

**OF WORTH AND WAGES:
REIMAGINING PHILIPPINE LOSS OF EARNING CAPACITY
TO INCLUDE HOMEMAKERS AND UNPAID DOMESTIC
WORKERS***

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ABSTRACT

This Article examines the eligibility of housewives, househusbands, and unpaid domestic workers to claim loss of earning capacity under Philippine tort law. Despite their contributions to the household economy, they remain outside the framework for compensatory damages. By surfacing this doctrinal gap, the Article argues that an interpretation that can accommodate the loss of housekeeping capacity under the existing head of actual damages is both possible and necessary. Through a survey of jurisprudence, the Article outlines how the Supreme Court has already adopted forward-looking approaches in awarding loss of earning capacity to certain non-earning individuals. It then turns to comparative law for models of loss of housekeeping capacity, drawing from jurisdictions that subsume unpaid domestic labor under compensable economic loss. Finally, it applies the capability approach to frame unpaid domestic work as a loss of real human functioning that warrants legal redress. In doing so, this Article invites a recalibration of how case law can be applied with greater fidelity to *restitutio in integrum*.

KEYWORDS: tort, earning capacity, domestic work, *restitutio in integrum*

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I. INTRODUCTION

To be made whole in the eyes of the law is, in theory, to be visible: to have the loss of one acknowledged and restored, not only economically but equitably. The animating principle of *restitutio in integrum*, which underpins compensatory damages in Philippine tort law, is premised on the principles of equity and natural justice.¹ The law compensates not to enrich a person, but to restore and repair.² Although flawed, the law offers the best remedy available: monetary or financial compensation for the loss or injury an individual sustains.³

¹ Ramon V. Villaflor, *Deficiencies of the Philippine Law on the Subject of Damages*, 7 PHIL. L.J. 329 (1928).

² *Id.*

³ *Id.*

Classified under actual damages, the loss of earning capacity may be awarded in two situations under the New Civil Code (“NCC”). First, in the instance of death caused by a crime or a quasi-delict, where damages are recoverable by the heirs of the decedent.⁴ Second, in cases of personal injury, whether temporary or permanent.⁵ On both occasions, the Supreme Court generally requires documentary evidence to substantiate proof of income and loss of earning capacity, notwithstanding certain settled exceptions.⁶ It is in this manner that the Court safeguards against awards based on speculation.⁷ Jurisprudence, nevertheless, reveals deviations from the foregoing rule that manifestly undermine the Court’s own rigidity against awarding actual damages based on future projections and speculation.

In *Mercury Drug v. Spouses Huang*,⁸ the Supreme Court granted damages for loss of earning capacity to a high school student who had neither employment nor income at the time of his accident. The Court instead relied on the primary considerations of his academic performance, extracurricular aptitude, and the likelihood of his promising future at a successful banking career were it not for the vehicular collision that led to his allegedly lifelong physical impairment.⁹ In doing so, *Mercury Drug* implicitly recognized that although potential earning capacity is intangible, it may constitute compensable economic value under the law. In the later case of *Abrogar v. Cosmos Bottling Co.*, the Court widened its considerations to determine if there was indeed loss of earning capacity.¹⁰ It remarked that it must be reasonably assumed that the victim would (1) complete schooling, and (2) “turn out to be a useful and productive person.”¹¹ Hence, this gives rise to the question: If the Court can overlook present earning capacity to favor future potential, why can it not do the same for those already engaged in economically valuable work, albeit outside the traditional scope of formal employment?

⁴ CIVIL CODE, art. 2206(3).

⁵ Art. 2205(1).

⁶ See *Guy v. Tulfo*, G.R. No. 213023, 901 SCRA 159, 177, Apr. 10, 2019; *Enriquez v. Isarog Line Transport, Inc.* [hereinafter “*Enriquez*”], G.R. No. 212008, 809 SCRA 223, 227, Nov. 16, 2016; *People v. Oco* [hereinafter “*Oco*”], G.R. No. 137370, 412 SCRA 190, 222, Sept. 29, 2003; *People v. Buenavidez* [hereinafter “*Buenavidez*”], G.R. No. 141120, 411 SCRA 202, 210, Sept. 17, 2003; *People v. Caraig* [hereinafter “*Caraig*”], G.R. No. 116224, 400 SCRA 67, 70, Mar. 28, 2003.

⁷ *Mencorp Transport Sys., Inc. v. Heirs of Libatique*, G.R. No. 203309, Feb. 3, 2021, “(Res.)”

⁸ [Hereinafter “*Mercury Drug*”], G.R. No. 172122, 525 SCRA 427, June 22, 2007.

⁹ *Id.*

¹⁰ [Hereinafter “*Abrogar*”], G.R. No. 164749, 820 SCRA 301, Mar. 15, 2017.

¹¹ *Id.* at 363.

The doctrinal disconnect is stark. The law compensates for a promising future that has not yet materialized but withholds compensation from the unwaged domestic labor or housework that is, in every sense, economically real. Certainly, it is more speculative to predict a bright career trajectory than to recognize the tangible productivity of individuals already contributing economically. This inconsistency warrants closer attention, not only for its doctrinal implications but also its practical implications for recovering loss of earning capacity in the country.

In the Philippines, the economic value of unpaid domestic labor—predominantly undertaken by housewives, househusbands, and caregivers—remains largely unrecognized in formal compensation frameworks, despite its substantial contribution to household and national well-being. Thus, without any exclusive reports on the number of homemakers and unpaid domestic workers in the country, proxies must be relied on. A 2019 study by the Philippine Institute for Development Studies estimated that unpaid work, primarily by women, accounted for approximately 2.5 trillion pesos, or about 20% of the country's Gross Domestic Product.¹² This figure underscores the significant yet often overlooked economic impact of domestic tasks such as childcare, eldercare, cooking, and cleaning. The increasing number of female Overseas Filipino Workers (OFWs), who comprised 55.8% of the total 2.3 million OFWs in 2019, has led to a rise in househusbands who assume primary caregiving roles at home.¹³ Inexplicably, these homemakers and unpaid domestic workers are adjudged to be beyond the scope of the award for loss or impairment of earning capacity despite the appreciable economic value of domestic labor.

The Author does not dispute that the model of *restitutio in integrum* remains doctrinally sound and normatively justified. However, it must be recognized that the interpretation of the model as regards loss of earning capacity reveals a selective application, as it favors those with access to formal employment and documentation to support it. It effectively excludes those who lack conventional markers of income, notwithstanding the occasional grant by the Supreme Court of damages to those who are categorically unemployed. Even so, these departures by the Court are few and far between. When there are judicial divergences, those engaged in

¹² Rappler.com, *Women's Unpaid Work Worth Trillions of Pesos — PIDS Study*, RAPPLER, Apr. 8, 2019, at <https://www.rappler.com/philippines/227646-pids-expert-reveals-women-unpaid-work-cost-trillions-pesos/>.

¹³ Jamaine Punzalan, *Househusbands on the rise as more Pinays work abroad*, ABS-CBN, June 16, 2019, at <https://www.abs-cbn.com/life/06/16/19/househusbands-on-the-rise-as-more-pinays-work-abroad>.

housekeeping and unpaid domestic work are not among the advantaged anomalies.

The current body of literature on loss of earning capacity in the Philippines remains scant. Existing works tend to focus on critiquing the prevailing computation to estimate actual pecuniary loss and proposing alternative standards grounded in economic theory,¹⁴ as well as scrutinizing the domestic damages system in its entirety.¹⁵ The latter mentions loss of earning capacity only in passing, rather than as a central object of inquiry.¹⁶ While these contributions are unquestionably significant, they largely presume that the claimant has already established eligibility. Rarely do they interrogate who is considered eligible in the first place. And rarer still are works that scrutinize how this eligibility is profoundly shaped by evidentiary standards that fail to capture unpaid domestic work.

Unlike most existing literature, this Article does not concern itself with refining the quantification of damages for loss of earning capacity. It pauses before that stage of analysis to ask a more fundamental question: who is eligible? More precisely, who does the law recognize as having an earning capacity to lose in the first place? The existing literature on loss of earning capacity in the Philippines has yet to meaningfully engage with its doctrinal boundaries or exclusions. No study has systematically challenged the jurisprudential assumptions that confine eligibility to the formally employed or demonstrably employable. Nor has any work fully interrogated the Court's selective laxity in allowing speculative projections in some cases, such as those involving students or minors, while applying stricter standards elsewhere. These asymmetries have yet been closely examined for their doctrinal or distributive implications, much less in relation to unpaid domestic labor. In turn, these rulings necessarily call attention to whether the Court's interpretive leeway may and should extend to those whose losses are no less real.

This Article seeks to place these questions at the forefront and address the aforementioned gaps. It explores the threshold question of whether househusbands and housewives, or those engaged in unpaid domestic work, may be accommodated by Philippine tort laws and prevailing

¹⁴ See Jose Nicetas S. Dimaculangan & Paula Katherina A. Gan, *The Problem of Pain: Approximating Damages for Loss of Earning Capacity*, 82 PHIL. L.J. 150 (2007).

¹⁵ See Ameurfina A. Melencio, *A Critical Analysis of the Philippine Law on Damages*, 23 PHIL. L.J. 481 (1948); *A Comparative Study of the Law of Damages under the Spanish and the Common Law Systems*, 2 PHIL. L.J. 227 (1915).

¹⁶ *Id.*

jurisprudence to claim loss of earning capacity. Further, this Article contends that the Court has already carved interpretative space for such awards, and that there is no statutory prohibition against extending the loss of earning capacity to housewives, househusbands, and unpaid domestic workers.

