A HARVEST OF EIGHTEEN YEARS: A SURVEY OF JOSE B. L. REYES' LEADING SUPREME COURT DECISIONS ON CIVIL LAW* (Part I)

RUBEN F. BALANE **

José Benedicto Luis Reyes y Luna was appointed to the Supreme Court on 30 June 1954 and retired on 19 August 1972. During the 18 years, one month, and 20 days that he served as Associate Justice of the Supreme Court, he penned 1,171 *ponencias* — or decisions for the entire Court —, 38 concurrences, 24 dissents, and 7 concurring-and-dissenting opinions. His first decision was *Bonsato v. Court of Appeals* (decided on 30 July 1954 and reported in Vol. 95, page 481 of Philippine Reports), on donations; his last, *People v. Canial* (decided on 18 August 1972 and reported in the 46th volume of the Supreme Court Reports Annotated, page 634), on homicide. The opinions he penned are found *passim* in 16 volumes of Philippine Reports and 46 of Supreme Court Reports Annotated, or a total of 62 volumes in all.

More than 300 of his decisions have to do with civil law, representing more than 25% of his total output. Doubtless this unusually heavy proportion was due to his undisputed mastery of this most intricate and challenging of fields, a specialization which, interestingly, he professes to have gone into at the start only because he was one of the few in law school who could *actually* read Manresa and Sánchez Roman with no difficulty (one wonders how differently things might have turned out if Cooley and Willoughby had written in Spanish).

All of which made it exceedingly difficult to prepare a monograph on his civil law decisions (unless one were prepared to imprison one's audience for a seven-hour lecture). The obvious solution was to divide, and so this year's lecture, as the invitation indicates, covers the first part — from Persons to Succession; and next year's, by whoever will be the occupant of this Chair, might be on Obligations, Contracts in general, Special Contracts, and Damages. Nor was the problem entirely solved by the division — there were still a formidable number of cases to include. Again, temporal constraints could allow only a selection —

* Lecture delivered at the College of Law, University of the Philippines on February 16, 1981.

** *Associate Professor of Law,* University of the Philippines; *Holder,* J. B. L. Reyes Professorial Chair in the Civil Law.

hence, a survey of J. B. L. Reyes' *leading* decisions on civil law. Now, which cases were leading and which, not so leading? In the end, the choice had to be that which an ordinary, knowledgeable student of civil law, acting with the diligence of a *bonus paterfamilias* would make; and since I am the student of civil law I know best, the choice had to be that which I would make, with all the diligence that my tired and rheumy eyes (after poring over some 62 tomes) would allow.

Two words of explanation: in discussing Justice J. B. L.'s *ponencias*, I state repeatedly: "J. B. L. wrote," or "J. B. L. explained (or pointed out, or observed, etc)." This must be taken in context. We all know of course that the decisions of the Supreme Court are collegially arrived at and the draft of the decision, though prepared by the justice to which the case was assigned, is usually thoroughly discussed, such that the finished product that finds its way to the Reports is truly *by* the Court. Yet there is a sense in calling it a *ponencia* of the individual justice, a J. B. L. authorship for instance, because the method of reasoning, the insights, the recourse to sources, and the writing style reflect the *ponente's* personality and values, often his philosophy and preferences, always the texture of his mind and the degree of his erudition. When we say then: "J. B. L. wrote, etc." we mean that a Supreme Court decision is at once both collegial and personal.

Furthermore, in the discussion, I quote Justice J. B. L. more often than I paraphrase or explain him — for two reasons: J. B. L.'s work is much more than enough to speak for itself; and, as you will all agree, the clarity of a diamond should not be dimmed by false trinkets.

And throughout this paper, for purposes of brevity, we will be referring to Justice J.B.L. Reyes consistently as J.B.L., for which we extend an advance apology, invoking only brevity, and meaning no impropriety.

And so, topic by topic, let us begin.

PERSONALITY

Article 40 reads: "Birth determines personality; but the conceived child shall be considered born for all purposes that are favorable to it, provided it be born later with the conditions specified in the following article."

The conditions specified in Article 41 are: "For civil purposes, the foetus is considered born if it is alive at the time it is completely delivered from the mother's womb. However, if the foetus had an intra-uterine life of less than seven months, it is not deemed born if it dies within twenty-four hours after its complete delivery from the maternal womb."

Two J.B.L. *ponencias* on personality are closely related and must be read together: *Geluz v. Court of Appeals*[1] and *Quimiguing v. Icao*.[2] In *Geluz*, the Supreme Court reversed a lower court decision (which had been affirmed by the Court of Appeals) awarding damages to the father of a foetus that had been aborted. The award had been based on the provisions of Article 2206 granting damages for death caused by a crime or quasi-delict. Setting this aside as error, the Supreme Court pointed out that an aborted foetus, never having been born, never acquires personality, and thus, its parents cannot claim damages in its behalf or in representation of it, since there is nothing to represent.

Explained the decision: "[Art. 2206], in fixing a minimum award ... for the death of a person, does not cover the case of an unborn foetus that is not endowed with personality. Under the system of our Civil Code, *'la criatura abortiva no alcanza la categoría de persona natural y en consecuencia es un ser no nacido a la vida del Derecho,'*[3] being incapable of having rights and obligations.

"Since an action for pecuniary damages on account of personal injury or death pertains primarily to the one injured, it is easy to see that if no action for such damages could be instituted on behalf of the unborn child on account of the injuries it received, no such right of action could derivatively accrue to its parents or heirs. In fact, even if a cause of action did accrue on behalf of the unborn child, the same was extinguished by its pre-natal death, since no transmission to anyone can take place from one that lacked juridical personality (or juridical capacity, as distinguished from capacity to act). It is no answer to invoke the provisional personality of a conceived child (*conceptus pro nato habetur*) under Article 40 of the Civil Code, because that same article expressly limits such provisional personality by imposing the condition that the child should be born alive: 'provided it be born later with the conditions specified in the following article.' In the present case, there is no dispute that the child was dead when separated from its mother's womb."

Under Article 40, therefore, a foetus that is never born because aborted, whether criminally or otherwise, never acquires personality and hence, never acquires any rights. Nor is the rule changed by Article 3, paragraph 1 of the Child and Youth Welfare Code, which provides: "Every child is endowed with the dignity and worth of a human being from the moment of his conception, as generally accepted in medical parlance, and has, therefore, the right to be born well.", because Article 5 of the same Code retains the requirement of birth for the acquisition of personality: "The civil personality of the child shall commence from the time of his conception, for all purposes favorable to him, subject to the requirements of Article 41 of the Civil Code."

---

[1] 112 Phil. 696 (1961).
[2] G.R. No. 26795, July 31, 1970, 34 SCRA 132 (1970).
[3] Citing 1 CASSO-CERVERA, DICCIONARIO DE DERECHO PRIVADO 49.

All this, however, is not to say that a foetus cannot acquire rights. It can, on condition that it be born subsequently. The *Quimiguing* case makes this clear. There, an unmarried woman, allegedly forced by a married man to yield to him, became pregnant by him. In a suit for support, apparently in behalf of the unborn child, the lower court dismissed the case on the ground that the complaint did not allege that a child had been born: The dismissal was reversed. JBL, speaking for the Court, wrote: "A conceived child, although as yet unborn, is given by law a provisional personality of its own for all purposes favorable to it, as explicitly provided in Article 40 of the Civil Code of the Philippines. The unborn child, therefore, has a right to support from its progenitors even if said child is only *"en ventre de sa mére,"* just as a conceived child, even if as yet unborn may receive donations as prescribed by Article 742 of the same Code, and its being ignored by the parent in his testament may result in preterition of a forced heir that annuls the institution of the testamentary heir, even if such child should be born after the death of the testator."

"It is true," he continues, "that Article 40 prescribing that 'the conceived child shall be considered born for all purposes that are favorable to it' adds further 'provided it be born later with the conditions specified in the following article' (i.e., that the foetus be alive at the time it is completely delivered from the mother's womb). This proviso, however, is not a condition precedent to the right of the conceived child; for if it were, the first part of Article 40 would become entirely useless and ineffective."

Now, it is important to construe that last statement in context, namely that birth is not a condition precedent to the child's right. Properly understood, it does not, I submit, contradict the statement in *Geluz* that the foetus' provisional personality is limited by the condition that the child should be born alive. Rather, what *Quimiguing* tells us is that rights may be acquired by the child or granted to it even during its period of gestation; otherwise, Article 40's grant of provisional personality to the foetus would be otiose. But the grant of personality *is* provisional and the acquisition of rights is necessarily also provisional. If the child is not born, no personality materializes and the provisional acquisition of rights is completely obliterated. If the child is born, on the other hand, the personality (for favorable purposes) and the acquisition of rights retroact to the moment of conception.

JURIDICAL PERSONS

It is a well-known principle that the grant of a separate juridical personality to corporations cannot be used as a subterfuge for wrongdoing or unfair dealings. The courts may, in proper cases, "pierce the veil of corporate fiction" and hold the individual stockholders personally liable

for the wrongful conduct, as in *McConnel v. Court of Appeals*,[4] which was a suit against both the corporation and its stockholders for the unauthorized use of a lot. Holding the stockholders personally liable (the corporation being insolvent), J.B.L., speaking for the High Court, pointed out that individual stockholders may be held liable for obligations contracted by the corporation "whenever circumstances have shown that the corporate entity is being used as an *alter ego* or business conduit for the sole benefit of the stockholders, or else to defeat public convenience, justify wrong, protect fraud, or defend crime."[5] The Court noted the fact that of the corporation's 1,500 shares, 1,496 were owned by the stockholders sued, that the office of one of these stockholders was also the office of the corporation, that the corporate funds were kept by this particular stockholder in his own name, that said stockholder "completely dominated and controlled the corporation," and that "the functions of the corporation were solely for their benefit."

MARRIAGE

Anaya v. Palaroan[6] is an important case because it explains the meaning and scope of fraud as a ground for annulling a marriage. Article 85 provides: "A marriage may be annulled for any of the following causes, existing at the time of the marriage:

x x x x x x x x x

(4) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as her husband or his wife, as the case may be; . . ."

The following article defines the term *fraud* as used in Article 85. Article 86: "Any of the following circumstances shall constitute fraud referred to in number 4 of the preceding article:

(1) Misrepresentation as to the identity of one of the contracting parties;

(2) Non-disclosure of the previous conviction of the other party of a crime involving moral turpitude, and the penalty imposed was imprisonment for two years or more;

(3) Concealment by the wife of the fact that at the time of the marriage she was pregnant by a man other than her husband.

No other misrepresentation or deceit, as to character, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage."

---

[4] 111 Phil. 310 (1961).

[5] Citing Koppel Phil., Inc. v. Yatco, 77 Phil. 496 (1946); Arnold v. Willits and Patterson, 44 Phil. 634 (1923).

[6] G.R. No. 27930, November 26, 1970, 36 SCRA 97 (1970).

The issue in *Anaya* was whether "the non-disclosure to a wife by her husband of his pre-marital relationship with another woman" constituted such fraud as would be a ground for the annulment of the marriage. The Court held that it did not, because fraud, to annul a marriage, has a specialized meaning and is limited to those circumstances enumerated in Article 86, which are narrower and more specific than the catch-all "insidious words and machinations" provided in Article 1338 to annul ordinary contracts.

Wrote J.B.L.: "This fraud, as vice of consent, is limited exclusively by law to those kinds or species of fraud enumerated in Article 86. . .

x x x x x x x x x

"The intention of Congress to confine the circumstances that can constitute fraud as ground for annulment of marriage to the foregoing three cases may be deduced from the fact that, of all the causes of nullity enumerated in Article 85, fraud is the only one given special treatment in a subsequent article within the chapter on void and voidable marriages. If its intention were otherwise, Congress would have stopped at Article 85, for, anyway, fraud in general is already mentioned therein as a cause for annulment. But Article 86 was also enacted, expressly and specifically dealing with 'fraud referred to in number 4 of the preceding article,' and proceeds by enumerating the specific frauds (misrepresentation as to identity, non-disclosure of a previous conviction, and concealment of pregnancy), making it clear that Congress intended to exclude all other frauds or deceits. To stress further such intention, the enumeration of the specific frauds was followed by the interdiction: "*No other misrepresentation or deceit* as to character, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage."

In a style characteristically his, J.B.L. observes that "[W]hile a woman may detest such non-disclosure of premarital lewdness or feel having been thereby cheated into giving her consent to the marriage, nevertheless the law does not assuage her grief after consent was solemnly given, for upon marriage she entered into an institution in which society, and not herself alone is interested."

One last point on *Anaya*: in her Reply, the wife alleged a second fraud, namely that the husband from the very beginning never intended to live with her or otherwise perform the duties of consortium. This charge was dismissed by the Court on the ground, that, 13 years having elapsed, the action had prescribed. By way of comment, it might be mentioned that even if prescription had not set in, that second allegation of fraud would not have prospered either, for the same reason that barred the first — that the enumeration of what constitutes fraud in marriage is exclusive.

The special nature of the contract of marriage is further manifested in the mandate of Article 88 that "[n]o judgment annulling a marriage shall be promulgated upon a stipulation of facts or by confession of judgment." This prohibition, according to *Jocson v. Robles,*[7] extends to summary judgments. Stated J.B.L. in that case: "we are satisfied that the Court of Domestic Relations correctly denied the motion for summary judgment in view of the first paragraph of Articles 88 and 101 of the Civil Code of the Philippines, that expressly prohibit the rendition of a decree of annulment of marriage upon a stipulation of facts or a confession of judgment. The affidavits annexed to the petition for summary judgment practically amount to these methods not countenanced by the Civil Code."

