CIVIL LIABILITY FOR CRIMINAL CONDUCT: CONCEPT AND ENFORCEMENT*

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Introduction

A significant reason that prompted my choice of this topic is that the subject of civil liability arising from crime can hardly be discussed with any utility strictly in the abstract. To be meaningful, it must be related to the process by which civil liability may be made effective. In a short while, I will point out the pitfalls of separating substance from procedure. As a law teacher with not a few years of general law practice, my teaching could be characterized by the injection of practical remedies to the discussion of legal concepts. It is from this combined perspective of an academician and law practitioner that I approach my subject today.

A peculiarity of Philippine criminal procedure by which it deviates from the American model from which it is derived, is the procedural joinder of the civil action to recover damages arising from crime with the criminal prosecution of the accused. This entailed institutionalizing the private prosecution of crimes. An undesirable problem that has arisen is that many prosecutions of crimes are undertaken primarily for the purpose of forcing a settlement of the civil aspect thereof. This is true not only with estafa and imprudence cases but with many other crimes as well.

On the other hand, separate civil actions based on the same punishable conduct, continue to be filed in court. The overlapping of actions has given rise to confusion that continues to provide problems for the courts.

It is then the purpose of this paper to analyze the concept of civil liability for criminal conduct, trace the sources for its confusion, and make recommendations that may hopefully contribute to prevent some of the unnecessary questions that continue to be raised and thereby accelerate the notoriously slow pace in the administration of our criminal justice.

Not all convictions produce civil liability

The legal basis for holding a person civilly liable for an act or omission that the law penalizes as a crime, has generally been assumed

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to be the provision of Article 100 of the Revised Penal Code. Quite tersely, said article provides: "Every person criminally liable for a felony is also civilly liable."

Closer analysis and more thoughtful consideration would show, however, that the foregoing assumption is not entirely correct. Not all persons convicted of a crime or felony are civilly liable.

Parenthetically, I use the disjunctive "or" not to show synonymity between the words "crime" and "felony" but to stress their technical diversity. Under American usage, "crime" is a generic term that is intended to mean any conduct that is punishable by law. Incidentally, "conduct" as a term is more advantageously used over the repetitious use of "act or omission." "Felony" is used in the United States to denote a more serious crime as contradistinguished from "misdemeanors." Under Philippine jurisprudence, however, felony is used to denote all crimes punishable by the Revised Penal Code irrespective of gravity. It thus includes misdemeanors or light felonies. Offenses or crimes are terms used in the Philippine context, to refer to conduct punishable by "special laws," that is, any law other than the Revised Penal Code.

Going back to our proposition that not all persons who are convicted of a crime are also civilly liable—this is easy enough to show in the general area of regulatory offenses. Thus, violation of licensing regulations pertaining to the sale of liquor or of prescription medicine or drugs; violation of health and sanitation regulations relating to food handling and preparation for human consumption; offenses related to traffic and road safety; the prohibited use of dangerous drugs and narcotics; and many other similar "crimes," do not give rise to civil liability.

Even assuming, however, that what Article 100 really refers to are "felonies," strictly speaking, i.e., those punishable under the Revised Penal Code, its sweeping provision is nevertheless not true in many cases. A cursory look at the table of contents of the code will immediately show the fallacy of the broad declaration that all persons criminally liable for a felony are also civilly liable. Thus, prosecution and conviction of crimes against national security, crimes against public order, crimes against public interest, crimes against decency and good customs, and many others, would not give rise to any civil liability.

To give specific examples, the prosecution of the well-publicized case against Tetchie Agbayani for posing nude in the German edition of Playboy magazine, will not result in the award of damages in favor of the relator, Polly Cayetano. Conviction for gambling, vagrancy, prostitution, drug addiction and other offenses which have been called "victimless crimes," will similarly not give rise to civil liability.

Civil liablity for crimes—legal basis

In order that criminally proscribed conduct may give rise to civil liability, it is imperative that not only public interest is affected but also that personal injury or damage is inflicted upon a particular victim of the crime. The legal basis for the award of damages in such a situation is then not really Article 100 of the penal code but the general provision of Article 20 of the Civil Code that, "Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same."

To illustrate the point that no civil liability will attach where the crime did not cause any damage or injury to another, a textbook writer gives the following hypothetical example: "'A' slapped the face of the mayor who was then in the performance of his duty. Under Art. 148, the crime committed is direct assault. As the slapping did not cause any injury to the mayor, 'A' is not civilly liable."[1]

While there can be no quarrel with respect to the point sought to be illustrated, the illustration used may easily be faulted for its inaccuracy. For the legal concept of injury is not restricted to physical or bodily injury; it also extends to the realm of the mental and emotional. Thus, it is provided that moral damages include among others, "mental anguish, fright, wounded feelings and social humiliation," even though they are "incapable of pecuniary computation."[2] Such moral damages are expressly made recoverable in a criminal case for "any other form of defamation."[3] This includes the offense of slander by deed penalized by Article 359 of the penal code. It can therefore be argued that the act of slapping the face of the mayor had "cast dishonor, discredit and contempt upon" him and therefore, the complex crime of direct assault upon a person in authority with serious slander by deed was committed. Civil liability for moral damages may thus be recovered in the cited hypothetical case, contrary to the conclusion of the author.

Not all acquittals absolve civil liability

To be logically consistent, if it is true that every person criminally liable is also civilly liable, then the converse proposition—every person not criminally liable is also not civilly liable—should also be true. This is, however, not the case in law. For as Justice Holmes once observed, experience and not logic is the life of the law.

Article 100 of the Revised Penal Code seems to have been formulated by legislative draftsmen utterly in the abstract. For it does not plainly consider the process of determining guilt or innocence. Otherwise, it would

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1 REYES, THE REVISED PENAL CODE 863 (1981).
2 CIVIL CODE, Art. 2217.
3 CIVIL CODE, Art. 2219(7).

have used the phrase "convicted of a crime" rather than "person criminally liable." In fact, the generic word "person" should not have been used at all. For a person must first be drawn into the criminal process as a suspect, then accused of a crime, and finally made a defendant by the filing of the appropriate charging document called a criminal complaint or information, before he can be convicted of the crime charged.

