In addition, the Court applied the doctrine of *caveat emptor.*

Where the contract of sale was entered into by sample and the seller is a dealer of the goods subject of the sale, Article 1565 holds that the seller liable for an implied warranty that the goods shall be free from any defect which would render the goods unmerchantable; where the defect is not apparent by a reasonable examination of the sample.

Article 1566, a reiteration of the general rule stated in Article 1547, holds the seller liable from hidden defects and faults, even if he was not aware thereof. Manresa, interpreting this rule which was adopted from the Spanish Civil Code[47] gives the rationale for this rule — that the seller remains responsible for the purpose of reparation of the error under which the vendee contracted, but not as a punishment of bad faith. This rule was applied to a sale of a vessel which was unseaworthy at the time of sale.[48] In this case, the plaintiff purchased the vessel for his own personal use, and it involved an investment of ₱55,000. The testimony was conclusive that at the time of its inspection, it was seaworthy and it had but little, if any, commercial value. The defects of its construction were hidden and concealed and were unknown to the plaintiff until the official inspection was made, when he promptly brought this action. The Court found that the proof was conclusive that such hidden defects rendered the vessel unfit for the use for which it was intended, and that the plaintiff did not have any knowledge of such defects; and that no sane man would have purchased it, with such knowledge. The Court applying the provisions of Article 1485 of the Spanish Civil Code held that the seller was liable to the buyer for any latent faults or defect of the thing sold, even if they were unknown to him.

The option either to withdraw from the contract or to demand a reduction of the price, in cases where hidden defects render the thing sold

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[45] Uniform Sales Act, Section 15, par. 5.

[46] Sison v. Ago, C.A.-G.R. No. 16509-R, April 12, 1967, 11 C.A. Rep. 2d 530 (1967).

[47] 10 MANRESA, *supra,* note 28 at 247.

[48] Bryan v. Hankins and Biaglowski, 44 Phil. 87 (1922).

unfit or diminish its fitness for the use intended; or where the goods are not reasonably fit for the particular purpose of the buyer; or are not of merchantable quality, belongs to the buyer. The same option of the buyer may be exercised in case of seller's breach of the implied warranty as to the quality or fitness for a particular purpose; that the goods are free from any defect rendering them unmerchantable; and that the thing sold is free from any hidden faults or defects.[49] If however the vendee should not decide to withdraw from the contract of sale, he may demand a reduction of the price, known as an action *quanti minoris* — a proportionate reduction of the price because of the existence of hidden defects.[50]

In *La Fuerza Inc. v. Court of Appeals*,[51] the Supreme Court held that the choice of the buyer as to the remedies afforded to him under Article 1567 of the Civil Code may be expressly or tacitly made. This case in an action for recovery of the price agreed upon for the manufacture and installation of a conveyor system installed by the Association Engineering to increase production in the manufacture of wine in the defendant's factory. It was established that the conveyor system failed to function according to the specification agreed by the parties because the conveyor belt jumped off and the bottles collided with each other, causing considerable damage. The Court, while finding that the seller failed to live up to its representations, found that the action to rescind the contract was barred by the Statute of Limitations under Article 1571.[52] The Court laid down a policy in this wise:

> Indeed, in contract of the latter type, especially when goods, merchandise, machinery or parts or equipment thereof are involved, it is obviously wise to require the parties to define their position in relation thereto, within the short probable time. Public policy demands that the status of the relations between the vendor and the vendee be not left to a condition of uncertainty for an unreasonable time, which would be the case, if the lifetime of the vendee's right to rescission were four years.

The vendor bears the loss of the thing sold if loss is caused by reason of its hidden defects and the seller was aware of its defects.[53] If this event happens, the seller shall be obliged to return the price; refund the expenses of the contract; and pay damages. If he does not know the hidden defects, his liability is limited to return the price and interest thereon and the reimbursement of the expenses of the contract.[54] However, where the thing sold with a hidden defect at the time of the sale is lost through fortuitous event or the fault of the vendee, the seller's obligation is to reimburse the price paid by the buyer less the value of the thing sold at the time of its loss.[55]

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[49] 5 PADILLA, CIVIL CODE 409 (1971).
[50] *Ibid.* at 409.
[51] G.R. No. 24069, June 28, 1968, 23 SCRA 1217 (1968).
[52] Article 1571 provides that actions arising from seller's liability for hidden defects shall be barred after 6 months from the delivery of the thing sold.
[53] CIVIL CODE, Art. 1568.
[54] CIVIL CODE, Art. 1555.
[55] CIVIL CODE, Art. 1569.

Article 1572 provides for the seller's liability for redhibitory defects when two or more animals are sold whether for a lump sum or for a separate price. In the latter case, where the animals are bought by a team, yoke, pair, or set and when it is shown that only one of the animals sold had a redhibitory defect, the liability of the seller shall extend only to the one which had the defect unless the buyer would not have purchased the animals without the defective one. This rule however does not apply when the animals are bought in fairs or public auction or if sold as condemned.[56] The reason for the exception is based on the assumption that the defect must have been clearly manifest to the buyer.[57]

By express provision of Article 1573, the hidden defect of the merchandise does not affect the other merchandise of good quality unless it be shown that the purchaser would not have bought the one without the other.

Generally, where a professional opinion has been sought before the purchase of the animals, a recourse against the seller for warranty against redhibitory defect will not prosper. Article 1576 provides an exception. If it is such that the defect in the animals, which by reason of its nature, a professional or expert inspection will not be sufficient to discover, then the seller shall remain answerable for his warranty. The veterinarian who gave the opinion shall be liable for damages if through his ignorance or bad faith, he should fail to discover or disclose the defect.[58] The remedy of rescission will not lie against the seller unless the defect is such nature that an ordinary prudent man acting in good faith would not have discovered it.[59]

The Statute of Limitations to file an action for faults or defects of animals is forty days from the date of delivery of the good to the buyer.[60] Whether or not the action shall prosper is made to depend on the law or local customs of the place.[61]

Where the court declares the sale rescinded, the animals shall be returned in the condition at the time of the sale and delivery. The buyer shall answer for damages due to his negligence, but not to those caused by reason of the redhibitory defect.[62]

The liability of the lessor for defect of things leased is provided by the Civil Code, with its origin from the Civil Code of 1889 and the Supreme Court decisions prior to 1950.