For the same reason; in proceedings for annulment of marriage, as well as for legal separation, Article 101, par. 2 provides: In case of non-appearance of the defendant, the court shall order the prosecuting attorney to inquire whether or not a collusion between the parties exists. If there is no collusion, the prosecuting attorney shall intervene for the State in order to take care that the evidence for the plaintiff is not fabricated.

Explaining the rationale of this requirement, J.B.L. in the earlier case of *Brown V. Yambao*[8] wrote: "The policy of Article 101 of the new Civil Code, calling for the intervention of the state attorneys in case of uncontested proceedings for legal separation (and of annulment of marriages, under Article 88), is to emphasize that marriage is more than a mere contract; that it is a social institution in which the state is vitally interested, so that its continuation or interruption can not be made to depend upon the parties themselves."

LEGAL SEPARATION

Two leading cases on legal separation were decided by J.B.L.: *Tenchávez v. Escaño*[9] and *Lapuz Sy v. Eufemio.*[10]

Tenchávez, the subject matter of three *ponencias* actually,[11] is something for a Victorian novel: a young engineer "of undistinguished stock", as the decision narrates, and a young lady belonging to a socially prominent and affluent family get married in secret. The plot is complete with go-betweens, clandestine trysting places, saccharine love-letters, parental displeasure, and planned elopements of the "midnight-and-moonlight"

[7] G.R. No. 23437, February 10, 1968, 22 SCRA 521 (1968).
[8] 102 Phil. 168 (1957).
[9] G.R. No. 19671, November 29, 1965, 15 SCRA 355 (1965); G.R. No. 19671, July 26, 1966, 17 SCRA 674, 684 (1966).
[10] G.R. No. 30977, January 31, 1972, 43 SCRA 177 (1977).
[11] The original decision was in 15 SCRA 355; the first Motion for Reconsideration, in 17 SCRA 674; and the Second Motion for Reconsideration in 17 SCRA 674.

variety. Alas, the story ends not with the bride and groom living happily everafter, but in a lawsuit. For after many twists and turns, the bride leaves for abroad, files a suit for divorce there, is granted one, and marries a foreigner. The lawsuit instituted by the groom is for legal separation and damages against both the bride and her parents (against the latter, for alleged alienation of affections).

Four rulings were laid down by the High Court, through J.B.L., in *Tenchávez*:

1) That a foreign divorce between Filipino citizens, sought and decreed after the effectivity of the present Civil Code, is not entitled to recognition as valid in this jurisdiction; and neither is the marriage contracted with another party by the divorced consort, subsequently to the foreign decree of divorce, entitled to validity in this country;

2) That the remarriage of the divorced wife and her cohabitation with a person other than the lawful husband entitles the latter to a decree of legal separation conformably to Philippine law;

3) That the desertion and securing of an invalid divorce decree by one consort entitles the other to recover damages;

4) That an action for alienation of affections against the parents of one consort does not lie in the absence of proof of malice or unworthy motives on their part.

On the first point, the decision avers that "the valid marriage between Pastor Tenchávez and Vicenta Escaño remained subsisting and undissolved under Philippine law, notwithstanding the decree of absolute divorce" obtained by the wife abroad. "For Philippine courts to recognize and give recognition or effect to a foreign decree of absolute divorce between Filipino citizens would be a patent violation of the declared public policy of the state, specially in view of the third paragraph of Article 17 of the Civil Code..."

The social implication of a contrary holding is pointed out: "Even more, the grant of effectivity in this jurisdiction to such foreign divorce decrees would, in effect, give rise to an irritating and scandalous discrimination in favor of wealthy citizens, to the detriment of those members of our polity whose means do not permit them to sojourn abroad and obtain absolute divorces outside the Philippines."

In the first motion for reconsideration the defendant-wife advanced the beguiling theory that her second marriage was the "better one" — an argument that J.B.L. demolishes not without a hint of impatience: "In seeking a reexamination of the decision, defendant-appellee Vicenta-Escaño, in turn, urges a comparison between the two marriages, stating, in plainer terms, that the Tenchávez-Escaño marriage[12] was no more than

[12] *I.e.*, the first marriage.

a ceremony, and a faulty one at that, while the Moran-Escaño marriage[13] fits the concept of a marriage as a social institution because publicly contracted, recognized by both civil and ecclesiastical authorities, and blessed by three children. She concludes that, since the second marriage is the better one, it deserves the law's recognition and protection over the other. This is a dangerous proposition: it legalizes a continuing polygamy by permitting a spouse to just drop at pleasure her consort for another in as many jurisdictions as would grant divorce on the excuse that the new marriage is better than the previous one; and, instead of fitting the concept of marriage as a social institution, the proposition altogether does away with the social aspects of marriage in favor of its being a matter of private contract and personal adventure."

For his part, the second husband sought to persuade the Court that the "recognition of Vicenta's divorce in Nevada is a more enlightened view" — in vain. The argument is brushed aside in the first Resolution on the Motion to Reconsider, thus: "The argument should be addressed to the legislature. As the case presently stands, the public policy of this forum is clearly adverse to such recognition... The principle is well-established, in private international law, that foreign decrees cannot be enforced or recognized if they contravene public policy[14]... It is, therefore, error for the intervenor to ask that 'private international law — rather than Philippine civil law—should decide the instant case,' as if the two branches of the law contradicted one another."

The second point follows logically from the first. In the words of the decision, "[the defendant-wife's] marriage and cohabitation with Russell Leo Moran is technically 'intercourse with a person not her husband' from the standpoint of Philippine Law, and entitles plaintiff-appellant Tenchávez to a decree of 'legal separation under our law, on the basis of adultery.'"

The second case of *Lapuz-Sy* settles the disputed question of whether a pending action for legal separation can be continued at all if either spouse should die *pendente lite.* A highly-respected authority in Philippine civil law made the following distinction: if the defendant (who would therefore be the guilty spouse if the suit were successful) died *pendente lite,* the action should terminate; if, however, it was the plaintiff (the innocent party if the suit succeeded) who died *pendente lite,* the action should be allowed to continue, the reason being that a decree of legal separation would result in totally disqualifying the defendant from the succeeding to the deceased consort. Article 834, par. 3 of the old Civil Code[15] was by the authority cited as applicable in principle:

[13] *I.e.,* the second marriage.

[14] Citing NUSSBAUM, PRINCIPLES OF PRIVATE INTERNATIONAL LAW 232 (1943).

[15] By virtue of an amendment of 24 April 1958, now Article 835, par. 1 of the SPANISH CIVIL CODE.

"Cuando estuviesen los cónyuges separados en virtud de demanda, se esperará el resultado del pleito."[16], notwithstanding the ommission of this article in our Code.[17]

Lapuz settles the controversy by laying down an absolute rule: the death of either party extinguishes the action.[18] The rational of the decision is explained in this manner: "An action for legal separation... is purely personal... Being personal in character, it follows that the death of one party to the action causes the death of the action itself — *actio personalis moritur cum persona* . . . A review of the resulting changes in property relations between spouses shows that they are solely the effect of the decree of legal separation; hence, they cannot survive the death of the plaintiff if it occurs prior to the decree. [I]t is apparent [from Article 106, which enumerates the effects of legal separation] that the right to the dissolution of the conjugal partnership of gains (or of the absolute community of property), the loss of right by the offending spouse to any share of the profits earned by the partnership or community, or his disqualification to inherit by intestacy from the innocent spouse as well as the revocation of testamentary provisions in favor of the offending spouse made by the innocent one, are all rights and disabilities that, by the very terms of the Civil Code article, are vested exclusively in the persons of the spouses; and by their nature and intent, such claims and disabilities are difficult to conceive as assignable or transmissible... A further reason why an action for legal separation is abated by the death of the plaintiff, even if property rights are involved, is that these rights are mere effects of a decree of separation, their source being the decree itself; without the decree such rights do not come into existence, so that before the finality of a decree, these claims are merely rights in expectation. If death supervenes during the pendency of the action, no decree can be forthcoming, death producing a more radical and definitive separation; and the expected consequential rights and claims would necessarily remain unborn."

DONATIONS PROPTER NUPTIAS

The case of *Mateo v. Lagua*[19] is authority for the rule that a donation *propter nuptias,* just like ordinary donations, may be reduced for inofficiousness if it impairs the legitime of the donor's compulsory heirs. The donation *propter nuptias* there was shown to have exceeded the disposable portion and prejudiced the legitime of the donor's son. The donee alleged that donations *propter nuptias* are revocable only for any of the grounds enumerated in Article 132 and inofficiousness is not one

[16] When the spouses are separated by virtue of a suit, the outcome of the case shall be awaited.

[17] 3 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 235-236 (1973 ed.).

[18] In *Lapuz,* it was in fact the plaintiff who died.

[19] G.R. No. 26270, October 30, 1969, 29 SCRA 864 (1969).

of them. Explicitly stating that such a donation is without onerous consideration and hence is an act of liberality (which rule had been clearly implied in *Solis v. Barroso,*[20]) *Mateo* holds that these donations "remain subject to reduction for inofficiousness upon the donor's death, if they should infringe the legitime of a forced heir."[21]

When the donation *propter nuptias* is made by one of the affianced to the other, a definite limit is set by Article 130 for donations of present property, namely one-fifth thereof.[22] Explaining the application of this rule, J.B.L. in *Mayor v. Millán*[23] pointed out that the limit must be computed on the basis of the value of the donor's entire patrimony, not on that of the particular property donated. Thus, the decision brushed aside the claim that the donation was valid only as to one-tenth of the specific lot donated.

PARAPHERNAL PROPERTY

In *Castillo v. Pasco,*[24] the question was the character of the fishpond which had been purchased partly with paraphernal and partly with conjugal funds. Neither Article 148, which enumerates the exclusive property of the spouses, nor Article 153, which sets forth what are classified as the conjugal partnership property, is explicit on this point. J.B.L., in *Castillo,* clarifies the matter: "As the litigated fishpond was purchased partly with paraphernal funds and partly with money of the conjugal partnership, justice requires that the property be held to belong to both patrimonies in common, in proportion to the contributions of each to the total purchase price..." Support for this rule is found in Manresa's commentaries: "... *debemos deducir que cuando una finca, por ejemplo, se compra con dinero... de la mujer y de la Sociedad, pertenece a aguellos de quienes procede el precio, y en la proporción entregada por cada cual.*"[25]

The wife, of course, is the owner of her paraphernal property. So Article 136 provides. Since the right of ownership includes the *ius disponendi,* it is set forth in Article 140 that: "A married woman of age may mortgage, encumber, alienate or otherwise dispose of her paraphernal property, without the permission of the husband, and appear alone in court to litigate with regard to the same." At the same time Article 138 provides that "the fruits of the paraphernal property form part of the assets of the conjugal partnership..." There is no conflict

20 53 Phil. 912 (1929).

21 Citing 21 SCAEVOLA, CODIGO CIVIL 328-329; 348-349 (2d ed.); 1 REYES & PUNO, AN OUTLINE OF PHILIPPINE CIVIL LAW 166 (1964).

22 Formerly one-tenth, under Article 1331 of the old Code.

23 103 Phil. 132 (1958).

24 G.R. No. 16857, May 29, 1964, 11 SCRA 102 (1964).

25 ". . . we should conclude that when a firm, for instance is purchased with funds . . . belonging to the wife and the conjugal partnership, it belongs to the parties from whom the purchase price came, in proportion to the amount contributed by each."

26 Quoting MANRESA, 549 (5th ed.).

between these last two provisions, as J.B.L.'s *ponencia* in *Pérez v. Pérez*[27] points out: "If the wife were not in any way incapacitated, the mere fact that the alienation of her parapherna would deprive the conjugal partnership of the future fruits thereof would not give rise to a cause of action for injunction, since the conjugal partnership is only entitled to the *net* fruits of such property, after deducting administration expenses[28]... More fundamental still, the wife's statutory power to alienate her parapherna necessarily implies power to alienate its future fruits, since the latter are mere accessory to the property itself."

The last sentence quoted is carefully worded: it tells us that the wife has the power to dispose of her parapherna absolutely, that is to say, to transfer full and complete ownership, including the *jus fruendi* to the transferee. But whatever net fruits are produced thereby while it is owned by the wife are conjugal and cannot be alienated by her.

CONJUGAL PARTNERSHIP

One of the more troublesome provisions in the section on conjugal property is Article 158, which has to do with works introduced or put up by the partnership upon separate property of either spouse. The first paragraph talks of improvements other than buildings; the second, of buildings specifically. Both paragraphs were criticized by J.B.L. in his observations on the new Code.

The first paragraph, reading: "Improvements, whether for utility or adornment, made on the separate property of the spouses through advancements from the partnership or through the industry of either the husband or the wife, belong to the conjugal partnership," provoked the following oft-cited comment from him:

"The old rule of Article 1404 of the Code of 1889 was that the *'expensas útiles'* (i.e. the *cost* of the improvement) should be reimbursed to the partnership. The change makes the present law unworkable. If the improvement is conjugal, but the land is separate, how are they to be sold or partitioned? There is no co-ownership because the objects are different; there can be no partition, because the land and the improvements cannot be separated. And if the improvement should happen to consist in leveling the land or in the excavating of irrigation canals, what would belong to the partnership? The empty space? This is ridiculous, yet under the article the land remains the property of the spouse. The old rule is decidedly better."[29]

---

[27] 109 Phil. 654 (1960).

[28] Citing People's Banks & Trust Co. v. Register of Deeds of Manila, 60 Phil. 167 (1934).