The more precise formulation could probably therefore be, "Every defendant convicted of a crime causing injury or damage to another, is also civilly liable therefor." But even as thus correctly re-formulated, the converse proposition that an acquittal absolves from civil liability is not true in every case.

Various meanings and civil effects of acquittals

Holding a person criminally liable, that is, the conviction of an accused for a crime by proof beyond reasonable doubt, means only one thing—that he committed the act punished as a crime.

An acquittal, in contrast, is not restricted to only one meaning. It is legally broad enough to cover several meanings.

a) *Factual innocence—no civil liability*

The first meaning and its usual connotation is that an acquittal is a determination that the accused did not commit the crime charged. This is the case where a mistake in identity has been made or where the defense of alibi is given full credit.

Perhaps the term "factual innocence" would more precisely indicate this particular ground for acquittal. An acquittal based on factual innocence, as the direct converse of conviction, absolves from any civil liability. In the rather confusing language used by Sec. 3(c) of Rule 111 of the Rules of Court, this is the case where "extinction [of the penal action] proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist." In this case, the civil liability is also extinguished. Why the draftsmen did not use the straightforward "acquittal" for the rather imprecise and rarely used "extinction of the penal action" can only lend support to the charge of "verbosity" that has often been levelled against the legal profession.

b) *Factual guilt but legal innocence*

An acquittal may be based on grounds other than factual innocence. This is the case where an accused enters a plea known in civil law as one of confession and avoidance. Here, the defendant admits having committed the act charged but claims exemption from criminal liability or alternatively claims that the conduct he engaged in was legally justified.

Parenthetically, a procedural reform to expedite the criminal process may be considered in this connection. A defendant relying on a defense

based on a justifying or exempting circumstance should be required to so specify in his formal plea on arraignment. Thus, he must enter a plea of "not guilty by reason of self-defense;" "not guilty by reason of minority (or insanity)" or some other similar plea of exemption or justification. Such plea must of necessity admit the conduct alleged to constitute the crime charged. A plea of not guilty by reason of insanity to a charge of homicide, for instance, should alter the order of trial. Since such a plea admits the fact of killing, evidence related thereto need no longer be introduced initially by the prosecution. The trial could then start with the defense presentation of psychiatric evidence on the claimed defense of insanity. Criminal trials could considerably be expedited by such a reform without sacrificing any essential right of the accused.

Justified crime produces no civil liability

Justification, as a theological concept, means the remission of sin and absolution from guilt and punishment. Law borrows from theology and gives the same meaning to the justification of crime. A defendant who proves a justifying circumstance, like self-defense, is not only exempted from the criminal penalty attached to the crime; he is also absolved from civil liability. This is so because justification legally obliterates the crime.

Exception from rule

There is one case of justified crime, however, which still gives rise to civil liability. This is the case where damage is inflicted in order to prevent a greater evil. There are not many cases involving this defense which have reached the Supreme Court. This is understandable since an acquittal on this ground would no longer be appealable by reason of the constitutional guarantee against putting anyone twice in jeopardy for the same offense.

A case illustrative of this defense is the case of *Tan v. Standard Vacuum Oil Co.*,[4] where a gasoline tanker caught fire while delivering gasoline at a service station. The driver was able to drive the burning tanker to the middle of the street fronting the station, and there hastily abandoned the vehicle. In his understandable excitement, he failed to actuate the emergency or parking brake mechanism thereof. As a consequence, the burning tanker continued to move forward and hit the houses across the street, which caught fire and were destroyed. The driver was prosecuted for arson through reckless imprudence but was acquitted on the ground of justifiable avoidance of the greater evil of having the service station burn. The conflagration that was prevented would have been of a greater magnitude on account of the highly flammable goods and materials usual to a gasoline station. His conduct being justified, the driver was held exempt from both criminal and civil liabilities. In a separate civil action brought by the houseowner, however, the gas station owner, who was the direct

[4] 91 Phil. 672 (1952).

beneficiary of the driver's injurious conduct, was held liable for indemnification of the damage caused.

Penal exemption does not absolve civil liability of third person

Unlike acquittals based on a justifying circumstance, which does not give rise to the civil liability of anyone, an acquittal based upon an exempting circumstance will still generate civil liability for damages caused by the crime. Such civil liability, however, is not imposed primarily upon the exempted offender but upon a third person to whom responsibility may be imputed for the conduct of the former.

Comparing now the civil effect of acquittals based upon an exempting circumstance with those based upon a justifying circumstance, it may be said that their effect is the same, in that the exempt offender and the justified defendant are both absolved from civil liability, which instead is imposed upon a third person. There is, however, a qualification to be made in the case of an exempt offender, because he may still be held civilly liable, though only in a subsidiary capacity.

Legal basis of third person civil liability

There is another difference to be noted in this connection, and that is the legal basis for holding a third person primarily liable for the damage caused by the exempt offender or the justified defendant.

Article 20 of the Civil Code holds a person civilly liable for damages that he causes either wilfully or negligently. If the offender is exempted from punishment because by reason of insanity, imbecility or minority, he could not be said to have acted wilfully, the legal basis for holding third persons liable for the damage or injury he caused is the presumed "fault or negligence on their part" in the exercise of their parental or "legal authority or control."[5]

The reason for holding the offender's custodians civilly liable is the presumption that they could have prevented the injury had they not been remiss in the performance of their parental or custodial obligations. Due diligence is, therefore, available to such third persons as a good defense, and sufficient proof thereof will negate civil liability.

In contrast, the legal basis for holding liable the third person beneficiary for whose benefit the damage was caused, has no relation to personal responsibility for one's own acts or omission. It is based on the general principle that "no one shall be unjustly enriched or benefited at the expense of another." The justified damage done in order to avoid or prevent a greater evil from befalling the beneficiary, "gives rise to the juridical relation of quasi-contract" between injured party and beneficiary that creates

[5] REV. PEN. CODE, Art. 101(2).

the obligation to repair or compensate for said damage. This is the express provision of Article 2142 of the Civil Code.

c) *Acquittals on reasonable doubt*

I have so far discussed at least two grounds for the acquittal of criminal defendants: namely, first, acquittal on factual innocence; second, acquittal on legal innocence. More specifically, legal innocence may either be based on a particular justifying circumstance or on any exempting circumstance.