To this end, the Article adopts a three-pronged analytical framework to demonstrate and substantiate its proposal. First, it applies a doctrinal approach through a jurisprudential survey and critique of Supreme Court rulings on the award of loss of earning capacity, with particular emphasis on the Court's digressions, as seen in *Mercury Drug*. Second, it employs a comparative law approach through a review of foreign jurisdictions that, while similarly anchored in *restitutio in integrum*, have explicitly recognized loss of housekeeping capacity either as part of loss of earning capacity or as an autonomous head of damages. Third, it adopts an interdisciplinary approach grounded in economic theory. It specifically draws on the capability approach to reframe earning capacity not as wage loss alone, but as the real ability to perform economically valuable roles such as unpaid domestic labor. Taken together, these lenses support the claim that loss of housekeeping capacity may, at the very least, be properly subsumed under the existing framework for loss of earning capacity in Articles 2205 and 2206 of the NCC.

While this Article endeavors to chart a more inclusive reading of loss of earning capacity under Philippine tort law, it also recognizes its own limitations. This Article does not delve into the distinctions between housewives, househusbands, and unpaid domestic workers based on educational attainment, previous employment history, or time spent in homemaking, among others. Particularly, it does not disaggregate the claimants engaged in unpaid domestic labor. It proceeds on the premise that regardless of such variables, individuals who regularly perform unpaid domestic labor contribute meaningfully to the household economy. Whether undertaken full-time or as part of a broader caregiving role, these contributions form the factual and normative bases of the Article's argument. A more nuanced description of homemakers and unpaid domestic workers may well be important for future scholarship, but for present purposes, it is their shared economic function and not their specific individual circumstances that is relevant to this Article.

At the outset, the Author wishes to clarify the caveat that this Article neither attempts to quantify what a suitable valuation of housekeeping capacity might be, nor propose the evidentiary aspects necessary to prove the same. It confines itself to determining whether those undertaking unpaid domestic work are eligible to be compensated with loss of earning capacity,

and does not explore the particular quantification methods and evidentiary standards to account for such compensation.

II. FOUNDATIONS OF RULES GOVERNING THE LOSS OF EARNING CAPACITY

A. Restitutio in Integrum vis-à-vis Loss of Earning Capacity

The beginnings of the law on damages in the Philippines traces back to the Roman legal classification of obligations. This included *ex delicto* and *ex contractu*, and were later expanded to embrace quasi-delicts and quasi-contracts.¹⁷ These obligations proffered the moral vision that harms must have consequences, and those consequences must be met with restoration or reparation.¹⁸ The legal paradigm designed by the Romans permeated Spanish colonial rule and found codification in the Spanish Civil Code, which became effective around 1889.¹⁹ Later, the Spanish Civil Code was superseded by the passage of the NCC in 1950, further enriching the country's civil law with layers of Anglo-American influence introduced during the American colonial period.²⁰ These plural roots have shaped the current landscape of the laws on damages in the Philippines.

Notably, the NCC carves out Book IV, Title XVIII as the primary repository of provisions on damages, which explicitly encompasses the loss of earning capacity as a compensatory damage. Actual or compensatory damages are “those awarded in satisfaction of, or in recompense for, loss or injury sustained. They simply make good or replace the loss caused by the wrong.”²¹ As iterated by the Supreme Court, it is treated as “compensation for an injury that will put the injured party in the position where it was before the injury.”²²

At the core of this legal framework is the deeply held belief that in a civilized society, each individual has the right to live unmolested, uninjured,

¹⁷ Villafior, *supra* note 1, at 329.

¹⁸ Melencio, *supra* note 15, at 485.

¹⁹ Ruben F. Balane, *The Spanish Antecedents of the Philippine Civil Code*, 54 PHIL. L.J. 1, 41 (1979).

²⁰ RUBEN F. BALANE. CIVIL LAW FLORILEGIUM: ESSAYS ON THE PHILIPPINE VARIANT OF THE CIVIL LAW TRADITION (2012).

²¹ *Mendoza v. Spouses Gomez*, G.R. No. 160110, 726 SCRA 505, June 18, 2014, *citing* V. ARTURO TOLENTINO, CIVIL CODE OF THE PHILIPPINES 633 (1992).

²² *Guy v. Tulfo*, G.R. No. 213023, 901 SCRA 159, 177, Apr. 10, 2019.

and undisturbed.²³ When this right is violated—whether by negligence or wrongful conduct—the law, guided by natural justice, demands reparation.²⁴ Of course, no amount of money can truly compensate for the loss of a limb, or worse, of life itself. Yet the law, in its limited capacity, seeks to redress harm by awarding monetary compensation as an attempt to make whole what was lost.²⁵

The foregoing belief, anchored in equity and natural justice, is guided by the overarching principle of *restitutio in integrum*. Literally translated, it means restoration to the original condition, or to the condition the injured party was in prior to the harm.²⁶ It is the cornerstone of Philippine damages as codified in Article 2200 of the NCC, which provides that indemnification shall include “not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.”²⁷ It is in this context that the Philippine legal system awards loss of earning capacity in Articles 2205 and 2206 of the NCC, causing physical injuries and death, respectively.²⁸ The law does not aim to punish the wrongdoer or provide a windfall to the injured. Instead, it seeks to deliver a form of justice that is remedial in character.²⁹ Stated otherwise, compensation is not meant to enrich victims but to return them to the same condition they were in before the injury. This is achieved primarily through monetary compensation, which, though inherently imperfect, is regarded as the best approximation the law can offer for the corresponding loss or impairment in earning capacity.

Philippine jurisprudence, following this mandate, has developed a fairly rigid formula for calculating lost future income, popularly known as the *Villa Rey* formula.³⁰ This computation is based on the victim’s life expectancy, gross annual income, and necessary living expenses.³¹ The formula reflects the doctrinal commitment to make whole the victim or heirs for the measurable pecuniary loss of the ability to earn a livelihood. In the same vein, the judicial interpretation of earning capacity has also evolved to generally refer to actual earnings, leaving a gap in protection that the

²³ Villafior, *supra* note 1, at 331.

²⁴ Dimaculangan & Gan, *supra* note 14, at 155.

²⁵ *Id.*

²⁶ Melencio, *supra* note 15, at 485.

²⁷ CIVIL CODE, art. 2200.

²⁸ Art. 2205–06.

²⁹ Dimaculangan & Gan, *supra* note 14, at 151.

³⁰ *Villa Rey Transit, Inc. v. Ct. of Appeals* [Hereinafter “*Villa Rey*”], G.R. No. 25499, 31 SCRA 511, Feb. 18, 1970.

³¹ *Id.* at 515.

subsequent Parts will discuss. Notwithstanding this prevailing description, the Court has, in a number of cases, widened its definition.

Fundamentally, the loss of earning capacity is understood as a compensatory remedy grounded in fairness and economic reality. At its core, it vindicates the NCC's imperative of full reparation, whether described as "profits which the obligee failed to obtain,"³² or as the lost power to earn by seeking to restore the prospective economic value extinguished by the defendant's wrongdoing. This principled focus on capacity, rather than on wages alone, affirms that compensation should mirror the real impact of the injury on one's livelihood or productive potential. In this manner, the courts are able to uphold their doctrinal fidelity to the principles of natural justice and equity embodied in *restitutio in integrum*.

In this light, Part III will exemplify how Philippine case law has interpreted the concept of loss or impairment of earning capacity in practice, and the gaps that remain in protecting those whose productive contributions lie outside the formal wage economy, particularly housewives, househusbands, and unpaid domestic workers.

B. Requirements to Claim an Award of Loss of Earning Capacity

As provided in the NCC, loss of earning capacity is expressly awarded as compensatory damages in the following two instances:

Article 2205. Damages may be recovered:

(1) For *loss or impairment of earning capacity in cases of temporary or permanent personal injury*;³³

Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The *defendant shall be liable for the loss of the earning capacity of the deceased*, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical

³² CIVIL CODE, art. 2200

³³ Art. 2205 (Emphasis supplied.)

disability not caused by the defendant, had no earning capacity at the time of his death;³⁴

Verily, from the text itself, Article 2205(1) contemplates the award of loss of earning capacity in cases of personal injuries, while Article 2206(1) applies to crimes or quasi-delicts that result in death. Professor Rommel Casis makes a case for the same differentiation, elucidating that:

Since 2206(1) makes the defendant liable for the loss of the earning capacity of the deceased, it may be suggested that 2205(1) applies to loss or impairment of earning capacity of a person injured but not killed. This interpretation is supported by the fact that 2205(1) covers both temporary and permanent injury.³⁵ There is injury to the earning capacity of a victim when the individual is “temporarily deprived of his [or her] capacity to perform his [or her] ordinary labor or to attend to his [or her] ordinary business.”³⁶

It has been clarified in jurisprudence that the loss of earning capacity of the victim refers to net income, which can be computed by deducting average expenses from total income.³⁷

The loss of earning capacity contemplated in both Articles 2205 and 2206, being categorized as actual damages under the NCC, thus requires the same to be “susceptible of measurement” as the “amount of loss must be capable of proof.”³⁸ In *Yamauchi v. Suñiga*, the Supreme Court clarified the nature of proof and loss necessary for a successful claim of compensatory damages:

Settled is the rule that actual damages must be *proved with reasonable degree of certainty*. A party is entitled only up to such compensation for the pecuniary loss that he had duly proven. It cannot be presumed. Absent proof of the amount of actual damages sustained, the court *cannot rely on speculations, conjectures, or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have been suffered by the injured party and on the best obtainable evidence* of the actual amount thereof.³⁹

³⁴ CIVIL CODE, art. 2206 (Emphasis supplied.)

³⁵ ROMMEL J. CASIS, ANALYSIS OF PHILIPPINE LAW AND JURISPRUDENCE ON DAMAGES 51 (2012).

³⁶ HECTOR S. DE LEON & HECTOR M. DE LEON, JR., COMMENTS AND CASES ON TORTS AND DAMAGES (2019).