[29] J. B. L. Reyes, *Observations on the New Civil Code on Points Not Covered by Amendments Already Proposed*, 15 LAW. J. 448 (1950).

On the second paragraph, providing: "Buildings constructed, at the expense of the partnership, during the marriage on land belonging to one of the spouses, also pertains to the partnership, but the value of the land shall be reimbursed to the spouse who owns the same:" he has this to say:

"In the case of *buildings,* the Code should specify as of what time the land ceases to be private and is to be considered conjugal, because the rule is unsettled. If the land is to remain private until liquidation and payment, then the partnership can only encumber or sell the building but not the land; and who will buy the former? Practical solutions here are sorely needed."[30]

Indeed that is exactly what the Supreme Court held in the case of *Padilla v. Padilla,*[31] decided in 1943 by Justice Jorge Bocobo. Three rules were there laid down regarding this precise situation (which is sometimes referred to as reverse accession):

(1) The consort on whose land the partnership building is put up retains ownership (of the land) until paid at liquidation time;

(2) Payment cannot be demanded before liquidation;

(3) The value to be reimbursed is that at the time of liquidation.

In 1961, the third *Padilla* case was decided.[32] This time the *ponente* was J.B.L. and two additional rules were laid down:

(4) If the conjugal building is destroyed before reimbursement (even if the destruction occurs after the dissolution of the partnership), the land remains separately owned; and

(5) Once reimbursement is made, the conversion of the land from separate to conjugal retroacts to the time immediately before the dissolution of the partnership.

Actually this rule of retroactivity redeems a bad situation somewhat, Senator Tolentino had spoken out on this problem, saying: "The argument that a liquidation of the partnership must be awaited, in order to determine whether there is conjugal property, before the ownership of the land can pass to the partnership, is questionable logic. It confuses the conjugal partnership property during the marriage with shares of the spouses in the net assets of the partnership after its dissolution and liquidation. It assumes that the partnership cannot acquire ownership of property unless it is first liquidated. This is absurd, because if this were so, the partnership can never become owner of properties purchased

[30] *Id.* 448-449.
[31] 74 Phil. 377 (1943).
[32] A second one, Padilla v. Paterno, had been decided in 1953 and reported in 93 Phil. 884 (1953). The third case is found in 3 SCRA 678 (1961).

on credit, until there is a dissolution and liquidation of such partnership; and by the time the liquidation is over, there would be no more partnership to which the ownership can pass, because it would have already been dissolved."[33]

The same line of thought is pursued by J.B.L. in the *Padilla ponencia*: "They (i.e. the paraphernal lots) cannot be considered to have become conjugal property only as of the time their values were paid to the estate of the widow . . . because by that time the conjugal partnership no longer existed and it could not acquire the ownership of said properties. The acquisition by the partnership of these properties was . . . subject to the suspensive condition that their values would be reimbursed to the widow at the liquidation of the conjugal partnership; once paid, the effects of the fulfillment of the condition should be deemed to retroact to the date the obligation was constituted."[34]

Incidentally, these rules laid down in the *Padilla* cases were basically reaffirmed in the 1967 case of *Maramba v. Lozano*,[35] penned by Mr. Justice Makalintal.

Balicudiong v. Balicudiong[36] reiterates the well-settled rule that the presumption of conjugality under Article 160 applies only to property shown to have been acquired during coverture. Acquisition during coverture is not presumed. The case of *Ponce de León v. Rehabilitation Finance Corporation*,[37] decided in 1970 by the Court through Mr. Chief Justice Concepción and various earlier cases had consistently laid down this doctrine; its latest articulation was made in *Torela v. Torela*,[38] a 1979 decision penned by Mr. Justice Abad Santos.

SEPARATION OF PROPERTY

The case of *Garcia v. Manzano*[39] posed an interesting question: In cases where the wife is the administrator of the partnership and she abuses her powers of administration, may the husband petition the courts for separation of property? Answering this question in the negative, J.B.L., speaking for the Court, pointed out that separation of property can take place under the Code only when so stipulated before the marriage in the marriage settlements, or, during the marriage, only in the six cases mentioned in Article 191. The enumeration in 191 is "limitative, in view of the Code's restrictive policy," and the right, given by 191 to the wife, to ask for separation of property in case of abuse by the husband of his

---

[33] Reproduced in 1 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 401 (1974 ed.).
[34] NEW CIVIL CODE, art. 1187.
[35] G.R. No. 21533, June 29, 1967, 20 SCRA 474 (1967).
[36] G.R. No. 29603, June 7, 1971, 39 SCRA 386 (1971).
[37] G.R. No. 24571, December 18, 1970, 36 SCRA 289 (1970).
[38] G.R. No. 27843, October 11, 1979, 93 SCRA 391 (1979).
[39] 103 Phil. 798 (1958).

powers of administration, cannot be extended, *mutatis mutandis,* to the husband where it is the wife who, as administratix, abuses her powers, because that would ignore the philosophy underlying the provisions in question. The wife is granted a remedy against the mismanagement or maladministration of the husband because, by express provision of law, it is the husband who has the administration of the conjugal partnership." If the wife, being the administratrix by tolerance or consent of her husband, mismanages the partnership affairs, "the remedy of the husband, does not lie in a judicial separation of property but in revoking the power granted to the wife and resume the administration of the community property and the conduct of the affairs of the conjugal partnership." In fact, in *García,* that is what the husband should have done, since the wife had only assumed administration *de facto* and by his sufferance.

May I submit, however, that there is one situation where the solution in *Garcia* may not hold: supposing that before the marriage an antenuptial agreement is drawn up conferring the administration upon the wife, under Article 112. If the wife then abuses her powers of administration, will it be possible for the husband unilaterally and extrajudicially to revoke the wife's powers and take over the administration? There would be no question of *resuming* administration, because the husband never had it. And it is highly doubtful whether the husband can unilaterally revoke the power of administration granted by contract in the antenuptial agreement. Should he not then be allowed to invoke Articles 191 and 167 as basis, *mutatis mutandis* for petitioning the court for transfer of administration to him?

FAMILY

The mandate in Article 222 that "[N]o suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed," was interpreted in two J.B.L. *ponencias* — *Mendoza v. Court of Appeals*[40] and *Jiménez v. Jiménez*[41] to mean that the allegation of the failed effort is essential for the existence of a cause of action. According to *Mendoza,* "since the law forbids a suit being initiated (filed) or maintained unless such efforts at compromise appear, the showing that efforts in question were made is a condition precedent to the existence of the cause of action. It follows that the failure of the complaint to plead that plaintiff previously tried in earnest to reach a settlement out of court renders it assailable for lack of cause of action and it may be so attacked at any stage of the case even on appeal."

[40] G.R. No. 23102, April 24, 1967, 19 SCRA 756 (1967).
[41] G.R. No. 26797, May 27, 1968, 23 SCRA 825 (1968).

Mendoza, however, reminds us that Article 222 expressly excludes from its operation those cases falling under Article 2035, namely: (1) the civil status of persons; (2) the validity of a marriage or a legal separation; (3) any ground for legal separation; (4) future support; (5) the jurisdiction of courts; and (6) future legitime. Since the issues involved in *Mendoza* included future support and the validity of the marriage, the exertion of efforts towards a compromise, as well as an allegation thereof in the complaint, was held to be not required. This rule was reiterated in the case of *Versoza v. Versoza,*[42] decided a year later by Mr. Justice Sánchez.

PATERNITY AND FILIATION

Natural Children

As every student of the law of *Persons* knows, recognition of a natural child may be either voluntary or compulsory — the latter being possible only through a judicial action. The grounds for an action for recognition are given in Article 283, as against the putative father; and in Article 284, as against the mother. The case of *Alabat v. Vda. de Alabat*[43] reiterates the basic rule that the grounds given in those two articles are not in themselves constitutive of recognition, but are only bases for a court action to compel recognition. Without the judicial pronouncement, no recognition can be said to have been made on the basis merely of the existence of these grounds. As emphatically put by J.B.L. in *Alabat*: "... it (i.e. the lower court) erred in declaring the natural daughter...entitled to succeed her late natural father...solely on the basis of her enjoyment of the status of a natural child. It is an elementary and basic principle in our law of succession that the rights of a natural child spring not from the filiation itself but from the child's acknowledgment by the natural parent made voluntarily or by court decree. Equally basic and elementary... is the fact that possession or enjoyment of the status of natural child is *per se* not a sufficient operative acknowledgment but only a ground to compel the parent to acknowledge the child."[44] This rule is worth emphasizing because, basic though it is, it is one that is all too often overlooked, if not altogether misunderstood, by people who should know better.

Illegitimate Children Other Than Natural

The matter of illegitimate filiation other than natural (commonly called spurious filiation) has been something of a problem. The questions of how it is established and the prescriptive period, if any, for its

[42] G.R. No. 25609, November 27, 1968, 26 SCRA 78 (1968).
[43] G.R. No. 22169, December 29, 1967, 21 SCRA 1479 (1967).
[44] Citing the CIVIL CODE (1889), art. 135; NEW CIVIL CODE, art. 283.

establishment are not explicitly answered by the Code, which devotes a meagre three articles[45] to spurious children. Explicably, therefore, the rules laid down by the Supreme Court on this matter show an interesting genesis. A lecture such as this does not allow for a very detailed treatment, but the main lines of development may be traced.

In 1957 the case of *Reyes v. Zuzuárregui*[46] was decided. The decedent had died in 1953 and the question was whether the claimants, four in number, had successional rights, upon the claim that they were the decedent's spurious children. The decedent had, in various documents signed by him, admitted his paternity, with respect to all the four. In granting them successional rights, the majority opinion declared: "There is nothing in the new law[47] from which we may infer that in order that an illegitimate child may enjoy his successional right he must first bring an action for recognition during the lifetime of the putative father...Neither is there any provision which requires that he be recognized as such before he can be accorded such successional right... [A]rticle 887, when speaking of illegitimate children as compulsory heirs, contains only the following condition: 'their filiation must be duly proved.'...The reason perhaps behind this liberal treatment is that, because they are spurious or offsprings of illicit relations, it would be obnoxious to oblige them to bring an action for recognition during the lifetime of their putative parents, let alone the embarrassment and scandal that such action would bring to all parties concerned."

What we can gather then from *Reyes v. Zuzuárregui* is that for a spurious child to claim his rights, it is not necessary that there be recognition, either voluntary or compulsory, and since this is so, it is therefore, not necessary, either, that an action for recognition be filed during the putative parent's lifetime. All that is needed is that the child's filiation be duly proved in a proceeding which can take place even after the parent's death. However, in an *obiter dictum,* the majority opinion goes on to say: "But, even if we uphold the theory that recognition is still necessary to accord to appellees the right to inherit, we may say that the evidence on record more than sufficiently establishes that appellees had been recognized by the deceased as his illegitimate children."

J.B.L., concurring in part and dissenting in part, states with emphasis: ". . . I cannot subscribe to the ruling that spurious children who are already of age, but have not been voluntarily acknowledged as such, may bring an action for declaration or investigation of their paternity even after the death of their progenitors. Such a holding seems

[45] Arts. 287 to 289.
[46] 102 Phil. 346 (1957).
[47] *I.e.,* the NEW CIVIL CODE.

to me subversive of the principles and plan of the Civil Code on the matter." He then points out the following:

(1) Our Civil Code, like the Spanish, establishes a gradation of children, both as to kind (legitimate, natural, and spurious) and as to rights (succession, periods for bringing actions to claim filiation, transmissibility of such action):

(2) Our Code nowhere specifies the period within which the action to investigate spurious paternity under Article 289 should be brought.

(3) It is inconceivable that a spurious child should enjoy a longer prescriptive period for establishing his filiation than a natural child, just because of the silence of the Code. "To hold that [a natural] child's action to claim his due is limited by the life span of the parent, while the claims of a child conceived in adultery or incest are not so limited is to step from the bounds of law into the realm of sentimental romance."

(4) The reason behind limiting the period for investigation of paternity — namely, to minimize false claims and blackmail suits — to the putative parent's lifetime, applies just as well to spurious children as to natural ones. The very facility of investigation of paternity under present law "demands that the action should not be directed against the parent's heirs, who are ordinarily kept in the dark as to the extra-matrimonial activities of their predecessor." And going back in history, he recalls that "...historically, the refusal of the Code Napoleon and the Spanish Civil Code of 1889 to allow a free investigation of illegitimate paternity was not motivated by a desire to cover up the debaucheries of the ruling aristocracy, as is commonly believed but to avoid its being used as a weapon for extortion. Under the French monarchy, that regime of privilege, illegitimate paternity could be investigated practically without restriction. It was the French Revolution, the revolution of the guillotine and the Rights of Man, the destroyer of feudal and aristocratic privileges, that prohibited inquiries on illegitimate paternity by the Law of the 12 Brumaire, An II, at the same time that it enlarged the successional rights of bastards; and the then restrictive spirit of that law was carried into the subsequent Codes of France and Spain."

(5) The doctrine that a natural child not recognized (either voluntarily or compulsorily) has no rights to support or succession is not peculiar to natural children but applies to all illegitimate children, natural or not natural.

(6) At the very least, the spurious child must be required to file the action to establish his filiation (assuming that there has been no voluntary recognition) during the lifetime of the presumed parent, as in the case of the natural child.

He concurs, however, with the *obiter* in *Reyes* that the claimants had in fact been voluntarily recognized.