A *third* ground for acquittal is on a reasonable doubt entertained by the court as to the guilt of the accused. In criminal cases, it is now common knowledge that the law requires the prosecution to prove the guilt of the accused beyond reasonable doubt in order to secure his conviction of the crime charged. The doubt may be generated by a plausible rival hypothesis or alternative explanation of the cause of the crime other than the felonious act of the accused.

A dramatic illustration of reasonable doubt that resulted in the acquittal of the accused for murder is the case of *People v. Magborang*.[6] The accused woman was charged of having caused the death by poisoning of her lover's wife. Two prosecution witnesses testified to having seen the accused place a "whitish substance" inside the pot where *pinakbet* was being cooked. Shortly after eating their meal together, which included the *pinakbet* as one of the dishes served, the wife and another person began throwing up and soon died. Autopsy and laboratory analysis of the victims' intestines showed the cause of death as arsenic poisoning. No proof was, however, adduced that the suspected dish of *pinakbet* really contained poison. In acquitting the accused, the Supreme Court took note that a rival hypothesis consistent with innocence raises a reasonable doubt that would not satisfy the test of moral certainty necessary for conviction. "The arsenic could conceivably have been mixed with the rice or with the ampalaya and other vegetables before they were gathered, in the form of insecticide deposited in their skin-fold and ridges," the court observed.

Could the heirs of the poisoned victims in the cited case have filed a civil suit for damages against the acquitted defendant? Article 29 of the Civil Code authorizes the filing of a separate "civil action for damages for the same act or omission" that constituted the crime in case of acquittal on reasonable doubt. Since "such action requires only a preponderance of evidence," it is possible, in the abstract level, to secure a favorable judgment for the plaintiff. As a practical reality, however, it would be difficult to persuade a judge to grant such a judgment. For sure, such a decision would be appealed, and the fact that there is no reported case on the matter is persuasive of the conclusion that no such judgment exists except perhaps

[6] 118 Phil. 950 (1963).

judgments awarding damages in such small amounts as not to be worth the effort and expense of appeal.

d) *Dismissal on procedural/constitutional violations*

An accused may further be held not criminally liable for a felony by reason of some ground not related to the substantive issue of guilt or innocence. Dismissal of the charge may result from a violation of a constitutional right, a substantive right or a procedural requirement.

d.1) *Constitutional violation*

The famous landmark case of *Miranda v. Arizona*[7] is presumably known to all lawyers. It will be recalled that Miranda was an indigent Mexican with pronounced sexual fantasies charged of kidnapping with rape. He was convicted on the basis of an extrajudicial confession secured during police custodial interrogation at which he was not warned of his constitutional rights to silence and to counsel. His conviction was reversed by the U.S. Supreme Court by reason of such violation.

A similar result was reached in the Philippine case of *Chavez v. Court of Appeals*,[8] where our Supreme Court also reversed the conviction of petitioner Chavez of qualified theft of a motor vehicle. Over his objection, accused Chavez was called to testify as a prosecution witness without being discharged. The trial judge, later to become a justice of the Court of Appeals, ruled that the prosecution has an absolute right to call on anyone to be its witness and that the defendant who is called to be a prosecution witness cannot object, except to particular questions that may call for incriminating answers. Primarily on the basis of his own testimony, Chavez was convicted of the crime charged.

Making a distinction between an ordinary witness and a defendant as a witness, the Supreme Court chided the trial judge for having "undone the libertarian gains made in over half a century and overturned settled law"[9] on the matter from the earliest reported case of *U.S. v. Junio*[10] found in the very first volume of the Philippine Reports. The Supreme Court reversed the conviction of Chavez and dismissed the case on the ground that his testimony was compelled in violation of his privilege against self incrimination.

Many cases have held that a dismissal based upon violation of the accused's constitutional right to a speedy trial, is in effect an acquittal founded on lack of evidence as to the guilt of the accused.

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7 384 U.S. 436 (1966).
8 24 SCRA 663 (1968).
9 *Id.* at 688.
10 1 Phil. 50 (1901).

d.2) *Dismissal on crime prescription*

In the case of *People v. Ramos and Phoenix Publishing House, Inc.,*[11] defendant was prosecuted for violation of the Copyright Law. His motion to quash on the ground that the crime had prescribed was denied by the trial court. On certiorari, the Supreme Court reversed and dismissed the case.

Effect of dismissal on civil liability

The dismissal in any of the foregoing illustrations does not absolve the offender from the obligation to compensate for the damage he has caused. This is because, in the language of the Rules of Court, the extinction of the penal action did not proceed "from a declaration in the final judgment [of dismissal] that the fact from which the civil might arise, did not exist."[12] The rape victim in *Miranda,* the car owner in *Chavez,* and the copyright owner in *Ramos* may file a separate civil action for damages against the respective accused notwithstanding the dismissals in their respective criminal actions.

Civil Liability of Third Persons for Crimes

From a practical standpoint, it is important to know the persons other than the accused who may be held civilly liable for his crime. For very frequently, such third persons are much more financially solvent than the offender himself. They are called "third persons" for the reason that they are not logically impleaded parties in the criminal case between the People of the Philippines and the accused.

Of practical value is a classification based on whether the third persons' liability is primary or secondary.

Primary. liability of parents, guardians

a) *On acquittal by reason of minority*

In general, the primary civil liability of third persons for the criminal conduct of another, arises upon the acquittal of the latter by reason of an exempting or justifying circumstance. The Revised Penal Code expressly provides several instances thereof.

First, the civil liability of parents and guardians of minor or youthful offenders acquitted on that ground.[13]

Article 11 unqualifiedly exempts a child under nine years of age from criminal liability. Qualified exemption is granted to a minor offender over nine but under fifteen years. To hold him criminally liable, the prosecution

[11] 83 SCRA 1 (1978).
[12] RULES OF COURT, Rule 110, Sec. 3(c).
[13] REV. PEN. CODE, Art. 101(2).

must prove that he committed the crime with discernment, that is, with the capacity to distinguish between right and wrong.