³⁷ *Villa Rey*, 31 SCRA 511, 517–18.

³⁸ CASIS, *supra* note 34, at 47.

³⁹ G.R. No. 199513, 861 SCRA 583, 592, Apr. 18, 2018. (Emphasis supplied.)

Time and again, in reiterating that all actual damages shall only be awarded and measured based on competent proof present, the Court has emphasized that such proof cannot rest “on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof.”⁴⁰ Several types of documents have been deemed acceptable as competent proof, or the best evidence obtainable by the court. For example, proof of actual loss or injury may be “in the form of receipts, evidencing the actual expenses of the victim’s heirs, the victim’s income tax return, or financial statements of the victim’s employer[;]”⁴¹ the aforementioned not being a closed enumeration.

Explicably, Philippine courts require claimants to present documentary proof of income. These provide the empirical certainty that courts need to reliably calculate net income, the figure on which loss of earning capacity is estimated.⁴² However, well-settled is the rule that “damages for loss [or impairment] of earning capacity may be awarded despite the absence of documentary evidence” in two cases:

(1) the deceased [or the injured] was *self-employed and earning less than the minimum wage under current labor laws*, in which case, judicial notice may be taken of the fact that in the deceased’s line of work no documentary evidence is available; or

(2) the deceased was employed as a *daily worker earning less than the minimum wage under current labor laws*.⁴³

Likewise, it is easily discernible from jurisprudence that the exceptions to the requirement of documentary evidence are strict.⁴⁴ Therefore, the self-serving testimony of a witness without documentary corroboration cannot substantiate a claim for loss of earning capacity.⁴⁵

⁴⁰ TOLENTINO, *supra* note 21, at 178.

⁴¹ Dimaculangan & Gan, *supra* note 14, *citing* People v. Magalona, G.R. No. 143294, 406 SCRA 546, July 17, 2003; People v. Singh, G.R. No. 129782, 360 SCRA 404, June 29, 2001; Alcantara v. Surro, G.R. No. 4555, 93 SCRA 472, July 23, 1953.

⁴² DE LEON & DE LEON, JR., *supra* note 36, *citing* People v. Gumayao, G.R. No. 138933, 414 SCRA 539, Oct. 28, 2003; People v. Abadies, G.R. No. 135975, 387 SCRA 317, Aug. 14, 2002.

⁴³ *Enriquez* 809 SCRA 223, 227, *citing* People v. Villar, G.R. No. 202708, 755 SCRA 346, 356, Apr. 13, 2015; *Oco*, 412 SCRA 190, 222; *Buenavidez*, 411 SCRA 202, 210; *Caraig*, 400 SCRA 67, 70. (Emphasis supplied.)

⁴⁴ Spouses Estrada v. Phil. Rabbit Bus Lines, Inc. [hereinafter “*Spouses Estrada*”], G.R. No. 203902, 831 SCRA 349, 374, July 19, 2017.

⁴⁵ *Id.*

Speaking through Justice Del Castillo, the Supreme Court in *Spouses Estrada v. Philippine Rabbit Bus Lines, Inc.* clarified that the victim, a government employee working at what was then the Department of Education, Culture, and Sports (DECS)—now the Department of Education—could not be entitled to loss of earning capacity without any documents evidencing his actual income.⁴⁶ The Court refused to accord the mere testimony of the victim, alleging that he was employed in the DECS as a teacher, sufficient weight to grant him an award of compensatory damages, stating:

It must be emphasized, though, that *documentary proof of Dionisio's actual income cannot be dispensed with since based on the above testimony, Dionisio does not fall under any of the two exceptions aforementioned.* Thus, as it stands, there is no competent proof substantiating his actual income and because of this, an award for actual damages for loss/impairment of earning capacity cannot be made.⁴⁷

However, testimony from a credible witness, in lieu of documentary evidence, may also be treated as an exception to the general rule requiring documentary proof. The Supreme Court, through Justice Marvic Leonen in *Torreón v. Aparra, Jr.*,⁴⁸ took a more progressive stance. It opined that: “lack of documentary evidence is not fatal to a claim for the deceased’s lost earning capacity. Testimony from a competent witness familiar with his salary is a sufficient basis to determine the deceased’s income before his death.”⁴⁹

Torreón elucidated that, in civil litigation, the standard of proof rests not on absolute certainty but on a preponderance of evidence.⁵⁰ In fact, Rule 133 of the Rules of Court empowers judges to assess the totality of the circumstances—including the manner of testimony, coherence, witness credibility, and factual probability—in determining which side bears the greater weight of truth.⁵¹ Contrary to popular assumption, this evidentiary threshold is not limited to documents. Nothing in the Rules of Court or the NCC mandates that claims for loss of earning capacity be proven exclusively through documentary evidence, as emphasized by the Supreme Court:

Nothing in the Rules of Court requires that only documentary evidence is allowed in civil cases. All that is required is the satisfaction of the quantum of evidence, that is, preponderance of evidence.

⁴⁶ *Id.*

⁴⁷ *Id.* at 376. (Emphasis supplied.)

⁴⁸ [Hereinafter “*Torreón*”], G.R. No. 188493, 848 SCRA 380, Dec. 13, 2017.

⁴⁹ *Id.* at 385.

⁵⁰ *Id.*

⁵¹ RULES OF COURT, Rule 133.

In addition, the *Civil Code does not prohibit a claim for loss of earning capacity on the basis that it is not proven by documentary evidence.*

Testimonial evidence, if not questioned for credibility, bears the same weight as documentary evidence. *Testimonies given by the deceased's spouse, parent, or child should be given weight because these individuals are presumed to know the income of their spouse, child, or parent.*

If the amount of income testified to seemed incredible or unrealistic, the defense could always raise their objections and discredit the witness or, better yet, present evidence that would outweigh the evidence of the prosecution.⁵²

Therefore, testimonial evidence, when given by credible witnesses, is equally admissible and, in some cases, determinative.⁵³ By way of illustration, in *Pleyto v. Lomboy*,⁵⁴ the Court relied on the widow's uncontroverted testimony to estimate the decedent's earnings, underscoring that the absence of documents need not be fatal to the claim.⁵⁵ Similarly, in *Philippine Airlines, Inc. v. Court of Appeals*, the Court maintained that co-workers and corporate officers have been allowed to testify to a colleague's income, especially where such testimony is unrebutted and grounded in their professional roles:

The payrolls of the companies and the decedent's income tax returns could, it is true, have constituted the best evidence of his salaries, *but there is no rule disqualifying competent officers of the corporation from testifying on the compensation of the deceased as an officer of the same corporation*, and in any event, no timely objection was made to their testimonies.⁵⁶

Given that these forms of testimonial evidence suffice in wrongful death claims under Article 2206 of the NCC, it logically follows that they may be admitted in cases of personal injury as well, given the shared doctrinal basis in Article 2205. Moreover, what emerges is a limited but meaningful doctrinal exception: where documents are unavailable, courts may turn to credible testimony to assess loss of earning capacity. This is not a dilution of evidentiary standards but a reaffirmation that justice values substance over

⁵² *Torreon*, 848 SCRA at 406, *citing* *People v. Wahiman*, G.R. No. 188493, 848 SCRA 380, 385, Dec. 13, 2017.

⁵³ *Id.*

⁵⁴ G.R. No. 148737, 432 SCRA 329, June 16, 2004.

⁵⁵ *Id.* at 340.

⁵⁶ *Phil. Airlines, Inc. v. Ct. of Appeals*, 185 SCRA 110, 123, May 8, 1990.

form. Rigid insistence on documentary proof, especially in cases where harm is already difficult to monetize, risks converting the remedial function of the law into a procedural formality. Loss, when clear and credibly attested to, should not be denied redress simply because it is not formally recorded.

The logic of the Supreme Court is consistent: damages must correspond to demonstrable loss and be reasonably certain for an award of compensatory damages. There can be no space for guesswork. Historically, however, courts have awarded temperate damages in place of actual damages for loss of earning capacity in cases where the fact of earning capacity is evident, but the claimant is unable to adequately substantiate or to present documentary proof of actual income.⁵⁷ This judicial approach finds statutory grounding in Article 2224 of the NCC, which provides that such damages “may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.”⁵⁸

On several occasions, courts have turned to temperate damages instead of actual damages in cases involving loss of earning capacity, particularly where the loss is apparent, but documentation is lacking. The Supreme Court affirmed the ruling of the Regional Trial Court in *Pleno v. Court of Appeals*,⁵⁹ which held that while the actual income of the injured party was not established, it was nevertheless unmistakable that there was a loss or impairment of Pleno’s ability to earn as an entrepreneur:

As to the loss or impairment of earning capacity, *there is no doubt that Pleno is an entrepreneur and the founder of his own corporation, the Mayon Ceramics Corporation. It appears also that he is an industrious and resourceful person with several projects in line and were it not for the incident, might have pushed them through.* On the day of the incident, Pleno was driving homeward with geologist Langley after an ocular inspection of the site of the Mayon Ceramics Corporation. *His actual income however has not been sufficiently established so that this Court cannot award actual damages, but, an award of temperate or moderate damages may still be made on loss or impairment of earning capacity.* That Pleno sustained a permanent deformity due to a shortened left leg and that he also suffers from double vision in his left eye is also established. Because of this, he suffers from

⁵⁷ *Spouses Estrada*, 831 SCRA 349, 374; *Tan v. OMC Carriers, Inc.*, G.R. No. 190521, 639 SCRA 472, 484, Jan. 12, 2011.

⁵⁸ CIVIL CODE, art. 2224. (Emphasis supplied.)