Then, in 1960, came the case of *Barles v. Ponce Enrile*[48] with Mr. Justice Gutierrez David as *ponente* and J.B.L. concurring in the result. *Barles* was a suit for compulsory recognition of children alleged to be spurious, against the father who was then still living. Setting aside the defense of prescription, the Court held that:

(1) such an action may be premised on any of the grounds specified in Articles 283 and 284 for natural children;

(2) such an action is subject to the same time limitation as that set in Article 285, for natural children.

In 1961, *Paulino v. Paulino,*[49] with Mr. Justice Padilla as *ponente,* was decided, again with J.B.L. concurring. The holding there was that a spurious child, in order to assert rights of support or succession, must prove his filiation either by voluntary or compulsory recognition, as in the case of natural children, and an action for compulsory recognition cannot be brought after the death of the putative father.

Noble v. Noble,[50] penned by Mr. Justice Barrera in 1966 involved an inheritance claim by one alleging to be a spurious child of the decedent — the allegation being that the claimant was "in continuous possession of status of a child of the late Don Vicente Noble by direct acts of the latter and/or his family. . ." The Court held such claim to be unfounded, because "there are cogent reasons, both legal and moral, which require that such [spurious] filiation must be acknowledged by the presumed parent." Acknowledged, that is, either voluntarily or compulsorily. It is significant that the Court in *Noble* explicitly relied on the *Paulino* case, pointing out that that was a unanimous decision, and stated that *Paulino* had reversed *Zuzuárregui.* There is more than a vague hint here that *Paulino,* which was unanimous, is more persuasive than *Zuzuárregui,* which carried one dissenting note — that of J.B.L.

Perplexingly, in 1967 came *Paterno v. Paterno,*[51] with J.B.L. as *ponente,* involving an action for successional rights by individuals claiming to be spurious children of the deceased. The claim was anchored on continuous possession of the status of spurious children. The decision observes that there was no allegation of voluntary acknowledgement, rather that the claimants' main action is one for recognition of their status as spurious children. The decision is perplexing because the case was remanded to the JDRC for determination of the issue of paternity — on the assumption, it seems, that the JDRC could entertain this issue.

---

[48] 109 Phil. 522 (1960).
[49] 113 Phil. 697 (1961).
[50] G.R. No. 17742, December 17, 1966, 18 SCRA 1104 (1966).
[51] G.R. No. 23060, June 30, 1967, 20 SCRA 585 (1967).

If this were so, the cases, cited above, coming after *Zuzuárregui* would be set at naught. Fortunately, the import of the *Paterno* ruling is watered down by the fact that the main point at issue was really whether the JDRC had jurisdiction to entertain a case which involved participation in a decedent's estate.

Whatever uncertainties may have been generated by *Paterno* were, however, laid to rest by *Clemeña v. Clemeña,*[52] decided in 1968, also penned by J.B.L. Here the observations set forth by J.B.L. on his concurring and dissenting opinion in *Zuzuárregui* become the holding of a unanimous Court. The issue in *Clemeña* was precisely whether or not an alleged spurious child may bring an action to establish his filiation even after the death of his supposed father. The Court ruled that he cannot: "...we are of the opinion, after mature deliberation, that reason and history support the thesis of the appellants that the action to establish paternity of spurious children... should at least be subject to the same limitations prescribed by law to actions by natural illegitimate children seeking compulsory recognition." And the reasons cited are those explained by J.B.L. in his separate opinion in *Zuzuárregui,* as well as the holding in *Barles* that both actions (i.e. for establishment of natural filiation and of spurious filiation) are substantially identical in nature and purpose, which is to establish a generative link bebetween claimant and supposed parent.

The *Clemeña* ruling is confirmed in the 1976 case of *Divinagracia v. Rovira*[53] where Mr. Justice Aquino, speaking for the Court, averred that the filiation of spurious children should be proven — and this can be done by voluntary means, under Article 278, or by compulsory means, under Articles 283 and 284, and the prescriptive period for the latter means is the same as that provided in Article 285.

Roma, locuta, causa finita — or at least we hope.

PATRIA POTESTAS
Over the Person of the Child

Medina v. Makabali,[54] penned by J.B.L. in 1969, is instructive because it explains in a nutshell the evolution of the concept of *patria potestas.* Awarding the custody of an 8-year-old child to his foster mother rather than to the biological mother who had left him in the former's care, the Court reminds us that " 'in all questions on the case, custody, education and property of children, the latter's welfare shall be paramount,[55] and that for compelling reasons even a child under seven,[56] may be ordered separated from the mother. This is as it should be, for in the continual

---

[52] G.R. No. 24845, August 22, 1968, 24 SCRA 720 (1968).
[53] G.R. No. 42615, August 10, 1976, 72 SCRA 307 (1976).
[54] G.R. No. 26953, March 28, 1969, 27 SCRA 502 (1969).
[55] CIVIL CODE art. 363; now Art. 8, Pres. Decree No. 603 (1974).
[56] *Cf.* now Art. 17 of Pres. Decree No. 603—the Child and Youth Welfare Code —which provides:

evolution of legal institutions, the *patria potestas* has been transformed from the *jus vitae ac necis* of the Roman Law, under which the offspring was virtually a chattel of his parents, into a radically different institution, due to the influence of Christian faith and doctrines. The obligational aspect is now supreme. As pointed out by Puig Peña, now 'there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor.' "

Over the Property of the Child

The extent of the parent's authority on the property of their children under Article 320 and 326 was explained in the case of *Nario v. Philamlife:*[57] first, if the child's property is worth more than two thousand pesos, the parents cannot exercise their powers as legal administrators of said property unless they file a formal application for guardianship under Rule 93, Section 7 of the Rules of Court; second, in either case—whether the child's property be not more than two thousand pesos and therefore are administrators thereof without need of court appointment, or the child's property be more than that amount and therefore are administrators only upon court appointment — their powers of administration do not extend to acts of disposition, for which special authority is required. This second limitation applies both to movables and immovables and thus clears up the ambiguity of Article 164 of the old Civil Code as to whether the prohibition covers immovables only.

PROPERTY

Classification

According to its nature, property is classified either as immovable or movable property. An enumeration of immovables is given in Article 415, of which the first paragraph reads: "Land, buildings, roads and constructions of all kinds adhered to the soil."

The troublesome term here is "building." *Tumalad v. Vicencio,*[58] penned by J.B.L. in 1971, reiterates the ruling in *López v. Orosa,*[59] in which Mr. Justice Félix, speaking for the Supreme Court, explains that: ". . . it is obvious that the inclusion of the building, separate and distinct

---

Art. 17. *Joint Parental Authority.*—The father and mother shall exercise jointly just and reasonable parental authority and responsibility over their legitimate or adopted children. In case of disagreement, the father's decision shall prevail unless there is a judicial order to the contrary.

In case of the absence or death of either parent, the present or surviving parent shall continue to exercise parental authority over such children, unless in case of the surviving parent's remarriage, the court, for justifiable reasons, appoints another person as guardian.

In case of separation of his parents, no child under five years of age shall be separated from his mother, unless the court finds compelling reasons to do so.

[57] G.R. No. 22796, June 26, 1967, 20 SCRA 434 (1967).

[58] G.R. No. 30173, September 30, 1971, 41 SCRA 143 (1971).

[59] 103 Phil. 98 (1958).

from the land, in the enumeration of what may constitute real properties could mean only one thing — *that a building is by itself an immovable property*... irrespective of whether or not said structure and the land on which it is adhered to (sic) belong to the same owner...."

The decision, however, hastens to add that although a building is by its nature immovable, the parties to a contract may by agreement treat it as a movable and such agreement will be binding *as between the parties,* notwithstanding the improper classification that they have given to the property.[60] Thus, in *Tumalad,* where the parties made the building the subject-matter of a chattel mortgage, such a mortgage was upheld and the mortgagor was not allowed to impugn it. As against third parties, however, who have no knowledge of the improper chattel mortgage, the classification of the building as an immovable will be strictly adhered to, with the consequence that the chattel mortgage will be ineffective as to said third parties. Such was the holding in *Associated Insurance v. Iya,*[61] penned by Mr. Justice Felix, where the subsequent real estate mortgage was preferred to a prior chattel mortgage over a house.

The nature of sugar quotas was the subject-matter of two J.B.L. *ponencias. Presbítero v. Fernández*[62] and *Gonzales v. Gonzales*[63] held that a sugar quota is an improvement attached to the land itself, under Section 9 of Act 4166 (the Sugar Limitation Law) and Section 4 of RA 1825. As such, it is an immovable, "just like servitudes and other real rights over an immovable," under Article 415, paragraph 10.

ACCESSION

The rules on *accesión industrial* laid down in Articles 447 to 456 are for the purpose of resolving conflicting claims between opposing parties resulting from a situation where the thing built, planted, or sown and the land belong to different owners. *Gaboya v. Cui*[64] defines the scope of the operation of these rules: "Under the articles of the Civil Code on industrial accession by edification on the principal land such accession is limited either to *buildings erected on the land of another,* or buildings constructed by the owner of the land with *materials owned by someone else* . . . Nowhere in these articles on industrial accession is there any mention of the case of [the] landowner building on his own land with materials owned by himself. The reason for the omission is readily apparent: recourse to the rules of accession is totally unnecessary and inappropriate where the ownership of land and of the materials used to build thereon is concentrated in one and the same person. Even if the law did not provide

[60] Citing Manarang v. Ofilada, 99 Phil. 109 (1956); Standard Oil v. Jaramillo, 44 Phil. 632 (1923); Luna v. Encarnacion, 91 Phil. 531 (1952); Navarro v. Pineda, G.R. No. 18456, November 30, 1963, 9 SCRA 631 (1963).

[61] 103 Phil. 972 (1958).

[62] G.R. No. 19527, March 30, 1963, 7 SCRA 1962 (1963).

[63] G.R. No. 22717, November 27, 1968, 26 SCRA 72 (1968).

[64] G.R. No. 19614, March 27, 1971, 38 SCRA 85 (1971).

for accession, the landowner would necessarily own the building, because he has paid for the materials and labor used in constructing it. We deem it unnecessary to belabor this obvious point."

Obvious indeed is this, because if the landowner also owned the materials used in what is built, planted, or sown on his own land, then there would be no conflict of rights that would need resolution.

Going now to the proper application of these rules on *accession industrial,* it is equally plain that the criterion for resolving the conflict of rights, is the good faith or the bad faith of the parties. And as set forth in the articles above-mentioned, the party in good faith is, as a rule, favored and the one in bad faith is penalized. This principle is basic in law. In *Bernardo v. Bernardo,*[65] J.B.L. explains that the "essence of the *bona fides* or good faith... lies in honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another." Again, in *Baltazar v. Caridad,*[66] he tells us that "good faith must rest on a colorable right in the builder, beyond a mere stubborn belief in one's title despite judicial adjudication."

In the kind of accession governed by Article 448, the situation is of a person building, planting, or sowing on another's land. If both parties are in good faith here, the landowner is given two options: (1) to buy what has been built, planted, or sown; or (2) to compel the builder or the planter to buy the land, or the sower to pay the proper rent. The qualification is that the landowner cannot exercise the second option against the builder or the planter if the value of the land is considerably greater than that of the works — his second option in such a case being merely to compel the builder or the planter to pay the proper rent. An interesting case on this article was *San Diego v. Montesa,*[67] where the builder, and presumably also the landowner, were in good faith. In an action by the landowners against the builders (what had been built was a house) for recovery, the lower court ordered the latter to vacate the land upon payment to them by the former of a specific amount, obviously representing the value of the house. After this decision became final, the builders moved to execute the decision, that is, to compel the landowners to pay them the amount in question preparatory to their (the builders') vacating the land. *Inter alia,* the landowners raised two points: (1) the builders have no right to make them pay, because it is they — that is, the landowners — who have the right to exercise the options under Article 448; and (2) they — the landowners — have elected to demand rentals on the land. The second point first: although, the decision did not bother to discuss this point, it is so manifestly untenable that a few words on it will suffice

[65] 96 Phil. 202 (1954).
[66] G.R. No. 23509, June 23, 1966, 17 SCRA 460 (1966).
[67] G.R. No. 17985, September 29, 1962, 6 SCRA 207 (1962).

— the landowner does not have the option to demand rental if, as in this case, there is no showing at all that the value of the land is considerably more than that of the works. Now, as to the first point, the following dispositions were laid down:

(1) Although normally it is the landowner who has the option either to buy the improvement or sell the land, "this option is no longer open to the respondent landowners because the decision in the former suit limits them to the first alternative by requiring the petitioners to vacate the land . . . upon payment of ₱3,500.00. Evidently, the Courts of First Instance and of Appeals opined that the respondents' suit to recover the property was an exercise of their right to choose to appropriate the improvements and pay the indemnity fixed by law."

(2) "If it (the judgment sought to be executed) also orders petitioners to vacate only upon the payment, it did so in recognition of the right of retention granted to possessors in good faith by Article 546 of the Civil Code of the Philippines. This provision is expressly made applicable to builders in good faith (Article 448). The right of retention thus granted is merely a security for the enforcement of the possessor's right to indemnity for the improvements made by him."

(3) "As a result, the possessor in good faith, in retaining the land and its improvements pending reimbursement of his useful expenditures, is not bound to pay any rental during the period of retention; otherwise, the value of his security would be impaired."