The lessor has to deliver the thing which is the object of the contract of lease in such condition as to render it fit for the use intended, and to

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[56] CIVIL CODE, Art. 1574. This article governs the sale commonly known as *caballerias enajenados coma de desecho.*
[57] 10 MANRESA, *supra,* note 28 at 258.
[58] CIVIL CODE, Art. 1576 (1950).
[59] 10 MANRESA, *supra,* note 28 at 264.
[60] CIVIL CODE, Art. 1577, (1).
[61] CIVIL CODE, Art. 1577, (2).
[62] CIVIL CODE, Art. 1579.

make the necessary repairs on the thing leased during the term of the lease in order to keep it suitable for the use to which it has been intended, unless there is an agreement to the contrary.[63] Likewise, the lessor is under the obligation to maintain the lessee in peaceful and adequate enjoyment of the lease for the entire duration of the contract;[64] to warrant the thing leased to be free from defects so as to prevent its being properly and beneficially used for the purpose for which it was leased.[65]

The term "repair" is defined by the Supreme Court as placing something back into the condition in which it was originally and not an improvement of the condition by adding something thereto unless the new thing be in substitution of something formerly in existence and is added to preserve the original status of the subject matter of the repairs.[66]

The provisions on warranty for hidden defects in contracts of sale are made applicable to leased goods as well.

In *Burk v. Hubert*,[67] the defendant raised as a defense for non-payment of rental the failure of the plaintiff to make repairs on the house leased to the former. The Court of Appeals found that the goods placed on the storeroom (which was part of the leased house) were damaged by water due to heavy rains. However, the plaintiff also proved that he engaged a carpenter who made a monthly inspection of the place in and about the storeroom and its roof. The Court found the plaintiff's claim supported by evidence.

In *United States Lines Co. v. San Miguel Brewery, Inc.*,[68] the lessor of a cold storage was held liable for deterioration of the foodstuffs stored therein due to the presence of rats. The Court declared that the lessor breached his warranty that the leased premises would be free from rats and that the showing of fraudulent intent or bad faith on the part of the lessor need not be proved.

In *Yap Kim Chuan v. Tiaoqui*,[69] the Supreme Court ruled that the lessor's obligation to warrant the thing leased against hidden defects is different from liability for damages. The liability for damages only attached when the lessor knew of the defect and failed to reveal the fact to the lessee. On the other hand, the obligation of the lessor to warrant the thing leased refers only to the obligation to repair or correct the defect of the thing leased, but it does not mean that the lessor will indemnify the lessee.

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[63] CIVIL CODE, Art. 1654; Donato v. Lack, 20 Phil. 503 (1911); Gregorio Araneta Inc v. Lyric Film Exchange Inc., 58 Phil. 736 (1933); Johnson Picket Rope Co. v. Grey, 40 O.G. Supp. No. 11, 239 (1942).

[64] CIVIL CODE, Art. 1654.

[65] CIVIL CODE, Art. 1653.

[66] Alburo v. Villanueva, 7 Phil. 280 (1907); Valencia v. Ayala de Roxas, 13 Phil. 45 (1909); Lizares v. Hernaez, 40 Phil. 981 (1920).

[67] 39 O.G. 179 (1941).

[68] G.R. No. 19383, April 30, 1964, 63 O.G. 1304 10 SCRA 805 (1964) (1967).

[69] 31 Phil. 433 (1915).

In a contract for a piece of work, the contractor is liable for defects which destroy or lessen the value of fitness of the work done. If the contractor does not comply with his contract, he may be compelled to remove the defect and do another work, and if he fails to do so, it may be done at his expense.[70]

In *Philippine American Life Insurance v. Santamaria*,[71] the defendant entered into a contract with the plaintiff to make a topographic survey work on the latter's 45-hectare lot. Plaintiff seeks to recover damages from the defendant on the ground that it suffered losses due to defendant's fault in the preparation of the topographic survey map and based its action on Article 1715 of the Civil Code. The Supreme Court in this case held:

> The obligation of the contractor under Article 1715 of the Civil Code to execute the work in such manner that it had qualities agreed upon and was free from defects which destroyed or lessened its value or fitness is not absolute. If the work to be performed consisted of machinery which must be constructed according to specification, the work performed must have a degree of perfectibility. Such is not the case in a contract for the preparation of a topographic map which is not linearly plotted whose boundaries are consequently not accurate unless the sketch is intended to be merely a preliminary layout subject to final adjustment after a fixed boundary survey has been made.

The burden of proof that the work was done without defect lies on the contractee. Reading Article 1715 with Article 1169[72] of the Civil Code, the Supreme Court ruled that:

> The plaintiff in a civil case is called upon only to prove by material allegations in his complaint constituting his cause of action. In the case at bar, plaintiff's cause of action relates to the prestation or repair service to the appellant for which the latter in turn obligated himself to pay the value thereof. Appellee proved his allegations. It is not enough that a defendant interposes an affirmative or special defense in order to relieve him of his liability to the plaintiff; he must establish by preponderant evidence such affirmative defense. x x x
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> Article 1715 in conjunction with Article 1169 of the New Civil Code, may be available only under certain established facts; that is, the proof of the defects in the works, which in the instant case, appellant has failed to do. The trial court found that the plaintiff did in fact render the repair service to the defendant, and in the absence of proof to the contrary, such repair services are deemed satisfactory. The law presumes that appellee acted in accordance with his commitments, and that the repairs were regularly due. x x x And since, in the case at bar, defendant-appellant presented no evidence, he is not justified in invoking aforecited provisions.[73]

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[70] CIVIL CODE, Art. 1715 (1950).
[71] G.R. No. 26719, February 27, 1970, 31 SCRA 798 (1970).
[72] Article 1169, par. 3 provides:
"That in reciprocal obligations, neither party incurs delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him."
[73] G.R. No. 26719, February 27, 1970, 31 SCRA 798 (1970).