⁵⁹ [Hereinafter “*Pleno*”], G.R. No. 56505, 161 SCRA 208, 224, May 9, 1988.

some inferiority complex and is no longer active in business as well as in social life.⁶⁰

Casis puts forth the cogent argument that the “ruling [in Pleno] may thus be interpreted as another exception to the rule requiring documentary evidence for the award of loss or earning capacity.”⁶¹ The approach in *Pleno* is likewise applied in cases like *People v. Singh* and *People v. Almedilla*, where the absence of sufficient proof did not negate the reality of earning capacity.⁶² In *Victory Liner, Inc. v. Gammad*, although the exact monetary loss could not be substantiated, the Court acknowledged the claimant’s income-earning capacity and granted temperate damages instead.⁶³ These cases reflect the Court’s cautious weighing and balancing of evidentiary standards, as well as its acknowledgment of genuine loss or impairment of earning capacity.

Still, the recognized exceptions to the requirement of presenting documentary evidence to prove loss of earning capacity in the form of actual damages, as examined in this Part, do not appear to be faithfully and consistently employed.

III. DOCTRINAL APPROACH: JURISPRUDENTIAL DEVIATIONS IN THE TREATMENT OF LOSS OF EARNING CAPACITY

While Philippine tort law articulates a clear commitment to *restitutio in integrum*, the promise of restoration falters in its application. Articles 2205 and 2206 of the NCC enunciate a victim’s entitlement to recovery for loss of earning capacity in cases of personal injury and death, respectively. However, the body of jurisprudence surrounding it exposes significant discrepancies—cracks into which housewives, househusbands, and unpaid domestic workers routinely fall. The inherent issue lies not in the wording of the law itself, but in the inconsistent exercise of judicial discretion that governs which claimants are permitted to recover.

This Part outlines several Supreme Court rulings that depart from the conventional approach to eligibility for an award of loss of earning capacity, with particular emphasis on *Mercury Drug*. Unlike most outlier cases,

⁶⁰ *Id.* at 224.

⁶¹ CASIS, *supra* note 34.

⁶² *Tan v. OMC Carriers, Inc.*, G.R. No. 190521, 639 SCRA 472, 484, Jan. 12, 2011, *citing* *People v. Singh*, G.R. No. 129782, 412 Phil. 842, 859, June 29, 2001 and *People v. Almedilla*, G.R. No. 150590, 409 SCRA 428, 433, Aug. 21, 2003.

⁶³ *Id.*

which are premised on Article 2206 of the NCC or involve instances of death, *Mercury Drug* depicts a deeper judicial flexibility. The case involves the award of loss of earning capacity for physical injuries sustained by the victim and relies on Article 2205 of the NCC as its mainstay. By particularizing these decisions, the speculative criteria employed by the Court in awarding loss of earning capacity is illustrated. Moreover, these decisions underscore that the same accommodation has arguably unfurled a space for awarding damages to individuals whose productivity and economic contributions, though unwaged, are no less tangible.

A. An Examination of *Mercury Drug v. Spouses Huang*

The 2007 decision of *Mercury Drug*⁶⁴ is a surprising one. It is an ambiguous deviation by the Court in its treatment of loss or impairment of earning capacity, notwithstanding its recognition that such damages are in the nature of actual damages. Notably, the doctrine in this case appears never to have been repealed. It was even echoed in prior and subsequent rulings, although the same are few and far between.

The Supreme Court, speaking through then Chief Justice Renato Puno, awarded “the conservative amount of [10 million pesos]” for the loss of earning capacity as actual damages to respondent-victim Stephen Huang.⁶⁵ Remarkably, at the time of the accident, Huang was an unemployed fourth-year high school student.⁶⁶ He had no mentioned employment or tangible earning capacity, and he presented no proof of either.

While he was driving his Toyota Corolla along C-5 Highway one evening, respondent Huang figured in a vehicular collision with a truck driven by an employee of petitioner Mercury Drug.⁶⁷ The Court affirmed that petitioner-employee was negligent while driving, and was the direct and proximate cause for the alleged life-long paralysis of Huang from his chest down.⁶⁸ Due to his injuries, the doctors of Huang opined that he would—for the remainder of his life—never be able to walk again and would require rehabilitation and therapy.⁶⁹ The Court, arguably empathic, called attention to Huang’s disconsolate medical condition in awarding respondents PHP 23,461,062.00 for the his life care:

⁶⁴ G.R. No. 172122, 525 SCRA 427, June 22, 2007.

⁶⁵ *Id.* at 439.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

The doctors who attended to respondent Stephen are one in their prognosis that his chances of walking again and performing basic body functions are nil. For the rest of his life, he will need continuous rehabilitation and therapy to prevent further complications such as pneumonia, bladder and rectum infection, renal failure, sepsis[,] and severe bed sores, osteoporosis and fractures, and other spinal cord injury-related conditions. He will be completely dependent on the care and support of his family.⁷⁰

However, of more material importance to this Article is the award of loss or impairment of earning capacity of Huang, which was heavily premised on his academic and extracurricular performance in school, and his bright career trajectory. The Court justified its award of 10 million pesos in cognizance of “his age, probable life expectancy, the state of his health, and his mental and physical condition before the accident.”⁷¹ Verily, it gave focus to his extracurricular involvement, academic records, and potential future in the banking industry were it not for the accident.⁷²

The Supreme Court emphatically highlighted Huang’s active participation in both extracurricular and leadership activities, as well as his outstanding academic performance. To wit:

He was only seventeen years old, nearly six feet tall[,] and weighed 175 pounds. He was in fourth year high school, and a *member of the school varsity basketball team*. He was also class president and editor-in-chief of the school annual. He had shown *very good leadership qualities*. He was looking forward to his college life, *having just passed the entrance examinations of the University of the Philippines, De La Salle University, and the University of Asia and the Pacific. The University of Sto. Tomas even offered him a chance to obtain an athletic scholarship*, but the accident prevented him from attending the basketball try-outs. *Without doubt, he was an exceptional student. He excelled both in his academics and extracurricular undertakings*. He is intelligent and motivated, a go-getter, as testified by Francisco Lopez, respondent Stephen Huang’s godfather and a bank executive.⁷³

In the same vein, the Court stressed that, were it not for the collision, Huang was predicted to have an unequivocally successful career ahead of him as a banker. In the words of Chief Justice Puno:

⁷⁰ *Id.*

⁷¹ *Id.* at 440.

⁷² *Id.*

⁷³ *Id.*

Had the accident not happened, *he had a rosy future ahead of him*. He wanted to embark on a banking career, get married[,] and raise children. *Taking into account his outstanding abilities, he would have enjoyed a successful professional career in banking*. But, as Mr. Lopez stated, it is highly unlikely for someone like respondent to ever secure a job in a bank. To his knowledge, no bank has ever hired a person suffering with the kind of disability as Stephen Huang's.⁷⁴

The Court was willing, and certainly proceeded, to make an inference that was generous and optimistic, but ironically speculative. This willingness to recognize future potential based significantly on academic performance and extracurricular undertakings is laudable, and the accident that Huang experienced was undeniably tragic. Albeit it raises a fundamental inconsistency in the treatment of loss of earning capacity by the courts—and seemingly confounds the nature and purpose of actual damages in the form of loss of earning capacity and temperate damages—*Mercury Drug* ultimately presents a favorable opportunity to reshape the judicial interpretation of loss of earning capacity.

Irrefutably, the Supreme Court exercised conspicuous discretion in *Mercury Drug*, which was neither the first nor last instance it ruled in such a manner. As mentioned, however, there are decidedly only a few cases where the Court departed from its usual stance on loss or impairment of earning capacity. This rarity may suggest an obvious discomfort of the Court in adopting the same posture and laxity. However, a point of clarity that can be gleaned from *Mercury Drug* is that the Court is capable of considerable flexibility in awarding loss or impairment of earning capacity. Further, nothing precludes it from deviating in such fashion, there being no prohibitive language in Articles 2205 and 2206 of the NCC or in other laws. This Article thus advances the potential of employing *Mercury Drug* and succeeding analogous cases as an avenue to expand the scope of who may be eligible to recover for loss of earning capacity.

B. Mapping Similar Deviations in Jurisprudence Pre- and Post-*Mercury Drug*

As early as 1998, in the case of *Metro Manila Transit Corp. v. Court of Appeals*, the Court exercised its flexibility in awarding loss of earning capacity to the heirs of a minor student who was run over and killed by the petitioner's

⁷⁴ *Id.*

passenger bus.⁷⁵ The decedent was only a third-year high school student enrolled in the University of the Philippines Integrated School. Yet, the Court granted her heirs loss of earning capacity as there was reasonable certainty she would “complete training for a specific profession:”

Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money. Evidence must be presented that the victim, if not yet employed at the time of death, was reasonably certain to complete training for a specific profession. In People v. Teehankee, no award of compensation for loss of earning capacity was granted to the heirs of a college freshman because there was no sufficient evidence on record to show that the victim would eventually become a professional pilot. But compensation should be allowed for loss of earning capacity resulting from the death of a minor who has not yet commenced employment or training for a specific profession if sufficient evidence is presented to establish the amount thereof.⁷⁶

The loss of earning capacity was categorically described by the Court to be representative of the loss of capacity to earn money. Impliedly, it signifies that there would have been future productivity in the form of earnings to be anticipated from the decedent had she not died. An even more obliging tenor characterized *People v. Sanchez*, as the Supreme Court awarded the heirs of the victims of rape with homicide for loss of earning capacity despite no proof of the probable earnings of the decedents and that such act would be speculative.⁷⁷ The Supreme Court explained in this wise:

Both Sarmenta and Gomez were *senior agriculture students at UPLB, the country’s leading educational institution in agriculture*. As reasonably assumed by the trial court, both victims *would have graduated in due course. Undeniably, their untimely death deprived them of their future time and earning capacity*. For these deprivation[s], their heirs are entitled to compensation; Difficulty, however, arises in measuring the value of Sarmenta’s and Gomez’s lost time and capacity to earn money in the future, both having been unemployed at the time of death. *While the law is clear that the deceased has a right to his own time—which right cannot be taken from him by a tortfeasor without compensation—the law is also clear that damages cannot be awarded on the speculation, passion, or guess of the judge or the witnesses . . . However, considering that Sarmenta and Gomez would have graduated in due time from a reputable*

⁷⁵ Metro Manila Transit Corp. v. Ct. of Appeals, G.R. No. 116617, 298 SCRA 495, Nov. 16, 1998.