An interesting question posed by a perceptive freshman student in this connection is whether a minor between 9 and 15 years could ever be exempted from criminal liability in cases of *mala prohibita*. Criminal intent or a guilty mind, also known as *mens rea* or *scienter*, is based on a consciousness of wrong-doing. This mental state is not required for conduct legislated as a crime without consideration of any moral standards. In such cases, the doctrine of strict or absolute liability prevails. Engaging in conduct violative of law, irrespective of intent, is penalized. Since *mens rea*, which is based on discernment, is not required for *malum prohibitum*, a minor offender over 9 but under 15, would seem to be always criminally liable for such class of crimes.

Although logically consistent, such reasoning was not followed by the Court of Appeals in *People v. Navarro*,[14] where a 13-year-old girl, prosecuted for selling a tin can of cocoa above the ceiling price in violation of the Anti-Profiteering Law, was acquitted for lack of discernment.

Criminal prosecution of child under 9 years

Of significance to the enforcement of civil liability is a possible innovation introduced by the Child and Youth Welfare Code. Under the Revised Penal Code, no prosecution need be undertaken against a child under 9 since he is absolutely exempt from criminal liability. Such a prosecution, however, seems now to be required under the youth code since it requires the court to award custody over such erring child to its parents subject to the supervision of the court.[15] Such supervisory jurisdiction can only be acquired by the court through the filing of the appropriate charge and the service of a coercive process upon the child. This clearly infers the necessity of formal prosecution.

Parenthetically, the question may be raised as to the utility of further burdening the courts whose dockets are already groaning under their heavy loads.

b) *On acquittal by reason of insanity or imbecility*

The second instance of primary civil liability of third persons is that imposed on parents and guardians for the damage or injury caused by their ward who is acquitted by reason of insanity or imbecility.[16]

Although the penal code also provides for civil liability where the offender is acquitted because he acted "under the compulsion of an irresist-

[14] 51 O.G. 4062 (1955).
[15] Pres. Decree No. 603 (1975) as amended by Pres. Decree No. 1179 (1977), Art. 189 par. 2.
[16] REV. PEN. CODE, Art. 101 (2).

ible force"[17] or "under the compulsion of an uncontrollable fear,"[18] this situation is not included in this part of the discussion. The reason is that the persons made primarily liable for having caused the fear or used the violence, are not "third persons" since they are normally included in the charge as principals by inducement.

c) *On acquittal for avoidance of greater evil*

The third instance relates to a case of acquittal by reason of avoidance of a greater evil.[19] As earlier pointed out, the law makes the beneficiary or "the persons for whose benefit the harm" was caused, primarily civilly liable "in proportion to the benefit which they may have received."[20]

d) *On conviction of minor offender*

Ordinarily, the accused who is convicted of a crime causing damage or injury to the victim, is himself held primarily civilly liable therefor. The Child and Youth Welfare Code seems to have expanded the civil liability of parents and guardians for the criminal conduct of their children.

As already discussed, the primary civil liability of parents under the penal code arises only upon acquittal of the minor accused who is not over 15 years of age. There is no express provision imposing parental civil liability in case of conviction of such minor. If such minor is convicted on a determination that he had acted with discernment, civil liability follows the general rule and, therefore, the minor must primarily respond with his own property, if any. The youth welfare code seems to have changed this rule. For Article 201 now holds the parents primarily civilly liable for the injury inflicted by the convicted minor.[21]

Further, the penal code is silent as to parental civil liability for crimes committed by minors above 15 but under 18. Inferentially, primary civil liability will be borne by the convicted minor offender following the general rule. Again, however, the youth code seems to have changed this by making the parents of such convicted minor primarily liable.

Primary liability of possessor of wrongfully taken goods

There are at least two instances wherein the law expressly imposes civil liability upon a third person who may be guilty of no neglect and irrespective of relationship with the accused.

The first case, earlier adverted to, relates to a third person-beneficiary who benefited from the harm done by the acquitted accused in avoidance of a greater evil that would otherwise have resulted. Such beneficiary may

[17] REV. PEN. CODE, Art. 12(5).
[18] REV. PEN. CODE, Art. 12(6).
[19] REV. PEN. CODE, Art. 101(4) in relation to Art. 11(4).
[20] *Ibid.*
[21] Pres. Decree No. 603 (1975) as amended by Pres. Decree No. 1179 (1977).

be a total stranger to the accused and in fact, may even be unaware that the harm was caused for his benefit.

The second instance relates to a third person who came into possession of stolen or otherwise wrongfully taken goods. Article 105 of the Revised Penal Code provides that the owner of such goods is entitled to be restored in his possession thereof, even as against a "third person who has acquired it by lawful means." Such third person must be innocent of knowledge that the thing he possessed is the subject of a crime. This is so because if he had guilty knowledge thereof, he would be criminally liable as an accessory who had profited by the effects of the crime.

Subsidiary liability of third persons

The subsidiary civil liability of third persons under the Revised Penal Code, may be classified into two situations: *one* is where the accused is not in any way related to such third person; and, *two,* is where the accused is an employee, apprentice or pupil of the third person.

Current government policy of promoting tourism in the country is affected by the first classification. Paragraph 1 of Article 102, makes hotel owners subsidiarily civilly liable for crimes committed in their establishments.

In a sense, this could be seen as an early forerunner of the modern "no-fault" concept of liability. The reason for this is that tourists are generally strangers in the place and are therefore constrained to rely on the vigilance and protection of the hotel keeper for the security of their persons and effects. The calculated extra cost for this vigilance and liability could easily be passed on to the customer as necessary expenses of operation.

A tourist who gets mugged while waiting for companions in the hotel lobby, a hotel guest who loses all his belongings in a fire by arson that guts his hotel room, or another tourist who gets robbed at the point of a knife—these are only a few examples of the logical beneficiaries of the protection sought to be accorded by this penal provision.

It is unfortunate that there are no reported cases where the provision of this penal law has been applied. This is probably because of the difficult condition imposed that the hotelkeeper must have committed a violation of a municipal ordinance or some police regulation before civil liability could be imposed.