Acceptance by the contractee of the work done relieves the contractor of the liability for any defect in the work except when the defect is hidden and the contractee is not by his special knowledge expected to recognize the defect or when the contractee expressly reserves his rights against the contractor by reason of the defect.[74] The Court has uniformly held that if the contractee had opportunity before signing the contract to examine the work and determine for himself whether it complied with the terms of the contract or not, his express acceptance without protest is an acknowledgment by him that the work had been performed substantially as required by the contract.[75]

Non-acceptance may be implied, as when a complaint is filed against the contractor.[76] The first exception stated in Article 1719 was applied in the case of *Limjap v. Nachura and Co.*[77] where a builder was held liable to the owner of the building for damages caused by hidden defects in the construction work. The basis of the action was for the failure to construct the pedestal of the mausoleum of reinforced concrete, hence, the defect was not apparent at the time of the delivery and acceptance of the work. The Court alluded to the fact that from the very nature of things, it is impossible to determine by the simple inspection of the concrete wall, floor or platform whether it has been made of reinforced concrete, for the reason that this work is done by imbedding iron or steel rods in the concrete in such manner as to increase its strength.

Another exception to the general rule that in a contract for a piece of work, acceptance of the work by the contractee relieves the contractor of liability for any defect in the work is provided by Article 1723. The liability of the engineer or architect for defects in his construction attaches if within fifteen years from the completion of the structure, the same would collapse by reason of a defect in those plans or specifications or due to the defects in the ground; if the edifice falls within the same period of time on account of defects in the construction on the use of materials of inferior quality furnished by him; or for any violation of the terms of the contract. Furthermore, the contractor stands solidarily liable to the contractee if the engineer or architect supervises the construction. The action against the engineer or contractor must be brought however within 10 years following the collapse of the building. In the case of *Hospicio de San Jose v. Findlay Millar Timber Co.*,[78] the contractor of a building which became ruinous by reason of defects in construction shall be liable for damages if the ruin occurs within ten years, to be counted from the completion of the construction. The architect who directed the work was likewise held liable to the

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[74] CIVIL CODE, Art. 1719.

[75] Choy v. Heredia, 12 Phil. 259 (1908); Campbell v. Behn Meyer and Co., 3 Phil. 590 (1904); Naval v. Benavidez, 8 Phil. 250 (1907); Chan Suanco v. Alonso, 14 Phil. 517 (1917).

[76] De Castro v. Tamparong, 78 Phil. 804 (1947).

[77] 38 Phil. 451 (1918).

[78] 50 Phil. 227 (1922).

same liability and for the same length of time if the ruin should be due to the defects in the ground or to improper direction.

The liability for warranty against defects is contractual in nature, thus the privity requirement is mandatory and still remains a cornerstone in Philippine law. This is clear from the provisions of Article 1311 of the Civil Code, which states:

> Article 1311. Contracts shall take effect only between the parties, their assigns, and heirs, except where the rights and obligations arising from contract are not transmissible, by their nature, or by stipulation or by provision of law.

The privity requirement to hold the seller liable for warranty for hidden defects on the goods sold is self-explanatory. The liability is based on contractual obligations of the parties, notwithstanding the fact that the liability based on warranty in American law was originally an action in tort,[79] and the provisions on warranty were a carry-over from the Uniform Sales Act.

It is the view of the commentators on the Civil Code that if a third person is not a party to the contract, he shall not be bound thereby — thus, he cannot be sued in case of breach thereof. By analogy, it can be adduced that a person not party to a contract of sale cannot be liable for breach of warranty for defects in the thing sold. The need for privity is uniformly provided by the provisions of the Civil Code, i.e., where unenforceable contracts cannot be assailed by third persons,[80] and that the defense of illegality of contracts is not available to third persons whose interests are not directly affected.[81] Philippine jurisprudence likewise requires the element of privity and in a long line of cases, it has been held that the binding effect of contracts cannot be extended to parties who do not intervene therein under the Latin maxim — *res inter alios acta nobis nocet nec nocet nec prodest.*[82]

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[79] Warranty was originally an action in tort, for breach of an assumed duty and conceived as a form of misrepresentation. In the latter of the seventeenth century, in the cases of Cross v. Gardiner, 1 Show. K.B. 68, 89 Eng. Rep. 455 (1689) and Medina v. Stoughton, 1 Ld. Rayon 593, 91 Eng. Rep. (1700), tort action could prosper for mere affirmation of fact made without the knowledge and falsity or negligence.

[80] CIVIL CODE, Art. 1408 (1950).

[81] CIVIL CODE, Art. 1421 (1950).

[82] Wolfson v. Estate of Martinez, 20 Phil. 340 (1911); Martinez v. Ramos, 28 Phil. 589 (1914); Poblete v. Cinco, 44 Phil. 369 (1923); Inton v. Quintana, 81 Phil. 97 (1948); Salonga v. Warner Barnes and Co., Ltd., 88 Phil. 125 (1951); Hermosa v. Zobel, 104 Phil. 769 (1958); National Labor Union v. International Oil Factory, 108 Phil. 387 (1960); Magdalena Estate Inc. v. Consing, 3 C.A. Rep. 2d 840 (1963); Sandico v. Paras, C.A.-G.R. No. 28414-R, November 18, 1963, 4 C.A. Rep. 2d 953 (1963); Climaco v. Central Bank of the Phil. C.A.-G.R. No. 34691-R, September 16, 1965 8 C.A. Rep. 2d 414 (1965); Rizal Surety and Insurance Co. v. Manila Railroad & Co., C.A.-G.R. No. No. 36122-R, December 2, 1966 10 C.A. Rep. 2d. 945 (1967); Viola & Associates v. Ramirez, C.A.-G.R. No. 5454R-R, February 28, 1967, 11 C.A. Rep. 2d. 305 (1967).

The Code Commission, adverting to the case of *McPherson v. Buick*[83] of the New York Court of Appeals in 1916 adopted Article 2187 in the Civil Code, which provides:

> Art. 2187. Manufacturers and processors of foodstuffs, drinks and toilet articles and similar goods shall be liable for death or injuries caused by any noxious or harmful substances used, although no contractual relations exists between them and the consumers.