⁷⁶ *Id.* at 510–11. (Emphasis supplied.)

⁷⁷ *People v. Sanchez*, G.R. No. 121039, 367 SCRA 520, Oct. 18, 2001. (Emphasis supplied.)

university, it would not be unreasonable to assume that in 1993 they would have earned more than the minimum wage. All factors considered, the Court believes that it is fair and reasonable to fix the monthly income that the two would have earned in 1993 at P8,000.00.⁷⁸

Post-*Mercury Drug*, the Court in *Pereña v. Zarate* again took the opportunity to underscore the nature of loss of earning capacity in justifying its award to the heirs of a 15-year-old high school student who was killed en route to Don Bosco, where he was enrolled:

[T]he fact that Aaron was then without a history of earnings should not be taken against his parents and in favor of the defendants whose negligence not only cost Aaron his life and his right to work and earn money, but also deprived his parents of their right to his presence and his services as well . . . Accordingly, we emphatically hold in favor of the indemnification for Aaron's loss of earning capacity despite him having been unemployed, because compensation of this nature is awarded not for loss of time or earnings but for loss of the deceased's power or ability to earn money.⁷⁹

It merits attention that there was no explicit mention by the Court of any reasonable certainty that the decedent would have completed training for a specific profession were it not for his untimely passing. Anent its award of compensatory damages, the Court went on to explicate that its empathetic treatment towards those to be benefited from Articles 2205 and 2206 has long been recognized:

This favorable treatment of the Zarates' claim is not unprecedented. In Carriaga v. Laguna Tayabas Bus Company and Manila Railroad Company, fourth-year medical student Edgardo Carriaga's earning capacity, although he survived the accident but his injuries rendered him permanently incapacitated was computed to be that of the physician that he dreamed to become. The Court considered his scholastic record sufficient to justify the assumption that he could have finished the medical course and would have passed the medical board examinations in due time, and that he could have possibly earned a modest income as a medical practitioner.⁸⁰

⁷⁸ *Id.* at 531.

⁷⁹ G.R. No. 157917, 679 SCRA 208, 234, Aug. 29, 2012.

⁸⁰ *Pereña v. Zarate*, G.R. No. 157917, 679 SCRA 208, 234, Aug. 29, 2012.

Penned by former Justice Bersamin in 2017, *Abrogar* highlighted the significance of the decedent's likelihood of becoming a useful and productive individual as a factor to the award of loss of earning capacity:

The petitioners sufficiently showed that Rommel was, at the time of his untimely but much lamented death, able-bodied, in good physical and mental state, and a student in good standing. *It should be reasonable to assume that Rommel would have finished his schooling and would turn out to be a useful and productive person had he not died.* Under the foregoing jurisprudence, the petitioners should be compensated for losing Rommel's power or ability to earn.⁸¹

From the unambiguous words of the Supreme Court, loss of earning capacity may be awarded not only on the reasonable presumption that the victim would finish his schooling, but also on the basis that it is reasonably conceivable for him to become "useful and productive."⁸² It bears emphasis that the Court not only interprets loss of earning capacity as the power and ability to earn, but also considers projected utility and productivity. In the 2021 Resolution of *People v. Marmol*, the Court maintained its recognition of future utility and productivity when it rationalized its refusal to grant loss of earning capacity to the heirs of the decedent in the following manner:

The prosecution only proved that John, at the time of his death, was a 17-year old minor. *There was no showing that he was gainfully employed at that time. Neither was there anything to prove that he was then studying which could have, at least, allow the courts to reasonably assume that he would have finished his schooling and become a useful and productive person had he lived.*⁸³

The evident departure in reasoning in *Mercury Drug* from the majority of case law, as fleshed out above, is therefore reaffirmed by cases both before and after it. These outliers expose two major inconsistencies in the manner in which the Court approaches awards for loss of earning capacity.

First, why is the Supreme Court prepared to compensate a student as a hypothetical professional-in-the-making who has yet to graduate high school, but not an established entrepreneur and a founder of his own business, such as Pleno? Between Huang and Pleno, the former lacked actual

⁸¹ G.R. No. 164749, 820 SCRA 301, 363, Mar. 15, 2017.

⁸² *Id.*

⁸³ *People v. Marmol* [hereinafter "*Marmol*"], G.R. No. 251881, June 16, 2021, slip op. at 2 (Res.).

earning capacity and naturally could not have presented any documentary evidence to prove the same. Meanwhile, the latter had an earning capacity that was impaired, but lacked documentary evidence to substantiate his actual income. Notwithstanding these material differences, Huang was awarded actual damages in the form of loss of earning capacity, while Pleno was only entitled to claim temperate damages.

Second, why is the Supreme Court willing to award loss of earning capacity to a student or their heirs based on the “reasonable certainty” of finished schooling and future productivity, but not to an individual who is already demonstrably useful and productive to their family, community, and society—even if without formal employment or higher education? By doing so, the judiciary assumes promise where there is potential for waged work but presumes the absence of value where the work is unpaid, albeit economically valuable. This reflects a selective calibration of productivity that privileges market-based roles while sidelining caregiving, household management, and other relational forms of labor. If the Court has shown willingness to measure future earning capacity based on academic promise and the likelihood of utility and productivity, then consistency suggests that it also accounts for demonstrated domestic functions that confer real social and economic benefit. These contributions, though unwaged, are no less constitutive of human flourishing and economic sustenance—a principle already glimpsed in *Mercury Drug* and fully resonant with evolving understandings of productive capacity and restorative justice.

The first question, while complementary to the broader critique, falls outside the scope of this Article. Instead, this work endeavors to explore the second inconsistency posited and illustrate how the Court, by preserving its tone and demeanor in *Mercury Drug*, may finally include househusbands, housewives, and unpaid domestic workers. Significantly, neither Philippine case law nor academic commentary appeals to squarely deal with this omission.

IV. COMPARATIVE LAW APPROACH: RECOGNIZING LOSS OF HOUSEKEEPING CAPACITY

This Article propounds that the loss of housekeeping capacity may be properly subsumed within the existing head of damages for loss of earning capacity as actual damages under Philippine Law. To support this posture, Part IV of this Article surveys the practice of foreign legal systems ranging from those with civil law or mixed traditions whose tort laws are

underpinned by *restitutio in integrum*. In these jurisdictions, the economic value of unpaid domestic labor has been acknowledged either by incorporating its loss under earning capacity or by recognizing it as a distinct compensable harm. These examples are not invoked as mandates, but as instructive analogs that demonstrate that an expanded reading of earning capacity is not only feasible but doctrinally consistent with the Philippine framework.

A. Loss of Housekeeping Capacity in Foreign Jurisdictions

Foreign jurisdictions offer working models for more inclusive understandings of earning capacity, particularly as regards loss of housekeeping capacity. This type of loss, though still invisible in Philippine damages jurisprudence, has been recognized in other jurisdictions as a concrete form of economic harm even when the labor in question is unpaid and non-waged. In other jurisdictions,⁸⁴ courts and legal scholars have developed nuanced approaches to compensating this type of loss. Although their methods differ in scope and form, each legal system is undergirded by the foundational doctrine of *restitutio in integrum*, the imperative to restore victims to their pre-injury condition.⁸⁵ This shared commitment renders these comparative insights doctrinally relevant to Philippine law.

There are four (4) central reasons for surveying several jurisdictions.

First, despite their structural differences—ranging from civil law systems (e.g., Germany, Italy, Spain) to common law traditions (e.g., England, Canada, United States)—they all embrace *restitutio in integrum* as the normative foundation of their compensatory damages.⁸⁶ This shared grounding makes comparative insight doctrinally relevant and compatible with local tort and damages laws.

Second, each jurisdiction illustrates a spectrum of jurisprudential and legislative shifts that have recognized unpaid domestic labor as compensable harm. Their experiences offer working models of how legal systems may evolve interpretively without needing wholesale statutory reform.

⁸⁴ Namely, Austria, England and Wales, France, Germany, Italy, the Netherlands, Norway, Poland, Spain, Switzerland, Canada, and the United States.

⁸⁵ Ernst Karner & Ken Oliphant, *Liability for Loss of Housekeeping Capacity in Comparative Perspective*, in WALTER DE GRUYTER, LOSS OF HOUSEKEEPING CAPACITY 292 (Ernst Karner & Ken Oliphant eds., 2012).

⁸⁶ *Id.*; *The Common Law Jurisdiction of the United States Courts*, 17 YALE L.J. (1907); Erik Encarnacion, *Making Whole, Making Better, and Accommodating Resilience*, 108 MINN. L. REV. 1338 (2024).

Third, the sample allows for both doctrinal depth and breadth. Well to note is that, apart from Canada and the United States, the compiled works published by Walter de Gruyter will be relied upon. These works offer a comprehensive comparative report on the other subject jurisdictions.⁸⁷

Lastly, surveying a broad range of jurisdictions demonstrates that recognizing unpaid domestic labor is not an outlier position but a growing international trend. It affirms that the Philippines would not be adopting a foreign or radical change; instead, it would be catching up with a global movement toward more inclusive recognition of economic harm.