Bad faith on the part of either the landowner or the builder, planter, or sower, of course, yields drastically different results, which we need not go into here. One of the questions that are relevant in this connection is whether a builder can be *bona fide* if the land on which he mistakenly builds is covered by a Torrens Title. In *J.M. Tuason & Co. Inc. v. Lumanlan,*[68] J.B.L., citing *J.M. Tuason & Co. Inc. v. Macalindong,*[69] penned by Mr. Justice Paredes, wrote: "As to Lumanlan's allegation in her counterclaim that she should be deemed a builder in good faith, a similar contention has been rejected in *Tuason & Co. v. Macalindong,* L-15398, December 29, 1962, where we ruled that there being a presumptive knowledge of the Torrens titles issued to Tuason & Co. and its predecessors-in-interest since 1914, the buyer from the Deudors (or from their transferee) can not, in good conscience, say now that she believed her vendor had rights of ownership over the lot purchased. The reason given by the Court is that: 'Had he investigated before buying and before building his house on the questioned lot, he would have been informed that the land is registered under the Torrens system in the name of J. M. Tuason & Co., Inc. If he failed to make the necessary inquiry, appellant is now

[68] G.R. No. 23497, April 26, 1968, 23 SCRA 230 (1968).
[69] G.R. No. 15398, December 29, 1962, 6 SCRA 938 (1962).

bound conclusively by appellee's Torrens title.'" This ruling was reiterated in the subsequent case of *J.M. Tuason & Co. Inc. v. Jurilla*,[70] with Mr. Justice Barredo as *ponente*.

As a rule, the bad faith of one party cancels out the bad faith of the other and their conflicting rights shall be adjudicated as if both had acted in good faith. Thus, Article 453 provides: "If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith."

"It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part."

The case of *Felices v. Iriola*[71] presents an interesting application of this article. It is important to give a brief picture of the factual situation: The plaintiff, a grantee of a homestead, sold to the defendant a portion thereof. The sale was executed within the five-year prohibitive period under Section 118 of the Public Land Law, and consequently null and void. Two years after the sale, the plaintiff sought to recover the land in question, offering to return the purchase price, but the defendant refused unless he were also paid the value of the improvements which he had put up on the property.

The Supreme Court, through J. B. L., ruled, first, that, the sale being absolutely void *ab initio*, the plaintiff never lost his ownership over the land and that the return of the purchase price was therefore not a case of repurchase but of mutual restitution, incident to the nullity of the conveyance. Secondly, on the issue of whether or not the defendant should be reimbursed the value of the improvements, on the theory, advanced by the defendant, that both he and the plaintiff knew the sale to be illegal and void and consequently their mutual bad faith was equivalent under Article 453 to good faith on both sides, the ruling was: "The rule of Article 453 of the Civil Code invoked by [defendant] can not be applied to the instant case for the reason that the lower court found, and [defendant] admits, that the improvements in question were made on the premises only after [plaintiff] had tried to recover the land in question from [defendant], and even during the pendency of this action in the court below. After [defendant] had refused to restore the land to the [plaintiff], to the extent that the latter even had to resort to the present action to recover his property, [plaintiff] could no longer be regarded as having impliedly assented or conformed to the improvements thereafter made by [defendant] on the premises. Upon the other hand,

[70] G.R. No. 19998, April 22, 1977, 76 SCRA 346 (1977).
[71] 103 Phil. 125 (1958).

[defendant], recognizing as he does [plaintiff's] right to get back his property, continued to act in bad faith when he made improvements on the land in question after he had already been asked extra-judicially and judicially, to surrender and return its possession to [plaintiff]; and as a penalty for such bad faith, he must forfeit his improvements without any right to reimbursement therefor." And the article cited for this last point is Article 449, providing: "He who builds, plants or sows in bad faith on the land of another, loses what is built, planted, or sown without right to indemnity."

In *Republic v. Lara*,[72] the issue *inter alia* was whether the Japanese forces which had occupied the defendant's land and converted it into a campsite and airfield for war purposes could be considered builders in bad faith under the Civil Code provisions on accession. Not so, wrote J.B.L. for the Court: ". . . the rules of [the] Civil Code concerning industrial accession were not designed to regulate relations between private persons and a sovereign belligerent, nor intended to apply to constructions made exclusively for prosecuting a war, when military necessity is temporarily paramount."

CO-OWNERSHIP

The case of *Estoque v. Pajimula*,[73] decided in 1968, is one of J. B. L.'s most interesting — and controversial — decisions on civil law. The issue involved in that case was co-ownership, specifically, the effect of a co-owner's sale of a specific portion of the property. Subject-matter of the litigation was a parcel of land owned in common and in equal shares by three individuals: for convenience, let us call them A, B, and C. A sold to X one-third of the lot, the deed of sale however, specifying a definite portion thereof, with descriptions of metes and boudns. The following day, in an extrajudicial settlement among A, B, and C, the entire lot was assigned to A. Eight years later, A sold to Y the remaining two-thirds of the lot, the deed likewise specifying the said portion by metes and bounds, such that the part already sold previously to X was excluded. X then sought to redeem the portion sold to Y, invoking Article 1620, on the right of redemption by co-owners. X's theory is that she was a co-owner, on the argument that the deed in her favor could not, under the principles of co-ownership, convey a specific physical portion of the land, and that the sale should be construed as having conveyed only an undivided one-third interest in the lot — so that when A acquired the two-thirds interest of B and C on the following day, the lot became common property of A and X. Therefore, continues the argument, when A sold the rest of the property to Y, it was really a sale of two-thirds interest owned by A and X, had the right to buy out Y as redeeming co-owner.

[72] 96 Phil. 170 (1954).
[73] G.R. No. 24419, July 15, 1968, 24 SCRA 59 (1968).

This theory was rejected by the Court, through J. B. L., on this reasoning: Granting that A could not have sold a particular portion to X, by no means does it follow that she intended to sell her undivided one-third interest. There is nothing in the deed of sale to justify such inference. That the seller could have validly sold her one-third undivided interest . . . is no proof that she did choose to sell the same. *Ab posse ad actu non valet illatio.*

"While on the date of sale to [X], said contract may have been ineffective, for lack of power in the vendor to sell the specific portion described in the deed, the transaction was validated and became fully effective when the next day the vendor . . . acquired the entire interest of her remaining co-owners and thereby became the sole owner [of the lot]. Article 1434 of the Civil Code of the Philippines clearly prescribes that —

" 'When a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee.' "

"Pursuant to this rule, appellant Estoque [i.e. X] became the actual owner of the *southeastern* third of lot 802 on October 29, 1951 [i.e. when A acquired the interest of B and C]. Wherefore, she never acquired an undivided interest in lot 802. And when eight years later Crispina Pérez [i.e. A] sold to the appellees Pajimula [i.e. Y] the *western* two-thirds of the same lot, appellant did not acquire a right to redeem the property thus sold, since their respective portions were distinct and separate."

The question however is: On the date of the sale to X, of the specific portion, was that sale ineffective? An earlier case, that of *Lopez v. Cuaycong*,[74] penned by Mr. Justice Bocobo in 1944, seems to provide a different answer. That case also involved a purported sale by a co-owner of a specific portion of the lot. Presenting the issue in the form of a question, the Supreme Court there held: "What rights did the intervenor acquire in this sale? The answer is: the same rights as the grantors had as co-owners in an ideal share equivalent in value to 10,832 square meters [This was the area of the specific portion purportedly sold] of the hacienda. No specific portion, physically identified, of the hacienda has been sold, but only an abstract and undivided share equivalent in value to 10,832 square meters of the common property . . . The fact that the agreement in question purported to sell a concrete portion of the hacienda does not render the sale void, for it is a well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so. *'Quando res not valet ut ago, valeat quantum valere potest.'* "

[74] 74 Phil. 601 (1944).

In defense of the *Estoque* holding, one could argue that the subsequent acquisition by the vendor, on the following day, of the interests of the two other co-owners gave a peculiar complexion to the case and ratified the purported transfer to X of the specified portion — on the ground that, there being no other co-owner than the vendor herself, X would then be barred from claiming any other portion other than the physical part which he agreed to buy, just as A would herself be barred from designating any other section of the land. That mutual estoppel then would preclude the existence of a co-ownership between the two.

Supposing, however, that the co-owners B and C had, instead of assigning their shares to A in an extrajudicial partition, sold their shares to strangers, would the *Estoque* decision still hold? Or would X now have a right to redeem from the vendees? These are questions that the *Estoque* decision leaves unanswered.

The case of *De la Cruz v. Cruz*,[75] penned by J. B. L. in 1970, also on co-ownership, proceeds from radically different facts and reiterates a principle that no one controverts. There, a married couple sold to one De la Cruz a specific portion of a conjugal lot (specifying 331 square meters on the northern part, comprising one-half of the lot). Two months later, the spouses sold to one Miranda the remaining portion. The first vendee then claimed the right to redeem as "co-owner." Brushing aside the claim, the Court held that "no right of redemption among co-owners exists." The rationale was: "Tested against the concept of co-ownership, appellant is not a co-owner of the registered parcel of land, taken as a unit or subject of co-ownership, since he and the spouses do not 'have a spiritual part of a thing which is not physically divided'[76], nor is each of them an 'owner of the whole, and over the whole he exercises the right of dominion, but he is at the same time the owner of a portion which is truly abstract . . .'[77] The portions of appellant-plaintiff and of the defendant spouses are concretely determined and identifiable, for the former belongs the northern half, and to the latter belongs the remaining southern half, of the land."

We note the basic differences between *Estoque* and *De la Cruz*. In the former, it was *one of the co-owners* purporting to sell a specific portion; in the latter, it was a sale of a specific portion by *both* (there being only two) *co-owners*.

In *Diversified Credit v. Rosado*,[78] where the husband constructed a house on land owned in common by his wife and twelve others, J. B. L. explained that: ". . . it cannot be validly claimed that the house con-

[75] G.R. No. 27750, April 17, 1970, 32 SCRA 307 (1970).
[76] Citing 3 SANCHEZ ROMAN, 162.
[77] Citing 3 MANRESA, 405.
[78] G R. No. 27933, December 24, 1968, 26 SCRA 470 (1968).

structed by her husband was built on land belonging to her, and Article 158 of the Civil Code can not apply. Certainly, on her 1/13 ideal or abstract share, no house could be erected." The basis for this was put forth thus: ". . . it is a basic principle in the law of co-ownership, both under the present Civil Code as in the Code of 1889, that no individual co-owner can claim title to any definite portion of the land or thing owned in common until the partition thereof. Prior to that time, all that the co-owner has is an ideal, or abstract, quota or proportionate share in the entire thing owned in common by all the co-owners."

POSSESSION

Article 544 gives to the possessor in good faith the right to the fruits received before the legal interruption of the possession. This article was applied by the Supreme Court in *Bautista v. Marcos,*[79] to a possessor who had acquired under the following circumstances: a parcel of land, then still part of the public domain was mortgaged by the possessor to his creditor with the stipulation that, while the debt remained unpaid, the latter was to take over the possession of the land as usufructuary, with right to the harvests. The mortgage was held to be void because at the time of its consttiution the land was not yet owned by the mortgagor (a free patent was not issued in his name until after two years). However J.B.L. explained that "the invalidity of the mortgage...does not... imply the concomitant invalidity of the collateral agreement whereby possession of the land mortgaged was transferred to plaintiff-appellee in usufruct... The [plaintiff-appellee]...believing her mortgagor to be the owner of the land mortgaged and not being aware of any flaw which invalidated her mode of acquisition, was a possessor in good faith[80] and as such had the right to all the fruits received during the entire period of her possession in good faith.[81]

The case of *Chua Hai v. Kapunan*[82] involved an application of Article 559. Goods had been bought from a hardware store and a check issued by the buyer, which check, however, was dishonored for lack of funds. The goods were subsequently resold by the buyer to a third person who had no notice of the swindle. In a criminal action for estafa, the trial court ordered the return of the goods to the swindled vendor. Striking down the order as improper, J. B. L., for the Supreme Court, observed that: "To deprive the possessor in good faith, even temporarily and provisionally, of the chattels possessed, violates the rule of Article 559 of the Civil Code. The latter declares that possession of chattels in good faith is *equivalent to title;* i.e. that for all intents and purposes, the possessor is the owner, until ordered by the proper court to restore the thing

[79] 113 Phil. 421 (1961).
[80] Citing CIVIL CODE, art. 526.
[81] Citing CIVIL CODE, art. 544.

to the one who was illegally deprived thereof. Until such decree is rendered (and it can *not* be rendered in a criminal proceeding in which the possessor is not a party), the possessor, or presumptive owner, is entitled to hold and enjoy the thing; and 'every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.' "[82]

SERVITUDES

The case of *Ronquillo v. Roco*[83] reiterates the rule that an easement of right of way, being essentially discontinuous, cannot be acquired by prescription, in accordance with Articles 537 and 539 of the old Code.[84] Mr. Justice Montemayor, however, who penned the majority opinion (and who, interestingly, professed himself to disagree with it), brings out two significant points: (1) that in the earlier case of *Municipality of Dumangas v. Bishop of Jaro*,[85] the Supreme Court had held that the continued use by the public of a path to and from the church had given the church and the public an easement by prescription;[86] (2) that the easement of right of way may now be acquired through prescription, at least since the introduction into this jurisdiction of the special law on prescription.[87]

Analyzing the nature of this easement and addressing himself to Justice Montemayor's two points, J.B.L. in his concurring opinion explains: "The essence of this easement (*servidumbre de paso*) lies in the power of the dominant owner to cross or traverse the servient tenement without being prevented or disturbed by its owner. As a servitude, it is a limitation on the servient owner's rights of ownership, because it restricts his right to exclude others from his property. But such limitation exists only when the dominant owner actually crosses or passes over the servient estate; because when he does not, the servient owner's right of exclusion is perfect and undisturbed. Since the dominant owner can not be continually and uninterruptedly crossing the servient estate, but can do so only at intervals, the easement is necessarily of an intermittent or discontinuous nature . . . From this premise, it is inevitable to conclude, with Manresa and Sánchez Román, that such easement can not be acquired by acquisitive prescription . . . "

---

[82] 104 Phil. 110 (1958).
[83] 103 Phil. 84 (1958).
[84] NEW CIVIL CODE, arts. 620 & 622.
[85] 34 Phil. 541 (1916).
[86] And, indeed, in that case, the Supreme Court, speaking through Mr. Justice Torres, said: "It is therefore to be presumed that the use of said side door also carries with it the use by faithful Catholics of the municipal land over which they have had to pass in order to gain access to said place of worship, and, as their use of the land has been continuous, it is evident that the Church has acquired a right to such use by prescription."
[87] Referring to Section 41, CODE OF CIVIL PROCEDURE.