It is explicit from the provision that the privity requirement is not necessary to render the manufacturer or processor liable for the defect of the products. However, it should be noted that the only manufacturers of foodstuffs, drinks, toilet articles and similar goods are held liable. Should the enumeration be construed as exclusive? Should the term "similar goods" be construed to include only necessaries under the *ejusdem generis*[84] rule in statutory construction?

Should the liability of the manufacturer be limited only to bodily injuries, since Article 2187 speaks of death and injuries caused by a noxious or harmful substances used? Or should the liability of the manufacturer extend to economic injury and injury to property as well?

As there is no decision of the Philippine Supreme Court on Article 2187, these questions remain unanswered.

Commentators on the Civil Code justify the adoption of Article 2187 on the ground that the sale of goods involves a reasonable risk to the buying public and that public policy requires that strict liability be adopted.[85]

On the other hand, there is a view that under Article 2187, if the injurious condition of the article is from its origin, the immediate vendor is a stranger to the fault of the manufacturer and that the former shall not be liable for the injuries the consumer may suffer. But if the noxious condition is not due to the manufacturer of the article but to the transformation when it is in the hands of the vendor, such as by the reasons of the time allowed to lapse, abandonment, or carelessness in its custody, the vendor becomes liable for his own negligence.[86] The latter view of Tolentino reflects the influence of the civil law system that it is only through one's own fault or *culpa* that one is liable for the injury caused to another.

Negligence

Liability for defective products may be based on negligence.

Philippine law on torts is a conglomeration of civil law and common law concepts, in the sense that American tort principles had found its way

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[83] 217 N.Y. 382, 111 N.E. 1050 (1916).

[84] Under this principle where the general terms follow the designation of particular things or classes of persons or subjects, the general terms will be construed to include those things or persons of the same class or of the same nature as those specifically enumerated. MARTIN, STATUTORY CONSTRUCTION, 70 (1972).

[85] BALDERRAMA, THE PHILIPPINE LAW ON TORTS AND DAMAGES, 280 (1953).

[86] 5 Tolentino, CIVIL CODE 531 (1953).

into the civil law concept of *quasi-delict* of the Spanish Civil Code of 1889. A view has been expressed that every tort case in Philippine jurisprudence is treated as quasi-delict, with the result that the quasi-delict principles have pre-empted the area in tort law reserved for intentional torts founded on American jurisprudence.[87]

Liability for negligent conduct is provided by Article 2176 of the Civil Code:

> Art. 2176. Whoever by act or omission causes damages to another, there being fault or negligence is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties is called quasi-delict and is governed by the provisions of this Chapter.

A suit based on Article 2176 will prosper, if the following requisites concur and proved by a preponderance of evidence:[88] (a) there must be an unlawful act or omission amounting to fault or negligence, imputable to defendant; (b) that the plaintiff suffered damage or injury; (c) that the damage or injury to the plaintiff was the natural and probable or direct and immediate consequence of the defendant's wrongful act or omission; and (d) that there is no pre-existing contractual relations between the plaintiff and defendant.

The requisite of fault or *culpa* is a carry-over from Article 1902 of the Spanish Civil Code. The policy according to Manresa behind this rule is that where the injury is caused by an act or omission without intentional fault but voluntarily performed, there should be a concommittant responsibility to make good the damage done.[89]

The liability is founded on the rationale that when a person by his act or omission caused damage or prejudice to another, a juridical relation is created by virtue of which the injured person acquires the right to be indemnified and the person causing the damage in charged with the corresponding duty of repairing the damage done. The reason is founded on the obvious truth that man should subordinate his acts to the precepts of precedence and if he fails to observe them and causes injury to another, he must repair the damage.

The third requisite is a reiteration of the rule enunciated in a long line of cases,[90] as the proximate cause requisite.

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[87] Carpio, *Intentional Torts In Philippine Law*, 42 PHIL. L.J. 645 (1972).

[88] REV. RULES OF COURT, Rule 133, sec. 1.

[89] *Establece este articulo la regla general en cuanto a la imposicion de las obligaciones provincentes de la culpa o de la negligencia. Traen estas origen de un dano causado por una accion o por una omision voluntaria, aunque ejecutado sin intencion punible, y por lo anto, el que voluntariamente ejecuto el acto generador o determinado del perjuicio, o el que incurrio tambien voluntariamente en la omision que el produjo, es el llamado, en primer termino, a suportar la carga o la responsibilidad, de su reparacion.* 12 MANRESA, *supra* note 28 at 611 (1911).

[90] Rakes v. Atlantic Gulf and Pacific Co., 7 Phil. 359 (1907); Taylor v. Manila Electric Co., 16 Phil. 8 (1910); Del Rosario v. Manila Electric Co., 57 Phil. 478

To impute liability on the manufacturer and the members of the distribution chain for defective products based on quasi-delict or negligence presents a number of difficult questions. Setting aside the problem of proof of manufacturer's fault or negligence, there are a number of questions presented. Firstly, the difficulty of defining the degree of care required of the manufacturer in the production of goods. In a number of actions based on quasi-delict, the degree of care required of a party sought to be charged for negligence varies from case to case, notwithstanding the the provision in Article 1173 of the Civil Code defining fault of negligence.[91]

In quasi-delict actions, to the Court belongs the task to make an inquiry on the standard of care required under the given circumstances of the case presented for adjudication and to determine the existence of negligence in the absence of any standard fixed by law, the standard applied is the imaginary conduct of the discreet *Pater Familias* of the Roman Law.

There is not a hard and fast rule which may be a basis for finding whether a negligent act has been committed or not. The Supreme Court in the case of *Corliss v. Manila Railroad Co.*,[92] citing *Ahern v. Oregon Telephone Co.*[93] held:

> Negligence is want of the care required by the circumstances. It is a relative or comparative, not an absolute term and its application depends upon the situation of the parties and the degree of care which is necessary, and the failure to observe it is a want of ordinary care under the circumstances.

To a certain degree the ruling in the *Ahern* case has been followed uniformly in Philippine jurisprudence.