Importantly, this Article does not seek to exhaustively dissect the entirety of these tort regimes. Instead, it selectively examines specific practices and doctrinal innovations that are most relevant and instructive to the Philippine context. These include the treatment of unpaid domestic labor as actual, compensable loss; the scope of housekeeping activities; and the shift from wage-based to function-based models of valuation. While each jurisdiction has carved its own doctrinal path, a common thread lies in the shared recognition that domestic labor, even when unpaid, is economically consequential and compensable. All told, this Section does not argue for wholesale legal application, but draws targeted lessons from diverse jurisdictions that may be thoughtfully adapted to the Philippine context.

Several jurisdictions subsume loss of housekeeping capacity under the purview of loss of earning capacity. For instance, Art. 444(2) of the Polish Civil Code recognizes the inclusion of housekeeping capacity losses within the wider context of earning capacity losses.⁸⁸ There is little debate that an individual who shoulders domestic responsibilities and becomes unable to carry them out due to injury has a rightful claim to compensation.⁸⁹ The same rings true for Austria and Germany.⁹⁰ The loss of housekeeping capacity has been appreciated as extending to both men and women.⁹¹

Anent the nature of loss of housekeeping capacity, it is uniform across jurisdictions that such is a compensable harm in both personal injury and wrongful death cases.⁹² In Germany, Section 843 of their Civil Code

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*; See JM Smits, *Import and Export of Legal Models: The Dutch Experience*, 13 *TRANSNAT'L L. & CONTEMP. PROBS.* 551, 558 (2003).

(BGB) has been interpreted by courts to cover the economic value of lost domestic services, even in the absence of a hired replacement.⁹³ The German Supreme Court has consistently held that the loss of housekeeping ability constitutes an economic loss and must be compensated accordingly.⁹⁴ While not all jurisdictions classify it under a distinct and autonomous head of damages, those that lodge it under the heading of loss of earning capacity or compensatory damages nonetheless regard it as compensable.⁹⁵ In such systems, courts subsuming it under the foregoing do so on the premise that housekeeping responsibilities yield a pecuniary or economic benefit, thereby justifying compensation under that category.⁹⁶

There appears to be no clear-cut and uniform bounds to define what constitutes housekeeping activities. However, several patterns emerge. A majority of the surveyed systems, including the United States, consider core domestic tasks as compensable, including cleaning, cooking, laundry, shopping, childcare, and gardening, which are generally activities physical in nature.⁹⁷ Some jurisdictions, such as Italy and Switzerland, expand this further to include coordinating and supervising family life and performing administrative household tasks.⁹⁸ Impairment in the victim's capacity to engage in the foregoing activities may be compensatory as “[a]fter all, according to the principle of *restitutio in integrum*, the victim shall, as far as possible, be put in the same position s/he would have been in but for the injury.”⁹⁹

A few jurisdictions, such as Austria and France, also allow social and relational functions (e.g., hosting gatherings or supporting a spouse's business contacts) to be factored in. However, these are typically subject to a threshold of substitutability or economic value.¹⁰⁰ Stated differently, “the mere inability to pursue hobbies” cannot be compensable as loss of earning

⁹³ See, e.g., Elisabeth Gleixner & Andreas Spickhoff, *Liability for Loss of Housekeeping Capacity in Germany*, in WALTER DE GRUYTER, *LOSS OF HOUSEKEEPING CAPACITY* 103–04 (Ernst Karner & Ken Oliphant eds., 2012).

⁹⁴ *Id.*

⁹⁵ Karner & Oliphant, *supra* note 85, at 278; Frank Tinari, *Household Services: Toward A More Comprehensive Measure*, 11 J. FORENSIC ECON. (1998); Charles Baum, et al., *Calculating Economic Damages in Wrongful Death and Personal Injury Cases*, 89 N.Y. ST. B.A. J., 12-16 (2017).

⁹⁶ *Id.*

⁹⁷ As seen in Austria, Germany, England and Wales, Canada, United States, and Norway. Karner & Oliphant, *supra* note 85, at 292; Tinari, *supra* note 95, at 1–3.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

capacity as these activities “cannot be considered to be of economic value.”¹⁰¹

Canadian jurisprudence sometimes classifies loss of housekeeping capacity as an economic (pecuniary) loss when it pertains to essential household services, while treating it as non-pecuniary when it involves a more subjective loss of amenity. The underlying rule, however, is that the value of lost domestic work can be recovered. Even if family members have been performing the household tasks gratuitously, an injured plaintiff is entitled to compensation for her diminished ability to contribute services to the family. In a leading Canadian case, the court remarked that pre-trial housekeeping services could be claimed “whether or not they were provided gratuitously,” distinguishing essential services from non-essential inconveniences.¹⁰² In contrast, countries like Spain and Poland show less developed jurisprudence, treating compensability as dependent on case-by-case judicial discretion.¹⁰³

This cross-jurisdictional view highlights both convergence and variability: while a common baseline of compensable domestic activities exists, each country calibrates its scope of recovery with nuances. Yet the shared principle of *restitutio in integrum* underpins all these approaches, affirming that loss of housekeeping capacity, properly understood, merits legal redress. In recognizing this trend, Philippine law need not reinvent doctrine; it need only reinterpret it in light of what is already globally acknowledged.

While the recognition of unpaid housework as compensable harm is relatively widespread, the actual methods for valuing it vary considerably. A full account of the mathematical approaches of other jurisdictions, however, falls outside the scope of this Article. Where claimants incur actual expenses by hiring replacements to perform household tasks, courts typically encounter less difficulty in valuation.¹⁰⁴ In such cases, compensation is generally awarded in full, so long as the services are reasonably necessary and demonstrably rendered. This involves restoring not just the work performed, but ensuring the continuity of domestic life and the well-being of those who

¹⁰¹ *Id.*

¹⁰² See Peter K. Doody, *Loss of Housekeeping Capacity in Personal Injury Claims*, 27 *ADVOC. QUARTERLY* 71, 71–72 (2003); see also *Dobbin v. Dobbin*, 21 C.C.L.T. (2d) 257 (Nfld. Ct. App. 1993).

¹⁰³ Karner & Oliphant, *supra* note 85, at 290.

¹⁰⁴ *Id.*; Charles Baum, et al., *Calculating Economic Damages in Wrongful Death and Personal Injury Cases*, 89 *N.Y. ST. B.A. J.*, 12-16 (2017).

depend on it.¹⁰⁵ As a case in point, under English law, a tort victim who can no longer perform usual housework or caregiving duties is entitled to recover the reasonable cost of hiring a substitute to perform such services. In practice, English courts often calculate damages by estimating the number of hours of housework the injured claimant can no longer do and multiplying it by a market hourly rate for domestic workers.¹⁰⁶

Economic scholar Cara L. Brown, quoting Kenneth Cooper-Stephenson, stated “that housekeeping claims are ‘incontestable in principle and now seem relatively well established[,]’ albeit the manner of computation of their amounts is not as set.¹⁰⁷ Further, citing *Wade v. Baxter*,¹⁰⁸ she posited that “[calculating] a loss of housekeeping capacity is more an art than a science,”¹⁰⁹ emphasizing the need for evidence beyond mere wage references to properly evaluate the impact of an injury on household responsibilities. This shift from wage-based to function-based valuation marks a departure from earlier approaches that relied solely on commercial wage analogs. In wage-based models, courts calculate losses using statistical or market rates for household services. For instance, courts apply replacement cost analysis using the hourly wages earned by a housekeeper.¹¹⁰ By contrast, function-based models center on the actual performance of the injured person and the functional loss resulting from the injury. Courts and scholars now recognize that many of the domestic activities affected involve not just quantifiable labor but also personal, relational, and social functions that contribute meaningfully to household life. Hence, function-based valuation broadens the conception of loss to include not just what was done, but what that work enabled within the family and home.

As Canadian courts have identified, the legal injury lies in the impairment of capacity itself, not in how the injured party chooses to adapt to that loss. Whether a person compensates by hiring help, doing fewer tasks, shouldering through with difficulty, or relying on unpaid support, the core deprivation remains the same: a diminished ability to perform essential domestic tasks. In this view, the method of coping is immaterial. What matters is that the injury has reduced one’s functional role within the household. As one decision put it, when an individual’s capacity to manage

¹⁰⁵ *Id.*

¹⁰⁶ Annette Morris, *England and Wales*, in DE GRUYTER, *supra* note 93, at 60.

¹⁰⁷ Cara L. Brown, *Valuable Services Trends in Housekeeping Quantum across Canada, 1990-2001*, 27 *ADVOC. QUARTERLY* 71, 71 (2003).

¹⁰⁸ 302 A.R. 1 (QB), ABQB 812 (2001).

¹⁰⁹ *Id.* at 76.

¹¹⁰ *Id.*

household responsibilities is diminished by injury, they are often left to navigate several imperfect alternatives:

(a) she can simply “do without[.]” In other words she can not clear the snow, or not mow the lawn, or not vacuum, or at least not do so as often.

(b) she can soldier on and complete the tasks herself. In many cases this will involve a cost to her in terms of increased pain, and in a loss of extra time that could otherwise be devoted to leisure activities or resting.

(c) she can hire replacement labour to actually complete the tasks that she is no longer able to do at her previous level of efficiency.

(d) she can rely on family and friends for assistance.