The same Article 102, paragraph 2, further provides that hotelkeepers are also subsidiarily liable to a hotel guest for losses incurred by reason of robbery or theft. The tourist who gets robbed at knife-point however, has no recourse against the hotel owner because the law expressly excepts cases of robbery with violence against or intimidation of persons, unless committed by hotel employees themselves. Further, the hotel is not liable

for theft or robbery losses incurred by one who is not a registered hotel guest. Thus, one who loses his bag to a theft while eating in a hotel restaurant, cannot hold the hotel liable. And even one whose hotel room is broken into and whose valuables are lost therein, cannot sue the hotel unless he can prove that he has given prior notice of such valuables being in his room and further, that he has complied with hotel instructions regarding the safekeeping thereof.

It is perhaps by reason of all these difficult conditions that there are also no reported cases cited by textbook writers showing the application of these legal provisions to specific cases.

Some of these perceived shortcomings are sought to be remedied by the U.P. Law Center proposed revision of the penal code. The proposed amendment would remove those difficult conditions and even impose primary liability upon the hotel operator where the offender is not known. The intended protection would thus be made more effective.

The second classification of subsidiary civil liability is where the accused is an employee of the third person who is sought to be held liable. Under Article 104 of the Revised Penal Code, there must be a finding that the employer is engaged in some kind of an industry and that the employee-accused committed the felony in the discharge of his duties.

Condition for subsidiary liability of employer

The meaning of the phrase "in the discharge of duties" was the specific issue raised in the very recent case of *Baza Marketing Corporation v. Bolinao Security and Investigation Service, Inc.*[22]

This was an action filed by plaintiff-appellant seeking to enforce what it claims to be the subsidiary civil liability of the defendant employer for the crime committed by its employee. In a previous criminal case, the accused, a security guard employed by defendant, was convicted of robbery. He was assigned to guard the premises of a building owned by the Chamber of Commerce of the Philippines against theft, robbery, arson and other unlawful acts. During his tour of duty, the guard conspired with a 16-year old boy, whom he assisted to enter the office of the plaintiff, a lessee of the very building that he was supposed to be protecting, and carted off the office equipment belonging to the plaintiff. The decision convicting the accused security guard also ordered him to indemnify the plaintiff owner for the value of the stolen equipment. After the writ of execution was returned unsatisfied by reason of the insolvency of the accused, plaintiff brought the instant action to recover the unsatisfied indemnity from the accused's employer.

[22] 117 SCRA 156 (1982).

The trial court denied plaintiff's claim. It held that defendant could not be held subsidiarily liable for the act of its security guard in conniving and assisting the actual robber commit the crime, since "this connivance was not in the discharge of his duties as security guard."[23] The trial court did not elaborate on its conclusion beyond saying that "the duty of the security guard was to guard the premises assigned to him."[24]

Appeal was taken by the plaintiff to the Court of Appeals. There being no issue of fact, however, since the case was decided solely on the basis of the stipulations of facts submitted by both parties, the case was certified to the Supreme Court on a single question of law.

Affirming the decision of the lower court, the Supreme Court held that the subsidiary civil liability of an employer is predicated upon the commission of a crime by an employee within the scope of his assigned tasks. The convicted guard was assigned to protect the properties of the building owner with whom the defendant had contracted to provide security services. Defendant had no similar contract with plaintiff and, therefore, had no duty to secure its premises. "The circumstance that the office of plaintiff-appellant is in the same building . . . does not materially change the legal implication of the said act"[25] as not being committed in the discharge of duties, the Supreme Court reasoned. "For all legal intents and purposes," it added, "the robbery could have been committed in a neighboring building or establishment, in which case, it could hardly be argued that the employer of the security guard should be made responsible for the consequences of such malefaction."[26]

The High Tribunal rejected the arguments of plaintiff-appellant who cited the Commentaries of Reyes and Albert, that such subsidiary liability arises in a hypothetical case similar to the case at bar. "The law does not say . . . that the crime be committed *while* in the discharge of his duties,"[27] the Court held.

Critique of decision

Inferentially, the Supreme Court adopted the position of defendant-appellee that admits liability "if the properties which were stolen belonged to the Chamber of Commerce of the Philippines," for had this been so, the "unlawful taking [would have] occurred in the performance or discharge of duties."[28]

While the above reasoning is correct, it failed to consider that under that supposition, plaintiff could have sued the defendant directly by an

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[23] *Id.* at 161.
[24] *Ibid.*
[25] *Id.* at 164.
[26] *Ibid.*
[27] *Id.* at 163.
[28] *Id.* at 162.

independent civil action, since it "is based on an obligation not arising from the act or omission complained of as a felony."[29] The employer's liability in that situation would be contractual in nature and it would not have been necessary for plaintiff to wait for the accused employee to be convicted of the crime charged.

Quite correctly the Court held that the condition that the employee commit the crime "in the discharge of his duties" was imposed as a "statutory limitation intended to exclude crimes not related to the performance of the duties assigned to him by his employer."[30] To illustrate what it meant, the Court hypothetized a security guard raping a woman passerby or committing a robbery in a nearby establishment during his tour of duty. In such cases, it would be "neither just nor logical" to hold the employer liable for such misdeeds, it concluded.[31]

Although the above reasoning is sound, its application to the particular facts of this case is questionable. The holding that "the act of stealing [is] not included in an employee's assigned task; [for] an employer [would never] include among the duties of his employee the commission of a crime,"[32] is so sweeping that its unqualified application could very well result in a nullification of the employer's statutory liability. In vehicular accidents, for instance, which is the most common case for claiming the subsidiary liability of employers, the employers could invoke this holding that they had not hired their drivers to be reckless or imprudent, and thereby escape liability.

The convicted security guard in the case at bar was assigned to guard the premises of the *entire* building under contract with its owner to provide for security services. The plaintiff victim was one of the tenants in that very building. Judicial notice could be taken of the well-known fact that a major consideration for the establishment of a tenancy relationship is the security offered by landlords. Tenants, subdivision residents and condominium owners rely on the promised security offered by their landlords or developers. It is hairsplitting to argue that the security guard was assigned only to protect the shell of the building and thereby afford him an excuse to ignore the security of the tenants under his very eyes. The holding of the court that the position of the plaintiff is "for all legal intents and purposes," analogous to a tenant who was robbed "in a neighboring building or establishment,"[33] ignores the realities of the situation and is absurd.