It was held that a street car company which maintains its tracks in the public highway in such a condition that the rails and a considerable portion of the tires are above the level of the street is negligent and liable to a person injured by reason of the condition of the tracks and for not using ordinary care and prudence in making the crossing.[94]

(1932); Marcelo v. Manila Electric Co., 29 Phil. 351 (1915); Gregorio v. Go Chong Bing, 102 Phil. 556 (1958); Bernal v. House and Tacloban Electric Co., 54 Phil. 327 (1921); Gabeto v. Araneta, 42 Phil. 252 (1921); Smith v. Cadwallader Gibson Lumber Co., 55 Phil. 517 (1930) Corliss v. Manila Railroad Co., G.R. No. 21291, March 28, 1969, 27 SCRA 674 (1969).

[91] Article 1173 of the CIVIL CODE provides:

> "The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time, and of the place." When negligence shows bad faith, the provisions of Articles 1171 and 2201, paragraph 2, shall apply.
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> If the law or contract does not state the diligence required which it is to be observed in the performance, that which is expected of a good father of a family shall be required.

[92] *Supra*, note 90 at 680.

[93] 35 P. 549 (1894).

[94] Wright v. Manila Electric Co., 28 Phil. 122 (1914).

In *De Guia v. Manila Electric Co.*,[95] the motorman of a car ran by the company was held liable for damages for negligence in using excessive speed causing the front wheels of the rear truck to be derailed. The Court held that an experienced and attentive motorman should have discovered that something was wrong and would have stopped before he had driven the car over the entire distance from the point where the wheels left the track to the place where the post was struck.

In *United States v. Barias*[96], a higher standard of care was required of a motorman operating a street car. The Court held:

> A motorman operating a street car on a public street in a densely populated section of the city of Manila was clearly charged with a high degree of diligence in the performance of his duties. He was bound to know and to recognize that any negligence on his part in observing the track over which he was running his car might result in fatal accident. x x x It was his duty to satisfy himself of the fact by keeping a sharp lookout and to do everything in his power to avoid the danger which is necessarily incident to the operation of heavy street cars on public thoroughfares in the populous sections of the city.

It may well be that a higher degree of care may be imposed on the manufacturer of foodstuffs and other necessaries, considering the provisions in Article 2187 and the ruling of the Supreme Court in the case of *United States v. Siy Cong Bieng* [97] where it was ruled that a manufacturer is liable for failure to observe statutory standards.

As in Anglo-American tort law, there is the need to establish that the defendant's act or omission is the proximate cause of the injury caused to the plaintiff. The *onus probandi* (burden of proof) lies on the injured party.

In *Bataclan v. Medina*,[98] the Supreme Court citing the *American Jurisprudence* defined the meaning of the term "proximate cause" as follows:

> The proximate cause is that acting first and producing the injury, wether immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.

The Philippine Supreme Court applied the doctrine of *res ipsa loquitur* in a number of cases to favor the plaintiff with evidential presumption. Under this rule, an inference is drawn that the thing which caused the

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[95] 40 Phil. 106 (1920).
[96] 23 Phil. 434 (1912).
[97] 30 Phil. 577 (1915).
[98] G.R. No. 10126, October 22, 1957, 54 O.G. 1805 (March 1958).

injury to the plaintiff was under the control and management of the defendant, and that the occurrence was such as in the ordinary course of things would not happen if those who had its control or management used proper care, or, it would constitute reasonable evidence in the absence of the explanation of the defendant that the injury arose from or was caused by defendant's want of care.[98a]

The doctrine of *res ipsa loquitur* was first applied in the case of *Espiritu v. Philippine Power and Development Co.*[99] where an electric transmission wire installed and maintained by the defendant suddenly parted and one of the broken ends hit the plaintiff on the head. In an action to recover damages from the defendant, the Court of Appeals ruling in favor of the plaintiff held:

> While it is a rule, as contended by the appellant (defendant) that in case of non-contractual negligence or *culpa aquiliana,* the burden of proof is on the plaintiff to establish that the proximate cause of his injury, was the negligence of the defendant, it is also a recognized principle that where the thing which caused the injury, without fault of the injured person is under the exclusive control of defendant and the injury is such as in the ordinary course of things does not occur if he having such control use proper care, it affords reasonable evidence, in the absence of the explanation, that the injury arose from defendant's want of care.

The *res ipsa loquitur* principle was likewise applied in the case of *Africa v. Caltex (Philippines).*[100] In this case, a fire broke out at the gasoline station maintained by the defendant while the gasoline was being hosed from a tank into the underground storage. The fire spread and burned the neighboring houses owned by the plaintiffs. No evidence was presented to show the origin of the fire, but the Supreme Court nevertheless held the defendant liable for the economic injury caused to the plaintiffs, in this wise:

> It is the rule that those who distribute a dangerous article or agent owe a degree of protection to the public proportionate to and commensurate with a danger involved. x x x We think it is the generally accepted rule as applied to torts that if the effect of the actor's negligent conduct actively and continuously operate to bring about harm to another, the fact that the active and substantially simultaneous operation of the effects of a third person's innocent, tortious or criminal act is also a substantial fact in bringing about the harm, does not relieve the actor from liability.

In the case of the *Republic of the Philippines v. Luzon Stevedoring Corporation,*[101] the *res ipsa loquitur* doctrine was again applied to hold the defendant liable for damages when its barges rammed against the bridge constructed and maintained by the Republic causing the bridge to list due to its smashed posts. The Court holding the defendant liable held:

[98a] 58 AM. JUR. 2d 46.
[99] C.A.-G.R. No. 3240-R, September 20, 1949.
[100] G.R. No. 12986, March 31, 1966, 16 SCRA 448 (1966).
[101] G.R. No. 21749, September 29, 1967, 21 SCRA 279 (1967).

> Considering that the Nagtahan Bridge was an immovable and stationary object and uncontrovertedly provided with adequate openings for the passage of the water craft, including barges like those of appellant's, it is undeniable that the unusual event that the barge, exclusively controlled by the appellant rammed the bridge supports raised the presumption of negligence on the part of the appellant or its employees manning the barge or the tugs that towed it. In the ordinary course of events, such a thing does not happen if proper care is used. In Anglo-American jurisprudence, the inference arises by what is known as *res ipsa loquitur* rule.