From a legal perspective, it does not make any difference which option the Plaintiff chooses. The loss of housekeeping capacity is the same in each one, and the award of damages should be identical. . . To argue otherwise is to confuse the assessment of the loss of capacity with the quantification of the loss. That the Plaintiff can still do some tasks, but more slowly and with pain, is also relevant.¹¹¹

In *Kim v. Lin*, a decision promulgated by the Supreme Court of British Columbia, the injured claimant was unemployed, married to a partner with physical disabilities, and a mother of two children who was entirely responsible for all household and family care activities.¹¹² Some of her tasks in the household involved assisting her husband in functions which required the use of his two hands, which he could not perform alone; cooking; cleaning; shopping; and taking care of the children. She figured in a motor vehicle accident and incurred injuries which caused her medical diagnosis of psychiatric disorders, fibromyalgia, and chronic pain syndrome. The Court recognized that the plaintiff suffered from significant injuries which considerably prevented her from carrying out housekeeping and childcare activities, and was entitled to be compensated for loss of past and future housekeeping capacity, to wit:

A plaintiff is entitled to claim damages both for loss of past and future housekeeping capacity. An award for loss of housekeeping capacity recognizes that work for which a person

¹¹¹ Brown, *supra* note 107, at 75.

¹¹² *Kim v. Lin*, 2016 BCSC 2405 (Supreme Court of British Columbia 2016).

does not get paid nevertheless has value to that person and others who benefit from it.

* * *

Ms. Kim is also entitled to be compensated for loss of future homemaking capacity. Because homemaking is required whether one is in the workforce or not, I consider it reasonable to base this award on the assumption that Ms. Kim would have continued to use her homemaking skills to age 70 had she not been injured. According to Mr. Carson's evidence, the present value at trial of \$1,000 per year to age 70 is \$26,030. Accordingly, before adjustment for contingencies, the present value of Ms. Kim's loss of housekeeping capacity to age 70 is \$312,360.

I am aware that there is judicial authority for the proposition that the court should be conservative in making awards for loss of housekeeping capacity (*Kroeker v. Jansen* (1995), 4 B.C.L.R. (3d) 178, [1995] B.C.J. No. 724 (C.A.)). However, in *Kroeker*, the injuries suffered by the plaintiff were minor. In this case, the uncontradicted evidence is that Ms. Kim simply lacks the capacity to look after her home and care for her children. In such cases this type of damage should result in a larger award for the cost of future care.¹¹³

Austria shares a similar stance with Canada. Courts reason that unpaid domestic labor produces a tangible economic benefit for the household, and its loss is thus compensable under the rubric of lost earning capacity.¹¹⁴ As stated in one Austrian case, housekeeping is an activity with monetary value for which "compensation is paid for [the] actual loss of earnings, although [the homemaker] earns no money from [the] task."¹¹⁵

B. Exploring the Inclusion of Housekeeping Capacity as Part of Earning Capacity

The Philippine legal tradition embraces *restitutio in integrum*—the ideal of making the injured whole again—not merely as a mechanical formula, but as a moral imperative. Yet, this aspiration falters when eligibility for compensatory damages hinges on market-oriented definitions of

¹¹³ *Kim v. Lin*, 2016 BCSC 2405 (Supreme Court of British Columbia 2016).

¹¹⁴ Ernst Karner & Nora Wallner-Friedl, *Liability for Loss of Housekeeping in Austria*, in WALTER DE GRUYTER, *LOSS OF HOUSEKEEPING CAPACITY* 2–3 (Ernst Karner & Ken Oliphant eds., 2012).

¹¹⁵ *Id.* at 3.

productivity. In general, loss of earning capacity is equated almost exclusively with loss of documented, waged labor. As a result, those whose productivity lies within the unpaid domestic sphere, such as full-time housewives, househusbands, and primary caregivers, find themselves outside the protective fold of damages law. This Section explores how such exclusion is neither doctrinally inevitable nor economically justified.

As evinced in Parts II and III, Articles 2205 and 2206 of the NCC refer broadly to the loss or impairment of earning capacity. However, Philippine jurisprudence has traditionally interpreted this narrowly, limiting it to the loss of income from paid employment. Generally, the Supreme Court has adhered to the principle that compensatory damages, particularly those awarded for loss of earning capacity, must rest on provable pecuniary loss. By requiring documentary proof of a victim's salary or income, courts often exclude those not formally employed from compensation, such as full-time homemakers and unpaid domestic workers. But this limitation stems from judicial construction, not statutory command. The NCC does not define earning capacity as wage-dependent, leaving its scope open to interpretation. Properly understood, it could encompass the ability to render valuable services, even if those services are unpaid.

In *Villa Rey Transit v. Court of Appeals*, the Supreme Court computed earning capacity as “the total of the earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses.”¹¹⁶ The formula rests on the assumption of documented income, drawing a direct line between earning capacity and wage generation.

This narrow orientation was reinforced by the Court in *Gatchalian v. Delim*, where it denied compensation for loss of earning capacity to a former public school substitute teacher who was unemployed at the time of the accident.¹¹⁷ In response to this ruling, Casis aptly contends that “[a] person's earning capacity is not necessarily shown by his employment status.”¹¹⁸ He elaborates:

[T]he Court based her claim for loss of revenue on her employment status. This is correct if what is meant by loss of revenue is loss of earnings. But if what is meant is loss of earning capacity, then lack of employment at the time of the mishap should not necessarily mean actual

¹¹⁶ *Villa Rey*, 31 SCRA 511, 517–18.

¹¹⁷ *Gatchalian v. Delim*, G.R. No. 56487, 203 SCRA 126, Oct. 21, 1997.

¹¹⁸ CASIS, *supra* note 35, at 49.

*damages should not be awarded. A person's earning capacity is not necessarily shown by his employment status.*¹¹⁹

While rare, there have been unmistakable glimpses of a more capacious view of earning capacity, as illustrated in *Mercury Drug*. There, the Court treated “earning capacity” as the power to earn money, equating loss with the inability to pursue gainful employment, which is indisputably future-looking.¹²⁰ That is to say, the basis of the Court’s award was not present income, but the projected trajectory of a successful professional banking career, supported by academic records and testimony. In effect, the Court treated earning capacity not as existing or actual income, but as a forward-looking power to earn—a legal recognition of future agency and functional capability. It was a progressive gesture toward valuing the real opportunities a person has reason to pursue, and a demonstration that courts could acknowledge the impairment of those opportunities as compensable harm.

Again, it bears noting that this recognition of future productivity is not isolated. In *Abrogar*, the Court emphasized that the deceased, a student in good standing, “would have finished his schooling and would turn out to be a useful and productive person.”¹²¹ Similarly, in *Marmol*, the absence of any showing that the victim was working or studying led the Court to withhold damages, precisely because it could not reasonably assume the deceased would have become “a useful and productive person.”¹²² That the Supreme Court expressly invokes usefulness and productivity in this context affirms that what is being compensated is not income per se. Instead, it is the extinguishment of a person’s forward-looking capability to contribute, whether in the workforce or otherwise.

Nevertheless, when the Court has acknowledged potential, it has done so selectively. Cases like *Mercury Drug* remain a deviation, not the rule. The Court’s recognition of capability has been extended to a high school student with a promising future in the formal labor market, but not to those whose labor, though unpaid, is no less economically essential. Full-time homemakers and unpaid caregivers, whose labor sustains households and supports the economy in no less essential ways, continue to fall outside the protective scope of loss of earning capacity.

¹¹⁹ *Id.*

¹²⁰ *Mercury Drug*, 525 SCRA 427.

¹²¹ *Abrogar*, 820 SCRA 301, 363.

¹²² *Marmol*, slip op. at 2 (Res.).

This discrepancy reflects a judicial inclination that prizes documented income, whether current or speculative, over actual, though unremunerated, productivity. This narrow construction of earning capacity fails to reflect the realities of economic contribution. Individuals who sustain households through care work, budget management, cooking, and cleaning, among others, may not generate income, but generate value. Their labor enables others to participate in the labor force, earn a living, sustain families, and accumulate wealth. To disregard these contributions merely because they do not produce a wage is not only economically shortsighted—it is arguably doctrinally inconsistent with the restorative ethos of *restitutio in integrum*.

C. Recognizing Housekeeping Capacity within the Existing Framework for Philippine Loss of Earning Capacity

The comparative trend in foreign jurisdictions is clear: modern tort law regards the inability to perform one's household duties as a genuine loss deserving redress. Jurisdictions may differ on quantum and classification—some treat it as part of lost earnings, others as a distinct head or within general damages—but all virtually agree that when a person's capacity to run a household is taken away by a wrongful injury, something of economic value has been lost.¹²³ Adhering to the principle of *restitutio in integrum*, these legal systems strive to restore the victim's position by accounting for the replacement value of lost domestic services.

For Philippine law, these examples reinforce that recognizing loss of housekeeping capacity is neither novel nor anomalous. It is a logical extension of the fundamental mandate to make the victim whole. Adopting this view would not constitute doctrinal overreach. Rather, it would harmonize Philippine tort law with both civil law counterparts and common law peers, while correcting a long-standing gap in acknowledging the economic reality of housework.

While the NCC does not explicitly enumerate household services among compensable losses under Articles 2205 and 2206, neither does it foreclose such recognition.¹²⁴ The statutory language speaks in broad terms of the loss of earning capacity and imposes no textual barrier limiting it to waged or market-based labor. In fact, the inclusion of housekeeping capacity under this head would be a straightforward application of the principle of *restitutio in integrum*, the spirit of which is embedded in Philippine law on torts.

¹²³ Karner & Oliphant, *Supra* note 85, at 278.

¹²⁴ CIVIL CODE, art. 2205–06.

To insist that only salaried work can ground an award of loss of earning capacity is not a textual imperative, but a judicial or interpretative habit—one that may now be revisited in light of both evolving standards in doctrinal equity and economic reality.

Accommodating a broader view of earning capacity would give effect and fuller meaning to the principle of *restitutio in integrum*. By way of illustration, Article 2206 speaks of compensating heirs for “loss of earning capacity,” a phrasing that supports valuation of capacity, not just income.¹²⁵ There is no conceptual barrier to interpreting productive capacity to include work performed in the home. If a househusband or housewife dies or becomes disabled, his or her family loses labor that they must replace or do without. Treating that loss as non-compensable frustrates the principle of making the injured whole once more.