Regarding the Code of Civil Procedure, he observes that "its section 41, in conferring prescriptive title upon 'ten years adverse possession' qualifies it by the succeeding words *'uninterruptedly* continued for ten years,' which is the same condition of continuity that is exacted by the Civil Code."

And with respect to *Dumangas,* he explains: "It will be seen that the *ratio decidendi* of that case lies in the application of Article 567 of the old Civil Code[88] that provides as follows: 'Art. 568. When an estate acquired by purchase, exchange, or partition is enclosed by other estates of the vendor, exchanger, or co-owner, the latter shall be obliged to grant a right of way without indemnity, in the absence of an agreement to the contrary.'

"Bearing in mind the provisions of the article quoted in relation to the wording in the Dumangas case, it can be seen that what the court had in mind is that when the Spanish Crown apportioned the land occupied by the Church of Dumangas, it impliedly burdened the neighboring public square (which was also Crown property at the time) with an easement of right of way to allow the public to enter and leave the Church, because without such easement the grant in favor of ecclesiastical authorities would be illusory: what would be the use of constructing a church if no one could enter it? Now, if there was an implied grant of the right of way by the Spanish Crown, it was clearly unnecessary to justify the existence of the easement through prescriptive acquisition. Why then does the decision repeatedly speak of prescription? Plainly, the word 'prescription' was used in the decision not in the sense of 'immemorial usage' that under the law *anterior* to the Civil Code of 1889, was one of the ways in which the servitude of right of way could be acquired.[89] This view is confirmed by the fact that throughout the passages hereinabove quoted, the court's decision stresses that the people of Dumangas have been passing over the public square to go to church since the town was founded and the church was built, an 'almost immemorable length of time.' It would seem that the term 'prescription' used in said case was merely a loose expression that is apt to mislead unless the court's reasoning is carefully analyzed."

Still on the matter of continuous and discontinuous easements, *Ongsiaco v. Ongsiaco*[90] held that the easement of natural drainage created in Article 552 of the old Code[91] is continuous, since its enjoyment does

---

[88] NEW CIVIL CODE, art. 652.

[89] Citing law 25, Title 31 of the Third Partida: "ha menester que aya usado dellas—tanto tiempo de que non se pueden acordar los omes quanto ha que lo comenzaron usar."

[90] G.R. No. 7510, March 30, 1957.

[91] Art. 637 of the present CIVIL CODE, providing: "Lower estates are obliged to receive the waters which naturally and without the intervention of man descend

not depend upon acts of man but upon the force of gravity. Because continuous, it is subject to extinction by non-user for the period prescribed by law, which, under Article 631, par. 2 of the new Code is ten years.

DONATIONS

On donations, the first question that we may ask is: When property is donated in the requisite form, how does ownership pass to the donee—by tradition or by donation? This question was discussed at some length at last year's lecture,[92] and two cases, both J.B.L. *ponencias—Ortiz v. Court of Appeals*[93] and *Liguez v. Court of Appeals*[94] were mentioned, both betraying a reluctance to treat donation as a true and independent mode of acquisition. In these cases, the Court showed itself open to the view that even in donations, it is really tradition that transfers ownership. The problem of the exact nature of donations is involved here and last year's lecture can serve as a footnote to this question. Suffice it to say here that these two decisions reflect J.B.L.'s observation on Article 712: "The Code has failed to recognize that modern civilists declare it unjustified to separate donations from contracts even as a mode of acquiring and transmitting ownership . . . Donation has *all* the requisites of contracts . . . and like them requires tradition to vest title in the donee. . ."

The distinction between donations *inter-vivos* and *mortis causa* is a major source of trouble for law students, and not infrequently, for practitioners and judges, too. We all know that donations *mortis causa* are in reality testamentary dispositions and hence really pertain to the law on succession. Scaevola's observation is apropos: "*Las donaciones mortis causa se conservan en el Código como se conserva un cuerpo fósil en las vitrinas de un Museo.*"[95]

The problem unvariably is characterization: *inter vivos* or *mortis causa?* This was the problem tackled by J.B.L.'s very first *ponencia*: *Bonsato v. Court of Appeals.*[96] The deed of donation involved contained two seemingly inconsistent stipulations:

(1) ". . . *por la presente hago y otorgo una donacion perfecta e irrevocable consumada a favor del citado Felipe Bonsato* . . .."; and

(2) *"Que despues de la muerte del donante entrará en vigor dicha donación y el donataria . . . tendrá todos los derechos de dichos terrenos en concepto de dueño absoluto . . ."*

---

from the higher estates, as well as the stones or earth which they carry with them. The owner of the lower estate cannot construct works which will impede this easement; neither can the owner of the higher estate make works which will increase the burden."

92 *Donations: Characterization and Other Problems,* 55 PHIL. L. J. 115 (1980).

93 97 Phil. 46 (1955).

94 102 Phil. 577 (1957).

95 21 SCAEVOLA, CODIGO CIVIL 575, 2ª parte. Donations *mortis causa* are retained in the Code as a fossilized body preserved in the showcases of a museum.

96 95 Phil. 481 (1954).

In the Court of Appeals decision appealed from, the majority had stressed the first and held the donation to be *inter vivos,* whereas the minority emphasized the second and held it to be *mortis causa,* and thus void for failure to observe the formalities of wills.

Going again into helpful historical references, J.B.L. wrote: "Despite the widespread use of the term 'donations *mortis causa,*' it is well-established at present that the Civil Code of 1889, in its Art. 620, broke away from the Roman Law tradition, and followed the French doctrine that no one may both donate and retain (*'donner et retenir ne vaut'*) by merging the erstwhile donations *mortis causa* with the testamentary dispositions, thus suppressing said donations as an independent legal concept. . . ." And after drawing from the commentaries of Scaevola, Manresa, and Castán, he continues: "We have insisted on this phase of the legal theory in order to emphasize that the term 'donation *mortis causa*' as commonly employed is merely a convenient name to designate those dispositions of property that are void when made in the form of donations."

If the donation was *mortis causa,* the deed, according to the decision, would contain any or all of the following characteristics:

"(1) Convey no title or ownership to the transferee before the death of the transferor; or, what amounts to the same thing, that the transferor should retain the ownership (full or naked) and control of the property while alive;[97]

"(2) That before his death, the transfer should be revocable by the transferor at will, *ad nutum;* but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed;[98]

"(3) That the transfer should be void if the transferor should survive the transferee."

The decision then observed that, in the deed in question, none of the above characteristics is discernible; significantly, there is no provision that the donor could revoke, on the contrary the deed declares the donation to be "irrevocable", which is repugnant to the essence of a donation *mortis causa.* The stipulation about the donation becoming effective upon the donor's death was, in context, held to mean that at such time the donees would be released from the encumbrance of the usufruct reserved by the donor for himself. The conveyance, therefore, was held to be *inter vivos.*

[97] Citing Vidal v. Posadas, 58 Phil. 108 (1933); Guzman v. Ibea, 67 Phil. 633 (1939).

[98] Citing Bautista v. Sabiniano, 92 Phil. 244 (1952).

In *Cuevas v. Cuevas*,[99] the deed was entitled "*Donación Mortis Causa.*" As set forth by J.B.L., the crux of the controversy resolved around the following provision: "*Dapat maalaman ni Crispulo Cuevas na samantalang ako ay nabubuhay, ang lupa na ipinagkaloob ko sa kanya ay ako pa rin ang patuloy na mamomosecion, makapagpapatrabaho, makikinabang, at ang iba pang karapatan sa pagmamayari ay sa akin pa rin hanggang hindi ako (sic) binabawian ng buhay ng Maykapal at ito naman ay hindi ko ñga iya-alis pagkat kung ako ay mamatay na ay inilalaan ko sa kaniya.*"

Interpreting the whole provision in context, the decision held the donation to be *inter vivos*, for the reason that the declaration of the donor to the effect that she would not dispose of the property because she was reserving it for the donor upon her death was a renunciation of the right of disposition, which is essential to full ownership and a manifestation of the irrevocable character of the conveyance. Irrevocability is characteristic of donations *inter vivos* and is incompatible with a disposition *post mortem*.[100] The phrase reserving possession, cultivation, etc. only meant retention of the beneficial ownership (the *dominium utile*) but not of the naked title, and the words "iba pang karapatan ng pagmamayari" should be construed as *ejusdem generis* with the preceding rights of possession, etc. The decision further reiterated the rule that the designation of the donation by the donor is not necessarily controlling. What controls is the essential nature of the dispositions.[101]

Finally, in *Cuevas*, a useful bit of advice to lawyers is added by J.B.L.: "We may add that it is highly desirable that all those who are called to prepare or notarize deeds of donation should call the attention of the donors to the necessity of clearly specifying whether, notwithstanding the donation, they wish to retain the right to control and dispose at will of the property before their death, without need of the consent or intervention of the beneficiary, since the express reservation of such right would be conclusive indication that the liberality is to exist only at the donor's death, and therefore, the formalities of testaments should be observed; while, *a converso*, the express waiver of the right of free disposition would place the *inter vivos* character of the donation beyond dispute."

Puig v. Peñaflorida,[102] on the other hand, involved two donations, both designated "*Mortis Causa*," but without the testamentary formalities. The first deed contained the clause: "*Que la Donante se reserva el derecho de hipotecar, y aun vender las propiedades objeto de esta escritura de donación mortis causa, cuando y si necesita fondos para satisfacer sus*

---

[99] 98 Phil. 68 (1955).
[100] Citing CIVIL CODE, art. 828.
[101] Citing Laureta v. Mata, 44 Phil. 668 (1923); Concepcion v. Concepcion, 91 Phil. 823 (1952).
[102] G.R. No. 15939, November 29, 1965, 15 SCRA 276 (1965) and G.R. No. 15939, January 23, 1966, 16 SCRA 136 (1966).

propias necesidades, sin que para ello tenga que intervenir la Donataria . . ."; whereas the second one had this provision: "*Que antes de su muerte, la Donante podrá enajenar, vender, traspasar o hipotecar a cualesquier pesonas o entidades los bienes aquí donados a favor de la Donataria de una donación mortis causa.*"

Analyzing the nature of the two deeds, J.B.L., speaking for the Court, enunciated the principle[103] that, inferentially from the revocability *ad nutum* of donations *mortis causa,* the specification of the causes whereby the act may be revoked by the donor indicates that the donation is *inter vivos.* The reservation by the donor in the first deed "to mortgage and even sell the donated properly, *when and if* she should need funds to meet her own needs" appears "incompatible with the grantor's freedom to revoke a true conveyance *mortis causa,* a faculty that is essentially absolute and discretionary, whether its purpose should be to supply her needs or to make a profit, or have no other reason than a change of volition on the part of the grantor-testator." If the donor had intended to retain ownership, there would have been no need for her to specify the causes for which she could sell or encumber the property. The first deed was therefore a valid donation *inter vivos.*

The second deed, on the other hand, specified an unlimited power to dispose. The necessary implication of that was that the donor had reserved absolute ownership and the power to revoke at will. That second donation therefore was *mortis causa* and fatally defective for lack of the testamentary requirements.

One final point on *Puig:* In case of doubt, the conveyance should be deemed a donation *inter vivos* rather than *mortis causa,* in order to avoid uncertainty as to the ownership of the property.

Genato v. Lorenzo,[104] involved the validity of an oral or manual delivery of shares of stock. Apparently, the donor had delivered two stock certificates to one of her sons, with verbal instructions to transfer them in equal shares to him and another son, who was then not present. A few days later the son to whom the certificates had been delivered (being the Assistant Secretary-Treasurer of the corporation) cancelled the same and issued two new certificates, one in his own name and the other in his brother's. Striking down the donation as void, J.B.L. wrote: ". . . this act did not constitute a valid manual donation in law for lack of proper acceptance. Incontestably, one of the two donees was not present at the delivery, and there is no showing that he [the absent one] had authorized his brother . . . to accept for both of them. As pointed out by Manresa. . . . the delivery by the donor and the acceptance by the donee must be simul-

[103] Citing Zapanta v. Posadas, 52 Phil. 557 (1928).
[104] G.R. No. 24983, May 20, 1968, 23 SCRA 618.

taneous, and the acceptance by a person other than the true donee must be authorized by a proper power of attorney set forth in a public document."

The decision, however, declared void the donation not only as far as the absent donee was concerned but also as to the donee present: "Since by appellants' own version, the donation intended was a joint one to both donees, one could not accept independently of his co-donee, for there is no accretion among donees unless expressly so provided[105] or unless they be husband and wife."

The questions that may be raised here are: in a donation to joint donees, will the failure of one to accept properly nullify the donation even as to the one who accepts? Otherwise stated, should the donation at least not be valid as to him who accepts properly and as to his presumed equal share under Article 753? The said article prohibits accretion; does it also prohibit independent acceptance of the share pretaining to the accepting donee?