Law

Laws relating to products liability exist in Philippine jurisprudence, however, most are regulatory, penal and preventive in character.

Act No. 3740 was enacted to prevent misrepresentations through advertising or misbranding of certain goods.[102] Acts prohibited are displaying, selling barter or exchange or to offer or expose for display, sale, barter, or exchange or to possess with intent to sell or to cause to be sent, carried or brought for display, sale, barter, or exchange from any foreign country to the Philippines, or from the Philippines to a foreign country, any article which is falsely packed, labeled, marked or branded in such a way as to misrepresent the character or amount, value, contents, properties or condition of the article, or of the materials of which it is composed or any article accompanied by advertising matter which misrepresents the character, amount, value, contents, properties, or condition of the articles advertised or of materials of which it is composed, whether or not the article or the container thereof is mislabeled, misrepresented, or misbranded.[103] Likewise, any natural or juridical entity and their agents are prohibited to insert or cause to be inserted in any newspaper, book, or periodical printed in the country, any advertising which misrepresents the character, value, properties, or condition of the article advertised or of materials of which it is composed.[104] The use of any handbill, billboard, signs, pamphlet, circulars projected lantern slides or in any other form whatsoever printed, displayed or circulated in the Philippines to misrepresent the value of any article offered for sale and of any stocks bonds, or shares of any firm or corporation required[105] as well as the use of the mails for the circulation of any advertising matter prohibited by Act No. 3740 is penalized.[106] Violation of any of the foregoing acts renders the offender liable to a fine of not less than ₱200 and not more than ₱5,000 or by imprisonment for not less than a month nor in excess of six months, or both in the discretion of the Court.[107]

The law on the use of marked containers was enacted to identify the containers used in manufacturing, packing or selling one's products, to

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[102] Approved November 22, 1930.
[103] Act No. 3740, (1930), Sec. 1.
[104] Act No. 3740, (1930), Sec. 2.
[105] Act No. 3740, (1930), Secs. 3 & 4.
[106] Act No. 3740, (1930), Sec. 5.
[107] Act No. 3740, (1930), Sec. 6.

protect the right to the exclusive use of the same and to protect the public from confusion or deception.[108]

Section 2 of Republic Act No. 623 provides that:

> It shall be unlawful for any person, without written consent of the manufacturer, bottler, or seller who has registered the marks of ownership in accordance with the provisions of the next preceding section to fill such bottles, boxes, kegs, barrels, steel cylinders, tanks, flasks, accumulators of other similar containers so marked or stamped for the purpose of sale or to sell, dispose, buy, or traffic or wantonly destroy the same, whether filled or not, to use the same for drinking vessels, or glasses or drain pipes, for any other purpose than that registered. Any violation of this section shall be punished by a fine of not more than ₱1,000 or imprisonment of not more than one year or both.

Republic Act No. 1556 seeks to give protection to the consumer by requiring the registration of any person, partnership, firm or corporation, or associations engaged in the manufacture, importation, sale or distribution of feeds or feeding stuffs. Furthermore, the law requires specifications as to the contents of the labels in the packages containing the feeds and goods covered by the said law.[109] Moreover, one of the acts considered unlawful is the manufacture, importation, sale or distribution of the feeds or feeding stuff, without procuring its registration. Other acts considered unlawful are provided in Section 10(b):

> Sec. 10(b). Any person, partnership, corporation or association which will unlawfully use a registration number, fraudulently lease or adulterate the feeding value of any feed or feeding stuff, or tamper with packaged feeds with fraudulent purposes, wilfully remove, or alter or efface the prescribed tags, labels, markings or other information placed on the packages of feeds or feeding stuffs, fraudulently alter or use certificate of analysis of any official analyst, wilfully obstruct, hinder or resist or in any other way, oppose an inspection in the examination of his duties under this Act, make an unauthorized disposition of feeds, or offer for sale or possess for sale any feed which does not conform with or contravenes the provisions of this Act or otherwise violate any provision of this Act, and the rules and regulations issued thereunder shall be punished by a fine of not less than ₱5,000 or by an imprisonment of not more than one year and one day or both in the discretion of the Court.

Republic Act No. 4729 aims to regulate the sale, dispensation and/or distribution of contraceptives, drugs and devices. Section 1 of the said law pronounces as unlawful the sale or distribution or dispensation, whether with or without consideration, of any contraceptive, drug or device unless the sale, dispensation or distribution is made by a duly licensed drugstore or pharmaceutical company according to a prescription of a qualified medical practitioner. Any person violating the mandate of the law shall be punished by a fine of not more than ₱500 or an imprisonment of not less than six months or more than one year, or both, at the discretion of the Court.[110]

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[108] Rep. Act No. 623 (1951).
[109] Approved June 16, 1956.
[110] Rep. Act No. 4729 (1960), Sec. 3

Presidential Decree No. 280 gives the Food and Drug Administrator the power to mete penalty to an erring drug establishment:

> Any provision of the law to the contrary notwithstanding, the Food and Drug Administrator is hereby authorized to order the closure or suspend or revoke the license of any drug establishment which after administrative investigation is found guilty of selling or dispensing drugs, medicines and other similar substances in violation of the Food, Drug and Cosmetic Act and Dangerous Drugs Act of 1972, or other laws regulating the sale or dispensation of drugs or rules and regulations issued pursuant thereto.[111]

Section 29 of Republic Act No. 5921[112] provides for the liability of manufacturer, importer or distributor of drugs:

> In cases of drugs, pharmaceuticals or poisons sold in original packings, the seal of which has not been broken or tampered with, the liability that may arise because of their quality and purity, rests upon the manufacturer or in his absence, upon the importer and the distributor, the representative or dealer who was responsible for their distribution or sale.
>
> It shall be unlawful for any person whosoever, to manufacture, prepare, sell or administer any prescription, drug, pharmaceutical or poison under any fraudulent name, direction or pretense to adulterate any drug, pharmaceutical, medicine. . . ."