The argument of the plaintiff that the law be construed to mean a crime committed by the employee *while or during* the discharge of his duties, which the court rejected, seems to be more in accord with the intent of the law.

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29 CIVIL CODE, Art. 21.
30 *Id.* at 164.
31 *Id.* at 163.
32 *Id.* at 164.
33 *Ibid.*

In the illustration given, it is clear that the rape of a woman passerby is totally unrelated to the duties of a security guard. Arguably, however, if the rape committed was that of a janitress cleaning the very premises he was assigned to guard, a persuasive case could be made out to hold the employer liable subsidiarily.

Enforcement of civil liability

We have this far made a less than exhaustive survey of the various situations under which civil liability for criminal conduct may arise. Let us now focus our attention on the practical matter of how to enforce such civil liability.

Following our presentation of the substantive aspect of this lecture, the procedural aspect will first discuss the problem of enforcing the civil liability of the offender himself, followed by that relating to the civil liability of third persons.

The Rules of Court expressly provide that "when a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately."[34]

I haven't heard of any victim who, in his right mind, has vountarily given up his right to be compensated for his injuries and damages that he has suffered. That the offender is being criminally prosecuted shows that the victim has not forgiven him. Since punishment is still sought, it would be absurd to expect forgiveness as to the civil aspect.

Victim's choice of remedies

Reservation, however, implies a recognition that the victim has a right to choose between a civil action or a criminal prosecution to recover his damages. This recognition is based on the fact that there are both advantages and disadvantages to each type of action which the victim must weigh in light of his own particular circumstances.

Financial capacity is one consideration. A victim who cannot afford to hire private counsel would have to opt for the joint proceedings and rely on the fiscal to protect his private interests in addition to being the public prosecutor. Further, there is the added advantage of having the threat of being jailed acting as a bludgeon to expeditiously compel the accused to come to the desired civil settlement.

On the other hand, the subordinate position of civil actions to criminal prosecutions, and the stringent proof beyond reasonable doubt required for conviction, are considerations that may tilt the balance in favor of an

[34] RULES OF COURT, Rule 111, Sec. 1.

independent civil action over which the fiscal has no control, and where only a preponderance of evidence is required to secure a favorable judgment. Also, where the *locus delicti* is far from the victim's residence, the psychological advantage and geographical convenience of suing on "home-ground" would be decisive.

Separate civil action

The problem posed by the victim's right to choose remedies is the failure of the Rules of Court to provide for the form and time of election. All that the Rules require is that the choice be by "express reservation." This could include a verbal manifestation to that effect in open court. Of course, an actual filing of a civil suit is already a clear exercise of the victim's right of choice.

Virata v. Ochoa,[35] illustrates the problem posed by this omission. In this case, the driver of a passenger jeepney was prosecuted for his reckless driving that resulted in the death of a pedestrian. At the initial hearing, the private prosecutor made an express reservation of the civil action. Subsequently, however, he withdrew said reservation and actively participated in the trial of the criminal case wherein he introduced evidence of civil damages. Sensing that the case was not going too well for the prosecution, the private prosecutor again made a reservation of the civil action. He then filed an action for quasi-delict against both the driver and the jeepney owner. The civil defendants filed a motion to dismiss on the ground of the pending criminal action. While the motion was pending resolution, judgment was rendered in the criminal case acquitting the accused-driver on the ground that the death of the victim was the result of an accident. The motion to dismiss the civil action was subsequently granted. The correctness of the dismissal was raised in the Supreme Court by certiorari. The Supreme Court reversed the dismissal, holding that the acquittal of the accused does not absolve from civil liability for a quasi-delict since this is a different source of obligation.

Judge Sangco, in his recent book on criminal law,[36] subjects the ruling of this case to a scathing attack, calling it "typical of the very simplistic approach to a very complex problem."[37] He correctly points out that the real issue in this case is whether the offended party has made a choice of remedies to which he must be bound. Such party having actively participated in the criminal prosecution, including the presentation of evidence of damages—which the private prosecutor would not have been allowed to do without the requisite joinder of actions—Sangco argues persuasively that such election bars the subsequent filing of the civil action for quasi-delict. In other words, having made his bed, the offended party must now lie on it.

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[35] 81 SCRA 472 (1978).
[36] SANGCO, CRIMINAL LAW (1979).
[37] *Id.* at 333.

As previously pointed out, the acquittal of the accused-driver on the ground of factual innocence wipes out his civil liability arising from non-existent *criminal negligence*. Technically, the Supreme Court was correct in holding that such acquittal does not absolve from liability for *civil negligence* or quasi-delict. But as a matter of praticality, it is difficult to see how a judge could hold the acquitted driver still liable for tort. Having been declared by his acquittal innocent of reckless or simple imprudence, it would be inconsistent to hold the same act of driving negligent for civil purposes.

Implied joinder

Where no express reservation has been made, the Rules provide that the civil action is impliedly instituted with the criminal prosecution. Should the accused decide to plead guilty on arraignment, it is error for the judge to forthwith sentence him for the crime charged. It is his duty to set the case for hearing to receive the offended party's evidence on the civil liability of the accused. In the case of *Morta v. Municipal Judge of Santiago, Agusan del Norte,*[38] respondent Judge was admonished to follow the foregoing procedure. This is as it should be. The professed abhorrence to multiplicity of suits and the object of the procedural rules "to assist the parties in obtaining a just, speedy and inexpensive determination of every action and proceedings," as announced in Rule 1, Section 2, must be given effective implementation.

Civil liability of third persons

a) *Primary responsibility enforceable in the same criminal action*

As earlier discussed, an acquittal by reason of an exempting circumstance such as minority or insanity, would make the parent or guardian primarily civilly liable for the injury or damage caused by the exempt minor or lunatic.