Going now to revocation of donations, Article 764 provides that: "The donation shall be revoked at the instance of the donor, when the donee fails to comply with any of the conditions which the former imposed upon the latter." The condition imposed upon the donee in *Ongsiaco v. Ongsiaco*[106] was the payment to the donor of a yearly pension, an obligation which the donee did not fulfill. As a result of the non-fulfillment, the donor executed a notarial deed of revocation. Apparently, however, the donee remained in possession and so when the donor died her (the donor's) heirs sought to recover the property from the donee. Ruling on the controversy, the Supreme Court laid down the following:

(1) revocation under Article 764[107] cannot be done unilaterally; it requires either court judgment or the donee's consent;[108]

(2) this action for revocation is prescriptible (this is now explicit in Article 764, par. 3 which provides a prescriptive period of 4 years from non-compliance).

Regarding the transmissibility of the action, *Ongsiaco* did not find it necessary to make a ruling on it, but cited the decision of the Spanish Supreme Court of 12 March 1928, holding it to be intransmissible. This too has been clarified by Article 764, par. 3 which explicitly provides for transmission to the donor's heirs.

SUCCESSION
EFFECTIVITY OF TRANSMISSION

The principle that the rights to the succession are transmitted from the moment of the death of the decedent, laid down in Article 777, is,

---

105 Citing art. 637 of the old Code; art. 753 of the NEW CIVIL CODE.
106 *Supra*, note 90.
107 Art. 647 of the old CODE.
108 Citing Parks v. Province of Tarlac, 49 Phil. 142 (1926).

despite infelicitous phraseology, clear and unequivocal. What it simply means is that, upon the decedent's death without a single moment's interruption, the successors acquire ownership over whatever they succeed to. As stated in an unreported J.B.L. *ponencia* of 1955 — *Visaya v. Suguitan*,[109] when the predecessor dies, his heirs immediately acquire his interest by operation of law. Subsequently, in *Butte v. Manuel Uy & Sons, Inc.*,[110] J.B.L. points out that "[T]he principle of transmission as of the time of the predecessor's death is basic in our Civil Code, and is supported by other related articles. Thus, the capacity of the heir is determined as of the time the decedent died;[111] the legitime is to be computed as of the same moment,[112] and so is the inofficiousness of the donation *inter vivos*.[113] Similarly, the legacies of credit and remission are valid only in the amount due and outstanding at the death of the testator,[114] and the fruits accruing after that instant are deemed to pertain to the legatee.[115] In *Butte*, the consequence of this principle was that the heirs of the co-owner who had died became co-owners of the property from the moment of their predecessor's death and, therefore, could exercise the co-owner's right of redemption against the vendee of one of the original co-owners. This right could be exercised even during the pendency of the predecessor's estate proceedings.

Again in *De Borja v. De Borja*,[116] penned by J.B.L. on the day before his retirement and his last decision on civil law, it was held that " . . . as a hereditary share in a decedent's estate is transmitted or vested immediately from the moment of the death of such *causante* or predecessor in interest, there is no legal bar to a sucsessor (with requisite contracting capacity) disposing of her or his hereditary share immediately after such death, even if the actual extent of such share is not determined until the subsequent liquidation of the estate. Of course, the effect of such alienation is to be deemed limited to what is ultimately adjudicated to the vendor heir."

WILLS

Articles 805 and 806 lay down the formal requirements for ordinary or attested wills. One of such requirements is the signing by the testator of the will and every page thereof. In *Matias v. Salud*,[117] the testatrix had affixed her thumbmark in all the required places and had attempted to affix her signature also but had been unable to continue after affixing it at the will's end, due to pain. Allowing the will to probate, the Court held that

[109] G.R. No. 8300, 18 November 1955.
[110] 114 Phil. 443 (1963).
[111] Art. 1034.
[112] Art. 908.
[113] Art. 771.
[114] Art. 935.
[115] Art. 948.
[116] G.R. Nos. 28040, 28568 and 28611, August 18, 1977, 46 SCRA 577 (1977).
[117] G.R. No. 10751, 23 June 1958.

the affixing of the thumbprint satisfied the legal requisite of signature.[118] The Court, however, made the following statement: "In the case now before us, it was shown that the *herpes zoster* that afflicted the right arm and shoulder of testatrix made writing a difficult and painful act, to the extent that, after writing one signature on the second page, she dropped the pen because of an attack of pain that lasted many minutes, and evidently discouraged attempts to sign."

I do not think, as others may reasonably claim, that this statement implies that the affixing of thumbmarks instead of signatures would fall short of the requirement of the law if the testator was not suffering from some infirmity or impediment, making it difficult for her to write. I think that under Article 805 a thumbmark is in all instances a valid substitute for a signature, provided of course that the mark is shown to be authentic. That is, at any rate, my understanding of J.B.L.'s final observation in *Matias,* to wit: "It is to be conceded that where a testator employs an unfamiliar way of signing, and both the attestation clause and the will are silent on the matter, such silence is a factor to be considered against the authenticity of the testament; but the failure to describe the unusual signature by itself alone is not sufficient to refuse probate when the evidence for the proponent fully satisfies the court (as it does satisfy us in this case) that the will was executed and witnessed as required by law."

Another requirement for attested wills is that the witnesses must sign the will and every page thereof. In *Icasiano v. Icasiano,*[119] it appears that one of the pages of the original of the will was not signed by one of the witnesses (though signed by the others). The failure apparently was caused by the inadvertent lifting by that witness of two pages instead of one.

Taking a liberal instance, the Court, through J.B.L., allowed probate, holding ". . . . we hold that the inadvertent failure of one witness to affix his signature to one page of a testament, due to simultaneous lifting of two pages in the course of signing, is not *per se* sufficient to justify denial of probate. Impossibility of substitution of this page is assured not only by the fact that the testatrix and two other witnesses did sign the defective page, but also by its bearing the coincident imprint of the seal of the notary public before whom the testament was ratified by the testatrix and all three witnesses. The law should not be so strictly and literally interpreted as to penalize the testatrix on account of the inadvertence of a single witness over whose conduct she had no control, where the purpose of the law to guarantee the identity of the testament and its component pages is sufficietly attained, no intentional or deliberate deviation existed, and the evidence on record attests to the full observance of the statutory

[118] Citing De Gala v. Gonzales & Ona, 53 Phil. 104 (1929); Dolar v. Diancin, 55 Phil. 479 (1930); Neyra v. Neyra, 42 O.G. 2817 (1946); Lopez v. Liboro, 46 O.G. (Suppl. to No. 1) 211.

[119] G.R. No. 18979, June 30, 1954, 11 SCRA 423 (1954).

requisites." The liberal attitude of the court, according to the decision exemplifies "the Court's policy to require satisfaction of the legal requirements in order to guard against fraud and bad faith, but without undue or unnecessary curtailment of the testamentary privilege."

The last quoted statement is important, because it tells us that a balance has to be struck between undue literalism and undue liberalism. Obviously, not every failure of a witness to sign as mandated by law is an excusable oversight, as some careless readers of the case might conclude. Determination must be situational and contextual. The peculiar circumstances of *Icasiano* justify the liberal stance but different circumstances may not. Neither excessive strictness nor excessive laxity would effectuate the mandate of the law. As the Oracle of Delphi cautions all: *Meden agan* — nothing in excess.

Regarding the requirement of acknowledgment before a notary public by the testator and the witnesses, *Javellana v. Ledesma*[120] tells us that the certification of acknowledgment need not be signed by the notary in the presence of the testator and the witnesses, because the signing and sealing by the notary of such certification is no part of the acknowledgment itself nor of the testamentary act. "Hence," declared the Court, "their separate execution out of the presence of the testatrix and her witnesses can not be said to violate the rule that testaments should be completed without interruption." If fact, J.B.L. in *Javellana,* notes that Article 806 does not contain words requiring that the testator and the witnesses should acknowledge the testament on the same day or occasion that it was executed. And may I add that the article does not, either, contain words requiring that the testator and the witnesses should acknowledge in one another's presence.

In addition to the requirements laid down in Articles 805 and 806, Art. 808 provides additionally that if the testator is blind, "the will shall be read to him twice; once, by one of the subscribing witnesses, and again, by the notary public before whom the will is acknowledged." The testatrix in *Garcia v. Vasquez*[121] suffered from such poor eyesight that she was "not unlike a blind testator and the due execution of her will would have required observance of the provisions of Article 808 of the Civil Code." Since there was no showing that the requirements of that article has been complied with, the Court, speaking through J.B.L., declared that the will "suffers from infirmity that affects its due execution" and should therefore not be admitted to probate. From which we can gather that the provisions of Article 808 (and by analogy, Article 807) are not merely directory but mandatory. On a Motion for Reconsideration, the Supreme Court, through Justice Barredo (with J.B.L. dissenting) remanded this

[120] 97 Phil. 258 (1955).
[121] G.R. Nos. 26615 & 26864, April 30, 1970, 32 SCRA 489 (1970).

case[122] to the lower court for reception of further evidence on the condition of the testatrix's eyesight, the majority in that Resolution not being convinced that the evidence then available warranted a conclusion that the testatrix was practically blind. But the reconsideration was on a factual point; the interpretation of Article 808 as mandatory was not modified.

If the rule on blind testators is mandatory, that on contested holographic will under Article 811 is not; so held *Azaóla v. Singson.*[123] Article 811, par. 1 provides: "In the probate of a holographic will, it shall be necessary that at least one witness who knows the handwriting and signature of the testator explicitly declare that the will and the signature are in the handwriting of the testator. If the will is contested at least three of such witnesses shall be required." Actually, the opposition to the probate of the holographic will in *Azaóla* was based on alleged undue influence, but the lower court denied probate on the ground that the proponent presented only one witness, which the lower court deemed insufficient, the will being, in its opinion, contested. On appeal, J.B.L., for the Supreme Court, stated: "We agree with the appellant that since the authenticity of the will was not contested, he was not required to produce more than one witness...." Then, in a strong and emphatic *obiter,* he continued "...but even if the genuineness of the holographic will were contested, we are of the opinion that Article 811 of our present Civil Code can not be interpreted as to require the compulsory presentation of three witnesses to identity the handwriting of the testator, under penalty of having the probate denied." The reasons for this are then set forth: (1) it may not always be possible to find three witnesses who can give a positive opinion on the authenticity of the handwriting ("it becomes obvious that the existence of witnesses possessing the requisite qualifications is a matter beyond the control of the proponent"); (2) the second paragraph of Article 811 itself provides for a possibility that no such witness may be found ("In the absence of any competent witness referred to in the preceding paragraph, and if the court deems it necessary, expert testimony may be resorted to"); (3) what the law deems essential is that the Court should be convinced of the will's authenticity, and for this the court should be allowed sufficient discretion. On these bases, "our conclusion," says J.B.L., " is that the rule of the first paragraph of Article 811 of the Civil Code is merely directory and is not mandatory."

Azaola in fact reflects J.B.L.'s previous comments on Article 811 in the Lawyers' Journal, to wit: "Why should the Court's discretion in weighing the proof be limited by a quantitative minimum of proof. Three witnesses in case of contest recalls the obsolete Roman rule, *'testis unus, testis nullius.'* The modern tendency is to leave the weight of evidence to the Courts. After all, one witness can be very convincing, and a probate case is not a prosecution for treason."[124]

---

[122] Precilla v. Narciso, G.R. No. 272000, August 18, 1972, 46 SCRA 538 (1972).
[123] 109 Phil. 102 (1960).
[124] J. B. L. Reyes, *Observations on the New Civil Code on Points Not Covered by Amendments Already Proposed,* 15 LAW. J. 448, 555 (1950).

On the effect of probate, Article 838, last paragraph, provides: "Subject to the right of appeal, the allowance of the will, either during the lifetime of the testator or after his death shall be conclusive as to its due execution." In *Fernandez v. Dimagiba,*[125] J.B.L., applying that rule, said: "It is elementary that a probate decree finally and definitively settles all questions concerning capacity of the testator and the proper execution and witnessing of his last will and testament, irrespective of whether its provisions are valid and enforceable or otherwise."[126]

More emphatically was this rule applied in the case of *De la Cerna v. Potot.*[127] There, a joint will executed by husband and wife was presented for probate upon the husband's death, and the court, curiously, admitted it to probate, from which decision no appeal was made. Subsequently, when the wife died, the will was submitted anew for probate, but this time the court declared it to be null and void for being contrary to the prohibition on joint wills in Article 669 of the old Code.[128] On appeal the Court of Appeals reversed, on the ground of finality of the first probate when the husband died and also because "this form of will has long sanctioned by use." The Supreme Court, through J.B.L., made the following dispositions:

(1) As far as the husband's share was concerned, the first probate had conclusive effect, despite its erroneous character, because it had acquired finality. "A final judgment rendered on a petition for the probate of a will is binding upon the whole world."[129]

(2) However, as far as the wife's share was concerned, there was yet no final decision of probate; therefore, it could still be disallowed. As explained by J.B.L.: ". . . the validity of the joint will, in so far as the estate of the wife was concerned, must be, on her death, reexamined and adjudicated *de novo,* since a joint will is considered a separate will of each testator."

(3) Parenthetically, the Supreme Court corrected the implication of the Court of Appeals that common usage has sanctioned this form of wills, because, as Article 7 provides: "Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary."