Republic Act No. 3720 was enacted to insure safe and good quality supply of food, drug and cosmetic and to regulate the production, sale and traffic of the same to protect the health of the people.[113] Acts prohibited are those which directly or indirectly jeopardize the interests of the buyers. Thus, Section 11 of the Act provides:

> Sec. 11. The following acts and the causing thereof are hereby prohibited:
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> (a) The manufacture, sale, offering for sale or transfer of any food, drug, device or cosmetic that is adulterated or misbranded;
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> (b) The adulteration or misbranding of any food, drug, device or cosmetic;
>
> (c) The refusal to permit entry or inspection as authorized by Section 27 hereof or to allow samples to be collected;
>
> (d) The giving of a guaranty or undertaking referred to in Section 12 (b) hereof which guaranty or undertaking is false except a person who relied upon a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the Philippines from whom he received in good faith the food, device, or cosmetic or the giving of a guaranty or undertaking referred to in Section 12(b) which guaranty or undertaking is false;
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> (e) Forging, counterfeiting, simulating or falsely representing or without proper authority, using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this Act;
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> (f) The using by any person to his own advantage, or revealing other than to the Secretary or other officers or employees of the Depart-

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111 Approved April 27, 1973.
112 Approved June 21, 1969.
113 Rep. Act No. 3720 (1963), Sec. 2.

> ment, or to the Courts when relevant in any judicial proceeding under this Act, information acquired under Section 9 or concerning any method or process which is a trade secret entitled to protection;
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> (g) The alteration, mutilation, destruction, obliteration or removal of any part of the labeling of, or the doing of any other act with respect to a food, drug, or device or cosmetic if such act is done while such article is held for sale (whether or not the first sale) and results in such article being adulterated or misbranded;
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> (h) The use on the labeling of any drug, or in any advertising relating to such drug of any representation or suggestion that an application with respect to such drug is effective under Section 21 hereof, or such drug is effective under Section 21 hereof, or such that drug complies with the provisions of such section; and
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> (i) The use, labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Section 26 hereof.

Act No. 3595 requires that every person who manufactures, sells, imports, or offers for sale any galvanized iron, should indelibly, conspicuously and plainly indicate the gauge according to the schedule fixed by the statute, the amount of zinc coating, the name and address of the manufacturer, and the brand registered with the Bureau of Commerce and Industry.[114] Likewise, the importer, manufacturer, seller or person offering for sale any reel of barbed wire or nails, in a closed package, is required to place a mark or tag so as to show the weight and length of the barbed wire or nails, the name of the manufacturer and the brand registered with the Bureau of Commerce and Industry.[115]

Act No. 3073 aims to regulate the sale of viruses, serums, toxins and analogous products. Section 1 of the Act requires that the virus, serums, toxins and other analogous products be sold, bartered, exchanged or offered for sale only when it has been prepared by a person or any entity holding an unsuspended license issued by the Secretary of Health, and that on the container shall be stated the proper name of the article contained, the name and address of the manufacturer, the license number of the same and date beyond which the contents cannot be expected beyond reasonable doubt to yield specific results.[116] Moreover, Section 2 of the same law provides that no person shall falsify, relabel, or remark any package container of any virus, toxin, etc. or alter mark on any package or container as to falsify the label or mark. Failure to comply with the provisions cited will render the person liable to a fine of not more than ₱1,000 or by imprisonment of not more than one year or both in the discretion of the Court.[117]

As to the sale of paints, the law protects the consumer-buyer by requiring the manufacturer, importer, seller or the person offering the paints for sale to place a conspicuous label stating the name and residence of the manufacturer and/or distributor thereof, the brand registered with

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[114] Act No. 3595 (1929), Sec. 2.
[115] Act No. 3595 (1929), Sec. 3.
[116] Act No. 3073 (1933), Sec. 2.
[117] Act No. 3073 (1933), Sec. 6.

the Bureau of Commerce and Industry, and if registered, the label should show the net weight of ready-mixed paint oils the true percentage by each ingredient, whether solid or liquid.[118]

Act No. 3091 penalizes any person, association, or corporation, importing, manufacturing, selling or offering for sale within the country, any insecticide or fungicide which is adulterated or misbranded within the meaning of the Act and a person or corporation misrepresenting the value, quality or composition of any treatment applied to trees, shrubs, or other plans or to any animal for preventing, repelling or mitigating any insect fungus, or bacterial disease or for accelerating its growth or productive power[119] by a fine not exceeding ₱1,000 or imprisonment not to exceed one year or both in the discretion of the court.[120]

Republic Act No. 1929 provides that the sale of acetic acid in any form, in groceries and retail stores selling foodstuffs is prohibited and violation of this provision will render liable the offender to a fine not exceeding ₱1,000 or imprisonment of more than one year or both in the discretion of the Court.[121]

Commonwealth Act No. 560 provides for security against fraud in case of sawn lumber offered for sale as mandated in Section 1 of the same law.[122] Section 1 provides:

> Sec. 1. All sawmills are under obligation to issue an invoice for every transaction of sale of lumber. There shall be printed at the foot of every page of the invoice a certificate stating that the lumber or lumbers sold to the purchasers are exactly the same kind or kinds described in the invoice. This invoice may be couched in the following similar terms:
>
> "We certify that the kind or kinds of lumber listed on the invoice are exactly the same as those sold and delivered (to be delivered to the purchaser.

Republic Act No. 428 penalizes any person knowingly possessing, selling, or distributing in any place and manner fish and other aquatic animals, stupefied, disabled, or killed by means of dynamite or other explosives or toxic substances.[122]

The penalty imposed on the transgressor depends on the value of the fish in possession to be sold or distributed. Section 2 of the same law provides:

> Section 2(a). If the total value of all the fish or other aquatic animals in possession, sale, or distribution does not exceed ₱100, by a fine of not less than ₱100 nor more than ₱500 or imprisonment of not less than one month nor more than six months or both in the discretion of the Court.

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118 Act No. 3596 (1929), Sec. 26.
119 Act No. 3091 (1923), Secs. 1 & 2.
120 Act No. 3091 (1923), Sec. 1.
121 Rep. Act No. 1929 (1957), Sec. 1.
122 Approved June 7, 1940.