In *U.S. v. Baggay,*[39] an early case decided in 1911, the accused went berserk, or, using current language, ran amuck, hacking various persons with a sharp bolo, including his own mother, resulting in the death of one woman and serious injuries to the others. Prosecuted for murder, Baggay was exonerated by reason of insanity. In the same decision, however, the trial court held the accused civilly liable for ₱1,000.00 payable to the heirs of the deceased. Executing the judgment, the Sheriff attached various properties including those belonging to the mother of the accused.

The sole issue raised before the Supreme Court was the propriety of holding the accused civilly liable in the same decision that acquitted him by reason of irresponsibility. The Supreme Court affirmed the questioned

[38] 101 SCRA 221 (1980).
[39] 20 Phil. 142 (1911).

decision, holding that "judges and courts rendering judgment in a criminal case prosecuted against an insane or demented person, even when they hold the accused exempt from crinimal liability, must fix the civil liability of the persons charged with watching over and caring for him or the liability of the demented person himself. . . ."[40] This case is therefore a clear *precedent for a judgment of acquittal with civil liability.*

Inferentially, the court approved the attachment and sale at public auction of the properties belonging to the mother of the accused. This is questionable. While the civil liability of parents in this situation is clear, the law itself absolves them if "they prove that there was no blame or negligence on their part." Further, such liability is predicated on the exercise of "legal authority or control" over the demented person. Lack of such authority or control is therefore a good defense.

The prosecution in this case was only for the killing of the deceased victim. The physical injuries inflicted on the others, including the mother, were the subject of a separate prosecution. Presumably, the same judgment of acquittal with civil liability will follow. The ultimate result will be that the mother, as the offended party, will wind up being held civilly liable for her own injuries. This is absurd.

The mother of the acquitted accused, not being a party to the prosecution for murder, did not have an opportunity to prove the defenses that the law recognizes. She was, therefore, denied her day in court and the execution of judgment violated her constitutional right not to be deprived of her properties without due process of law.

The case of *Reyes v. Ruiz*[41] provides another illutsration of enforcement of the primary responsibility of a third person in the same criminal action.

The accused was prosecuted of estafa for having pawned jewelries which she received from the complainant for sale on commission. Convicted on her own plea of guilty, she was sentenced to four months of *arresto mayor* and to pay an indemnity of ₱400.00. After she started to serve her sentence, the offended party filed a motion praying that the pawnshop owners be directed to return the jewels to her without payment, in accordance with the penal provision which was carried over to the present Article 105 of the Revised Penal Code. At the hearing of said motion, no one appeared to contest it despite notice and summons. The court thereupon granted the motion of the offended party. One pawnshop owner voluntarily complied with the court order and returned the jewelry pawned to him. The others, however, challenged the order by appeal, alleging violation of due process.

[40] *Id.* at 146-147.
[41] 27 Phil. 458 (1914).

The Supreme Court affirmed the order of the trial court, holding that the jewelries "must be restored by the appellants even though they acquired them under a legal contract and *notwithstanding the fact that they are third parties* with respect to the agreement between the owners of the jewels and the accused."[42]

The Court failed to rule on the issue of due process violation. It can be surmised, however, that the Court did not consider this a serious issue considering that the trial court took pains to issue summons and give due notice of the complainant's motion against the pawnshop owners.

I had occasion to utilize the foregoing doctrine to advantage in a murder case before then Circuit Criminal Court Judge, now Ex-Justice Onofre Villaluz of the Court of Appeals. Five teen-agers, 16 to 18 years old, made a pin cushion of the body of their classmate, stabbing him no less than 32 times while he was bound and gagged. The motive was to punish him for being rude or *bastos* to a sorority sister who was offended by an obscene gesture that he had made with his fingers. They were convicted and sentenced to pay indemnity. I then filed in my capacity as private prosecutor, a motion for execution against the parents of the convicted defendants. Despite opposition, Judge Villaluz granted the motion. No appeal was taken.

b) *Primary liability enforced by separate action*

The victim's right of choice of remedies to enforce civil liability was illustrated in the case of *Tan v. Stanvac* earlier discussed. There, the primary responsibility of the third person-beneficiary for whose account the damage was done in order to avoid a greater evil from happening, was enforced by separate civil action.

c) *Subsidiary liability enforced in some criminal action*

Uniformly, crime victims elect to enforce the subsidiary civil liability of employers by separate civil action. In 1978, a controversial departure from settled practice was made in *Pajarito v. Señeris.*[43]

The driver of a passenger bus was prosecuted for reckless driving that resulted in overturning the vehicle, thereby causing the death of two passengers. Convicted on his own plea of guilty, the court sentenced him to the proper penalty and imposed on him civil liability for ₱12,000.00.

The writ of execution against the convicted driver was returned unsatisfied by reason of the driver's insolvency. Thereupon, the heirs of the deceased filed a "Motion for Subsidiary Writ of Execution" against Felipe Aizon who was alleged in the Information as the owner and operator of the ill-fated bus. Opposition was centered on the employment status

[42] *Id.* at 461.
[43] 87 SCRA 275 (1978).

of the driver, the oppositor contending that he had already sold the bus to the driver's father, who thereby became the employer of the accused.

Although the issue seems to have not been raised, the trial court denied the motion on the ground that the alleged employer was not a party in the criminal case. The court held that a separate civil action was required to enforce the claimed subsidiary liability of the employer.

The Supreme Court reversed the trial court on this issue. It held that the procedural joinder of the civil action with the criminal prosecution authorizes the trial court to continue with the criminal proceedings, to determine the defenses that may be interposed by the alleged employer. Quoting with approval from American Jurisprudence that "a case in which an execution has been issued is regarded as still pending so that all proceedings on the execution are proceedings in the suit,"[44] it directed the trial court "to hear and decide in the *same proceeding* the subsidiary liability of the alleged owner and operator of the passenger bus."[45]

As to the claim that the alleged employer was deprived of his day in court, the High Tribunal cited with approval the earlier case of *Miranda v. Malate Garage and Taxicab, Inc.*,[46] which, while admitting that "an employer, strictly speaking, is not a party to the criminal case instituted against his employee," nevertheless held that "in substance and effect, considering the subsidiary liability imposed upon him by law," such employer is deemed a party.[47]

Critique of decision

The reasoning may be faulted as being inaccurate. Where the alleged employer claims that the convicted defendant was not his employee at the time the crime was committed, how could he be expected to know that "it is his concern that his interest be protected in the criminal case by taking virtual participation in the defense of his employee," as the court reasoned? This could well happen in a case where a relative takes a vehicle without permission from the owner. This is not unusual in our society where a myriad of close personal relationships exists.