PRETERITION

On the thorny subject of preterition, we have the decision of *Reyes v. Barretto-Datu,*[130] decided in 1967. The heir there — the testator's

[125] G.R. No. 23538, October 12, 1967, 21 SCRA 428 (1967).
[126] Citing Montañano v. Suesa, 14 Phil. 676 (1909); Mercado v. Santos, 66 Phil. 215 (1938); Trillana v. Crisostomo, 89 Phil. 710 (1951).
[127] G.R. No. 20234, December 23, 1964, 12 SCRA 576 (1964).
[128] Retained *ne varietur* in the New as Article 818.
[129] Citing Manalo v. Paredes, 47 Phil. 938 (1925); In re Estate of Johnson, 39 Phil. 156 (1918).
[130] G.R. No. 17718, January 25, 1967, 19 SCRA 85 (1967).

legitimate daughter — had been instituted to a portion less than her legitime (the entire estate having been disposed of by will). She then claimed that the institution of the other heir was invalid precisely because of her prejudiced legitime. This contention was brushed aside because although she had been given something less than her legitime, she had been given *something,* and therefore there was no preterition. Preterition, it is to be noted, means *total* omission. This decision coincides with the opinions of Valverde, Puig Peña, and Castan, all of whom point out that the remedy of the prejudiced heir here is not to invoke preterition but to bring an *actio ad supplendam legitimam,* sanctioned by Article 906 of our Code.[131]

COLLATION

The case if *Liguez v. Court of Appeals*[132] clarifies what had been considered by some as an arguable matter, namely who were bound to collate donations for the purpose of determining the donor-decedent's net hereditary estate.[133] Citing Spanish Supreme Court decisions of 4 May 1899 and 16 June 1902, J.B.L. explained that "...collationable gifts under Article 818[134] should include gifts made not only in favor of the forced heirs, but even those made in favor of strangers..." Which means that *all* donations without exception, whether made to compulsory heirs or to strangers, should be included in the computation of the value of the estate left by the donor as mandated by Art. 908 — contrary to the erroneous view of some Spanish commentators that only donations made to compulsory heirs should be so collated.[135]

RESERVA TRONCAL

Two J.B.L. *ponencias* shed light on that most baneful of institutions — the *reserva troncal.* Eliminated in the draft Code, and restored by Congress as Article 891 of the new Code, the *reserva troncal* has continued to confuse, perplex, and bedevil students of law, and not a few professors, too. The case of *Cano v. Director of Lands*[136] laid down the following principles:

(1) the requisites for the passing of title from the *reservista* to the *reservatario* are: a) the death of the *reservista,* and b) the fact that the *reservatario* has survived the *reservista;*

2) the *reservatario* is not the *reservista's* successor *mortis causa* because the *reservatario* receives the property as a conditional heir of the

---

131 For a fuller treatment of this point, *vide* this writer's article on *Preterition —Provenance, Problems, and Proposals,* 50 PHIL. L. J. 577 (1975).

132 102 Phil. 577 (1957).

133 *Cf.* Arts. 908-910, 1061.

134 Now Art. 908.

135 *Vide,* 3 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 305-308 (1973 ed.).

136 105 Phil. 1 (1959).

prepositus, said property merely reverting to the line of origin from which it had temporarily and accidentally strayed during the *reservista's* lifetime;

(3) if there are *reservatarios* that survive the *reservista,* the latter must be deemed to have enjoyed no more than a life interest in the reservable property;

(4) Any transmission of the property *mortis causa* by the *reservatarios* to his own heirs will be ineffective if *reservatarios* survive the *reservista;*

(5) the reserved property is not a part of the *reservista's* estate if *reservatarios* survive him, and thus cannot be made to answer for the *reservista's* debts;

(6) as a consequence of the foregoing principles, the *reservatario,* upon the *reservista's* death, becomes, automatically and by operation of law, the owner of the reserved property.

In *Padura v. Baldovino,*[137] the precise issue that arose was formulated by J.B.L. thus: In a case of *reserva troncal,* where the only *reservatarios* surviving the *reservista* and belonging to the line of origin, are nephews of the *prepositus,* but some are nephews of the half blood and the others are nephews of the whole blood, should the reserved properties be apportioned among them equally, or should the nephews of the whole blood take a share twice as large as that of the nephews of the half blood? In the course of the Opinion, J.B.L. explained the *reserva troncal* to be "a special rule designed primarily to assure the return of the reservable property to the third degree relatives belonging to the line from which the property originally came, and avoid its being dissipated into and by the relatives of the inheriting ascendant *(reservista).*" This institution of *reserva troncal* "had no direct precedent in the law of Castile" and was provided for the first time in the Code of 1889, because, according to a cited work by the President of the Spanish Code Commission, D. Manuel Alonso Martinez, "... *la mayoría de la Comision* ... [*considero*] *el principio de familia como superior al del afecto presumible del difunto.*"

Proceeding then to the issue at hand, J.B.L. continued: "The stated purpose of the reserva is accomplished once the property has devolved to the specified relatives of the line of origin. But from this time on, there is no further occasion for its application. In the relations between one *reservatario* and another . . . . there is no call for applying Art. 891 any longer; wherefore, the respective share of each in the revisionary property should be governed by the ordinary rules of intestate succession." And one of the rules of intestate succession is that nephews of the full blood each inherit double the share of each one of the nephews of the half blood, in accordance with Articles 1008 and 1006. In laying down

[137] G.R. No. 11960, 27 December 1958.

this rule (which incidentally confirms the earlier case of *Florentino v. Florentino,*[138] penned by Mr. Justice Florentino Torres, and cited in *Padura*), *Padura* explicitly rejects Scaevola's theory of *reserva integral,* according to which all the reservatarios should inherit in equal shares, regardless of proximity, and adopts Manresa's contrary stance.

For all that *Padura v. Baldovino* is an unreported case, it is of major importance in considering the nature and operation of *reserva troncal.*

LEGACIES AND DEVISES

In *Fernandez v. Dimagiba,*[139] J.B.L. had occasion to explain the meaning of Article 957, par. 2, which provides that the legacy or devise shall be without effect "if the testator by any title or for any cause alienates the thing bequeathed or any part thereof, it being understood that in the latter case the legacy or devise shall be without effect only with respect to the part thus alienated. If after the alienation the thing should again belong to the testator, even if it be by reason of nullity of the contract, the legacy or devise shall not thereafter be valid, unless the reacquisition shall have been effected by virtue of the exercise of the right of repurchase." That phrase "nullity of the contract" cannot, according to the *Fernandez* case, be taken in an absolute sense. "Certainly, it could not be maintained, for example, that if a testator's subsequent alienation were avoided because the testator was mentally deranged at the time, the revocatory effect ordained by the article should still ensue. And the same thing could be said if the alienation (posterior to the will) were avoided on account of physical or mental duress. Yet, an alienation through undue influence in no way differs from one made through violence or intimidation. In either case, the transferor is not expressing his real intent, and it can not be held that there was in fact an alienation that could produce a revocation of the anterior bequest."

In short, the nullity of the contract of alienation will not make the reacquisition of the thing revive the previous legacy, *unless* such nullity was caused by vitiated consent on the part of the testator who alienated.

In *Belen v. Bank of the Philippine Islands,*[140] the issue presented was: if the institution (in this case, of legatees) was of the descendants of a certain individual, would that refer conjointly to *all* living descendants as a class or only to the descendants nearest in degree? Actually, in *Belen,* there was an institution, by simple substitution, of the *"descendientes legitimos"* of the legatee originally instituted. The substitution became operative, but the original legatee was survived by both children and grandchildren. One of the children claimed that the grandchildren should be excluded, being remoter in degree, invoking by analogy Article

[138] 40 Phil. 480 (1919).
[139] G.R. No. 23638, October 12, 1967, 21 SCRA 428 (1967).
[140] 109 Phil. 1008 (1960).

959, providing that: "A distribution made in general terms in favor of the testator's relatives shall be understood to be in favor of those nearest in degree." Holding said article to be inapplicable, J.B.L. pointed out that the *ratio legis* of that article (that among a testator's relatives the nearest are dearest) obviously does not apply where the beneficiaries are relatives of *another person* (in this case the original legatee) and not of the testator. The conclusion was that "in the absence of other indications of contrary intent, the proper rule to apply in this case is that the testator, by designating a class or group of legatees, intended all members thereof to succeed *per capita,* in consonance with article 846".[141]

INTESTACY

Two J.B.L *ponencias* — *Rodriguez v. Reyes*[142] and *Cacho v. Udan*[143] apply Article 992 barring intestate succession between legitimates and illegitmates. The statutory provision reads: "An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child." In *Rodriguez* (actually applying Art. 943 of the old Code, from which the present provision was derived), it was held that a mother's illegitimate (natural) son could not succeed by intestacy to the estate of his half-brother, who was his mother's legitimate son. *Furthermore,* the disqualification in Article 992, according to this decision, *extends to the children and descendants of the illegitimate child.*

And since the prohibition in the article goes both ways, the legitimate relatives of an illegitimate child's parents were not allowed, either, in the *Cacho* case, to succeed by intestacy from the illegitimate child. In *Cacho,* the claimants were legitimate brothers of the decedent's mother. Since the decedent, however, was his mother's illegitimate child, the brothers (uncles to the decedent) were held barred from inheriting from him.

Still on intestacy, *Bacayo v. Borromeo*[144] answers a very simple question: if the decedent is survived only by uncles and aunts, and nephews and nieces as his nearest relatives, who should succeed? And it was there held that Article 1009 supplied the rule: "Should there be neither brothers nor sisters, nor children of brothers or sisters, the other collateral relatives shall succeed to the estate." Thus, the nephews and nieces of the decedent *exclude* his uncles and aunts, in spite of the fact that they are *all* three degrees removed from him. "Under [Art. 1009]," explained J.B.L., "the absence of brothers, sisters, nephews and nieces of the decendent is a pre-

[141] Art. 846: Heirs instituted without designation of shares shall inherit in equal parts.

[142] 97 Phil. 659 (1955).

[143] G.R. No. 19996, April 30, 1965, 13 SCRA 693 (1965).

[144] G.R. No. 19382, August 31, 1965, 14 SCRA 986 (1965).

condition to the other collaterals (uncles, cousins, etc.) being called to the succession."

PARTITION

The case of *Romero v. Villamor*[145] involved the validity of a partition *inter vivos,* made by a person, without a supporting will. Applying Article 1056 of the old Code, which was the governing law at the time,[146] and citing part jurisprudence,[147] J.B.L. stated: "...the validity of any such distribution rests upon the prior making of a valid testament, with all the formalities prescribed by law, the partition *inter vivos* being but the execution thereof."

Under the new Civil Code, however, the word "testador" has been changed to "person". The present Article 1080 provides: "Should a person make a partition of his state by an act *inter vivos,* or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs." Is it thus now possible for a person to make a partition of his estate by a deed *inter vivos,* without a supporting will, so long as he divides his property strictly according to the rules of intestate succession? The *Romero* case did not rule on this point, but seemed to be favorably disposed towards such a possibility when it declared: "It is true that when [the *causante*] died, the new Civil Code was already in effect, and that its Article 1080 now permits any *person* (not a *testator,* as under the old law) to partition his estate by an act *inter vivos;* but the validity of any such partition must be determined as of the date it was executed or accomplished, not the date when the author dies."

In 1979, the Supreme Court came out with the case of *Alsua-Betts v. Court of Appeals,*[148] holding, through Mr. Justice Guerrero, that a partition without a supporting will is void, *even if* a subsequent will is executed in accordance with the partition. That holding, however, was also on the basis of the old Article 1056.[149] And so the question we have raised remains — at least judicially — unanswered.

And to end where we began, this lecture, having been made by Dean Bacuñgan as one of the features of the Seventh Decennial of the College in the year 1981, attempts to mark this celebration by honoring,

---

[145] 102 Phil. 641 (1957).

[146] Art. 1056, par. 1, provided: *Cuando el testador hiciere, por acto entre vivos o por ultima voluntad, la partición de sus bienes, se pasará por ella, en cuanto no perjudique a la legitima de los herederos forzosos.* If the testator should make a partition of his property, either by an *inter vivos* or by will, the property shall pass thereby, provided the legitime of the compulsory heirs is not prejudiced.

[147] Legasto v. Verzosa, 54 Phil. 766 (1930); Fajardo v. Fajardo, 54 Phil. 842 (1930).

[148] G.R. Nos. 46430-31, July 30, 1979, 92 SCRA 332 (1979).

[149] The partition there was made in November, 1948, but the husband and wife who executed it died in 1959 and 1964, respectively.

in the person of the man after whom this chair is named, one of the alumni who have truly done this College proud.

When, one evening last week, I sat back, looking at the last page of the manuscript of this lecture, the tale having been told (for now), and thought what I might say about the man, some lines, learned long, long ago in College, hazily came to hazy mind. Memory not serving too well, I plucked out of one of my bookshelves my old and dusty Horace, and found the lines. They are from his Third Book of Odes and will do well to end this lecture:

Iustum et tenacem propositi virum
non civium ardor paava iubentium,
non vultus instantis tyranni
mente quatit solida neque Auster,
dux inquieti turbidus Hadriae,
nec fulminantis magna maus Iovis;
si fractus illabatur orbis,
impavidum ferient ruinae.[150]

[150] The just and steady-purposed man cannot be shaken
By the frenzy of the mob bidding what is wrong,
Nor by a tyrant's threatening countenance,
Nor by the South Wind, that stormy master
Of the restless Adriatic.
His firm resolve is not undone
By the fearsome hand of thunder-gripping Jove.
Through heaven's vault should break upon him
Undaunted among the ruins he stands.