> (b) If the total value of all the fish or other aquatic animals in possession, sale, or distribution exceeds ₱100, by a fine or not less than ₱200 nor more than ₱1,000 or by imrisonment of not less than two months nor more than one year, or both in the discretion of the court.

Also under pain of penalty under Section 3 of Republic Act No. 328 is any person who receives fish or other aquatic animals knowing the same to have been stupefied, disabled or killed in violation of the said law, but if before apprehension, he denounces the vendor, he may be exonerated from liability.

Republic Act 1071 provides that it shall be unlawful for any agency or store to sell to the public, veterinary biologics and medical preparations other than registered pharmacies or drugstores, biological laboratories, veterinary clinics and government veterinary agencies. Offenders of said law are deemed guilty of misdemeanor, subject to a fine from ₱100 to ₱200 or by an imprisonment from 30 days to six months, or both in the discretion of the Court.[123]

Republic Act 1517[124] was enacted to regulate the collection or processing of human blood and the establishment and operation of blood banks and blood processing laboratories. Section 3, the core of the law provides:

> Sec. 3. It shall be unlawful for any person to establish or operate a blood bank or blood processing laboratory or to collect or process blood if he is not a licensed physician, or to sell blood collected from another person, even if authorized by the latter, without first securing a license from the Department of Health; provided that in cases of emergency, blood transfusion shall be allowed under the responsibility of the attending physician without such license x x x.

The *United States v. Siy Cong Bieng* case[125] reflects the governing policy where statutory standards in the manufacture of food are violated. Notice should be taken that the case is an indictment penal in character for the violation of the Pure Foods and Drugs Act. In this case, the defendant Siy Cong Bieng was the owner of a store, whose employee sold adulterated and falsely branded coffee. The questions raised on appeal (after holding the defendant liable by the trial court) are as follows: (1) whether a conviction under the Pure Foods and Drugs Act can be sustained where it appears that the sale of adulterated products charged in the information was made without conscious intent to violate the statute; and (2) whether the principal can be convicted under the Act for a sale of adulterated goods made by one of his agents or employees in the regular course of his employment, but without knowledge on the part of the defendant that the goods sold were adulterated.

The Supreme Court ruled that under the Philippine Pure Foods and Drugs Act, proof of the fact of the sale of prohibited drugs and food

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[123] Rep. Act No. 1071 (1954), Sec. 3.
[124] Approved June 16, 1956.
[125] *Supra*, note 97 at 577.

products is sufficient to sustain a conviction of a violation of the statute, without proof of guilty knowledge of the fact of adulteration or criminal intent in the making of sale other than that necessarily implied by the statute in the doing of the prohibited act. The Supreme Court, following American jurisprudence on the point held:

> It is notorious that the adulteration of food products has grown to proportions so enormous as to menace health and safety of the people. Ingenuity keeps pace with greed and the careless and the heedless consumers are exposed to increasing perils. To redress such evils is a plain duty but a difficult task. Experience has taught the lesson that repressive measures which depend for their efficiency upon the dealer's knowledge and of his intent to deceive and defraud are of little use and rarely accomplish their purpose. Such an emergency may justify legislation which throws upon the seller the entire responsibility of the purity and soundness of what he sells and compels him to know and to be certain.

On the defense that the master shall not be liable for acts of the employees without the former's approval, the Supreme Court following the ruling in the case of *Groff v. State*[126] rejected the defendant's claim, to wit:

> The distribution of impure or adulterated food for consumption is an act perilous to human life and health; hence, a dangerous act cannot be made innocent and harmless by the want of knowledge or the good faith of the seller. Guilty intent is not an element in the crime — hence, the rule that governs in that large class of offenses, which rest upon criminal intent, has no application here. Cases like this are founded largely upon the principle that he who voluntarily deals in perilous articles must be cautious how he deals. The sale of oleomargarine in an adulterated form, or as a substitute for butter, is a crime against public health. Whoever, therefor, engages in its sale, or in the sale of any article interdicted by the law, does so at his peril, and impliedly undertakes to conduct it with whatever degree of care is necessary to secure compliance with the law. He may conduct the business himself, by clerks or agents, but if he chooses the latter the duty is imposed upon him to see to it that those selected by him to sell the article to the public obey the law in the matter of selling; otherwise, he, as the principal and responsible proprietor of the business, is liable for the penalty imposed by the statute.

III

AN ASSESSMENT

Thus, it has been seen that the state of the Philippine law and jurisprudence on products liability have been greatly influenced by the country's historical past, the socio-cultural forces at play in the Filipino society, and the state of its economy, the civil law concepts on redhibitory defects which remain to be imbedded in the present governing legal concepts in contracts of sale, together with the influx of the warranty concepts of American law through the adoption of the rules provided by the Uniform Sales Act of

[126] 171 Ind. 547.

the United States, the privity requirement remains to be a cornerstone in Philippine law in order that the injured party may recover from the person responsible for placing the defective product in the market. In actions based on negligence, the problem of proof on the defendant's negligent act or omission is to be contended with, compounded with the question on what degree of care ought to be exercised by the manufacturer and the members of the distribution chain to make them liable for injury caused by their product. While statutory standards exist governing the manufacture, distribution, and sale of particular products, there also lies a problem on the part of the injured party to prove defendants liable, since the proof required is one of guilt beyond reasonable doubt because the penalty partakes a form of a criminal offense, with the imposition of imprisonment and a fine on the manufacturer and its privies.

At the extreme end are the principles in American jurisprudence, particularly, those declared by the California Courts governing products liability. The Courts have imputed to the manufacturers and the members of the distribution chain a sort of an enterprise liability for injury caused by the defective product. While California law on private rights was based on the Spanish Civil Code, the industrialization achieved by the American society rendered it more expedient to adopt the principles of strict liability in tort in products liability cases. This theory has been hypothesized by Morris, Justice Traynor, Chait and Sedgwick.

With the emerging development of the Philippine economy from a traditional subsistence-oriented one to a modernizing one, characteristic of the Third World, the adoption of the rules in American jurisprudence on products liability, specifically, the doctrine of strict liability in tort should be the mandate of the Philippine legislature and of the Courts.