The *Pajarito* holding was affirmed in *Paman v. Señeris*,[48] involving the same judge in the same official assignment at Zamboanga City, on almost identical facts. Curiously, the *Paman* case relates to an event that happened much earlier than the *Pajarito* case. The length of time it took to resolve this case is noteworthy. From the time the vehicular accident happened in December 1956 until the case was decided by the Supreme Court, *almost a generation—25 years and 6 months—elapsed!* As to whether

[44] *Id.* at 283.
[45] *Id.* at 284.
[46] 99 Phil. 670 (1956).
[47] *Id.* at 281.
[48] 115 SCRA 709 (1982).

the offended party has already collected on the adjudicated amount of civil liability is still a subject of speculation. In the light of such delay, it is no wonder that the people's faith in the formal institutions administering justice has reached such a low ebb.

Like the *Pajarito* case, *Paman* also involves reckless driving, which, this time, caused the death of a passenger who fell out of a cargo truck. The accused pleaded guilty to the charge of homicide thru reckless imprudence and was accordingly sentenced to 2 months of *arresto mayor* and to indemnify the heirs of the victim in the sum of ₱12,000.00. Upon showing of the driver's insolvency, petitioners filed a motion for execution of subsidiary liability of the employer. The trial court denied the motion. The sole issue before the Supreme Court is the enforceability of the employer's subsidiary liability in the criminal action against the erring driver. Reiterating the *Pajarito* rule, the Court directed further proceedings in the same criminal action to determine the subsidiary liability of the employer.[49]

Why both cases were not consolidated for a joint decision, considering the similarity of both facts and issues, is a mystery that cannot be solved by a mere reading and comparison of the separate decisions.

What is significant to note is that in both cases, there are no averments in the information of jurisdictional facts upon which the civil liability of a third person may be predicated. All that was alleged is that the third person was the owner and/or operator of the ill-fated motor vehicle. The unwarranted assumption was made that employment could be inferred from such ownership. As previously pointed out, this could be fallacious.

Further, it could be argued that the criminal court did not acquire effective jurisdiction over the third person by a mere notice of hearing of motion. Such notice is usually sent by the movant without court intervention. It is basic that jurisdiction over the person is only acquired by the court either by the service of a coercive process of an arrest warrant or summons, or alternatively, by voluntary appearance. The third person conceivably could make an express reservation that his opposition to said motion should not be construed as a voluntary appearance that concedes the court's jurisdiction over his person.

Conclusion and recommendations

There is no denying the desirability of the objectives of simplifying procedure, avoiding multiplicity of actions and hastening the notoriously slow process of formal adjudication in this country. Undoubtedly, these are the objectives of the procedural joinder of civil and criminal proceedings into one action.

[49] *Id.* at 715.

As early as 1911, the *Baggay* case already decided that the liability of a third party, particularly that of a parent for the crime committed by an insane child, may properly be enforced in the criminal action. Three years later, in 1914, *Reyes v. Ruiz*[50] reiterated the propriety of such a remedy in the case of a thrid-party possessor of swindled jewelries. Notwithstanding the lapse of seven long decades from the earlier decision, however, and despite the promulgation of the first Rules of Court in 1940 and its revision in 1964, the Supreme Court has deplorably not responded by way of providing appropriate procedural rules to enforce the civil liability of a third party in the criminal action. Had it done so, such questions relating to claimed violation of due process, raised in the two *Señeris* cases, would have been forestalled, and the wastage of time spent in considering and deciding this anticipated issue would have been prevented.

It is in the spirit of enhancing fairness and advancing expeditiousness in the administration of justice that the following procedural reforms in this area of civil liability arising from criminal conduct are here advocated:

1. An amendment to Article 100 of the Revised Penal Code to clarify that civil liability for criminal conduct arises only upon determination of factual guilt of a crime that has caused damage or injury to a private offended party. It is intended to erase the misimpression that the original provision gives.

2. An amendment to Section 1, Rule 111 of the Rules of Court, setting an irrevocable deadline for the offended party to make an express written reservation of the civil action. Such reservation should be made on or before the initial hearing of the criminal case and that failure to do so would imply a joinder of the civil with the criminal action. This amendment is meant to prevent the victim's choice of remedies from being converted into a game of play.

3. A new procedural rule requiring that averments must be made in the criminal complaint or information, of the essential jurisdictional facts upon which the civil liability of the offender and that of any proper third party may be predicated. Thus, in order to hold the offender civilly liable, an averment of damage or injury to the private complainant must be made. To hold a parent primarily liable for a minor offender's criminal conduct, an averment must be made of parental authority and negligence. And in order to hold an employer subsidiarily liable, an averment must be made that he is engaged in industry and that the crime was committed in the discharge of the offender's employment duties.

4. A new procedural requirement that summons be served upon any third party sought to be made civilly liable, whether in a primary or sub-

[50] *Supra* note 40.

sidiary capacity, and that a copy of the criminal complaint or information containing the foregoing required averments be also served with the summons.

The last two proposals are designed to obviate objections based on claimed violation of due process and defective acquisition of jurisdiction over the person.

5. Lastly, a new procedural rule that would defer presentation of evidence relating to civil damages until after, and only upon, an adjudication or admission of factual guilt. The intention is to make the process of fact-finding more accurate and reliable by preventing the introduction of prejudicial evidence unrelated to the factual issue. Equally important, this proposal is intended to eliminate the wasteful expenditure of judicial time spent in hearing evidence of civil damages, in cases where the eventual verdict of acquittal based on factual innocence likewise absolves from civil liability.

I submit the foregoing proposals for reform in the hope that they may contribute in some small measure towards narrowing the presently wide gap between law practice and the ideal of fair and speedy justice for all.