Under current laws, there is nothing that precludes the judiciary from considering the economic worth of housekeeping labor as part of a person’s earning capacity. In doing so, courts need not craft a new head of damage. They need only espouse a more faithful interpretation of an existing one, aligning the law with reality and equity.

Likewise, there is value in drawing on foreign jurisprudence to distinguish between the loss of actual earnings and the impairment of earning capacity. “Earning capacity” in such systems signifies the capability to earn money by virtue of one’s training, experience, and talents, not merely what one was earning at the moment of injury.¹²⁶ Thus, a plaintiff need not have been drawing a salary to suffer a real loss of earning capacity. As keenly observed, an injury may diminish a person’s capacity to earn or perform services even though the person injured was performing services without compensation at the time of injury.¹²⁷ That is, the law can recognize that a homemaker or student has lost an ability that, while not previously reflected in wages, nevertheless had economic value.

Although comparative experience reinforces the aforementioned point, it cannot override Philippine doctrine. At most, foreign case law can

¹²⁵ Art. 2206.

¹²⁶ See *Texas Electric Ry. v. Worthy*, 250 S.W. 710, 712 (Tex. Civ. App. 1923); see also 25A C.J.S. Damages § 162 (1966).

¹²⁷ See 25A C.J.S. Damages § 162, at 726 (1966).

only be instructive and is not doctrinally binding.¹²⁸ Time and again, this rule has been reiterated in a long line of cases: “while legal principles in a legal system similar to ours may hold persuasive value in our courts, [the Philippines] will not adopt such principles without considering our own unique cultural, political, and economic contexts.”¹²⁹

In view of the foregoing, Philippine courts may take careful heed of certain foreign practices—for instance, how other jurisdictions delineate the scope of domestic work or adopt function-based valuation models—though these remain merely persuasive in nature. The ultimate authority rests not in foreign models but in our own laws and jurisprudence, long anchored in the doctrine of *restitutio in integrum*. If anything, the fact that interpretation lies with the courts only reinforces the value of comparative insight. The judiciary need not defer to foreign systems to act boldly within its own. To be sure, the courts need only to read its own law with clarity and equity, and with the same spirit of accommodation embodied in its rulings, like *Mercury Drug*.

V. INTERDISCIPLINARY ECONOMIC LENS: APPLYING THE CAPABILITY APPROACH

For its third and final mode of analysis, this Article grounds its argument for treating unpaid domestic work as compensable under the head of loss of earning capacity in an interdisciplinary economic perspective. Specifically, this Part invokes the capability approach, developed primarily by Amartya Sen, to illustrate that the inability to perform domestic labor constitutes a tangible diminution in a person’s functions and freedoms. These are losses that, though often overlooked, are no less deserving of compensation. The capability approach reframes well-being and economic harm in terms of real opportunities to achieve the things one has reason to value, including caregiving and household roles that sustain daily life. By shifting the focus from wage proxies to human capabilities, this lens exposes how the current exclusion of unpaid domestic labor in the Philippines fails to capture the full extent of injury and impairment. In turn, it furnishes a principled, policy-relevant justification for interpreting “earning capacity” more inclusively. This leads to an interpretation that hews with both the spirit

¹²⁸ See *Ient v. Tullett Prebon (Philippines), Inc.*, G.R. No. 189158, 814 SCRA 184, 212, Jan. 11, 2017.

¹²⁹ *Pangilinan v. Cayetano*, G.R. No. 238875, 976 SCRA 509, 591, Mar. 16, 2021.

of *restitutio in integrum* and the economic reality of work performed beyond the market.

A. Understanding the Capability Approach

Pioneered by economist Amartya Sen and further developed by philosopher Martha Nussbaum, the capability approach offers a broader lens for evaluating loss and well-being than traditional market-based metrics. This approach was originally advanced as an alternative to traditional welfare metrics like income or utility.¹³⁰

The capability approach shifts focus from means to ends: what people are actually able to do and be in their lives.¹³¹ As one scholar succinctly explains, “[t]he core characteristic of the capability approach is its focus on what people are effectively able to do and to be, that is, on their capabilities.”¹³² Rather than measuring well-being by one’s wealth or satisfaction alone, the capability framework directs attention to a person’s “ability to do valuable acts or to reach valuable states of being” and the “alternative combinations of things a person is able to do or be.”¹³³ Put differently, it asks not only what has been lost in monetary terms, but which human functions and freedoms have been impaired. Following this framework, the ability to perform household work is not merely a routine chore—it is part of a person’s meaningful “functionings,” the things one does and achieves in life. Correspondingly, the capability to perform those functionings, such as to maintain one’s home and care for one’s family, is a freedom that has intrinsic value.

Under Sen’s formulation, functionings are achieved states of being or doing, including being healthy, being employed, raising a family, or participating in community life.¹³⁴ Capabilities represent the genuine freedom to achieve those functionings.¹³⁵ Using this lens, the harm from a serious injury can be described as a loss of functionings, as the person can no longer perform certain valuable activities. It can also be seen as a contraction of capabilities, as the person’s range of feasible activities is

¹³⁰ Ingrid Robeyns, *The Capability Approach: A Theoretical Survey*, 6 J. HUM. DEV. 93, 94 (2005).

¹³¹ *Id.*

¹³² *Id.*

¹³³ Amartya Sen, *Capability and Well-Being*, in *THE QUALITY OF LIFE* 30, 31 (Martha Nussbaum & Amartya Sen eds., 1993).

¹³⁴ AMARTYA SEN, *THE STANDARD OF LIVING* 36 (Geoffrey Hawthorn ed., 1987).

¹³⁵ *Id.*

reduced. While this loss may not materialize in lost income, it markedly impacts the person's well-being.

What is ultimately important under this view is that individuals have the freedom to choose and to live a life that they value. Once they possess these substantive opportunities, they may choose to realize them in different ways according to their personal values.¹³⁶ This emphasis on freedom to achieve valued beings and doings marks a departure from traditional measures of welfare. As Sen observes, unlike the utility-based or resource-based approaches, which may focus on income or subjective satisfaction alone, the capability approach judges a person's advantage "by [their] capability to do things [they have] reason to value."¹³⁷ Sen famously posits that relying solely on economic metrics, like gross domestic product or income, fails to capture these critical dimensions of loss.¹³⁸

Nussbaum further evolves the capability approach to be centered on justice by emphasizing human dignity and equality as an end. She builds on Sen's postulations by articulating a list of 10 "central human capabilities" (e.g., life, bodily health, practical reason, and affiliation) that she considers fundamental entitlements every society should protect.¹³⁹ According to Nussbaum, this list is meant to "formulate an intuitive idea of a life that is worthy of the dignity of the human being" by outlining what truly human functioning requires.¹⁴⁰

B. Reframing Domestic Labor as Compensable Loss

To stress, the capability approach reframes the notion of productivity and value by including unpaid and non-market activities as essential functionings. Housekeeping capacity or the ability to maintain one's home and provide domestic services for oneself and one's family contributes directly to core functionings like bodily health,¹⁴¹ affiliation,¹⁴² and even

¹³⁶ Robeyns, *supra* note 130, at 95.

¹³⁷ Sabina Alkire, *The Capability Approach and Well-Being Measurement for Public Policy*, 4 (Oxford Poverty & Hum. Dev. Initiative, Working Paper No. 94, 2015), *citing* AMARTYA SEN, *THE IDEA OF JUSTICE* (2009).

¹³⁸ AMARTYA SEN, *THE IDEA OF JUSTICE* 238–39 (2009).

¹³⁹ MARTHA C. NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH* 74 (2000).

¹⁴⁰ *Id.*

¹⁴¹ Through cooking nutritious meals and cleaning living spaces.

¹⁴² Through nurturing family relationships and caring for dependents.

senses, imagination, and thought.¹⁴³ It is labor that sustains daily life and well-being, even though it is typically unpaid and historically undervalued in economic terms.

The capability approach underscores that the inability to carry out one's customary household tasks due to injury or disability is far from a mere inconvenience. Such incapacity represents a serious loss of functioning and freedom that warrants acknowledgment. Sen's concept of the capability set highlights how such harm narrows the range of meaningful choices and opportunities the individual has reason to value. In contrast, Nussbaum's focus is on human capabilities integral to dignity and self-respect. It emphasizes that losing the ability to carry out one's domestic and caregiving roles undermines a fundamental component of a dignified life, consequently framing this impairment as a genuine and compensable harm.

Manifest in this approach is that the loss of housekeeping capacity is not an abstract or sentimental loss. It is the loss of a concrete freedom to act and to be, which has real importance in a person's life.¹⁴⁴ Traditionally, damages for loss of earning capacity have tended to equate an individual's loss with lost wages or reduced labor-market income.¹⁴⁵ This demonstrates a narrow, market-oriented view of productivity. Conversely, the capability approach recognizes that well-being "should be conceived directly in terms of functionings and capabilities instead of [mere] resources or utility."¹⁴⁶ It thereby validates a more inclusive understanding of loss.

Consider, for example, a car accident that leaves a person paralyzed. Conventionally, the law would be inclined to focus on lost income or medical expenses.¹⁴⁷ The capability approach, by contrast, invites reflection on what opportunities and daily activities that person can no longer pursue, whether it is the ability to move freely; to care for children; or to participate in social and civic life.¹⁴⁸ It has profound implications for the valuation of unpaid domestic labor and caregiving. Injuries often diminish a person's capacity to perform household work or to care for family members, which are activities

¹⁴³ By creating an environment where family members can learn, play, and develop. MARTHA C. NUSSBAUM, *CREATING CAPABILITIES: THE HUMAN DEVELOPMENT APPROACH* (2011).

¹⁴⁴ *Id.*

¹⁴⁵ AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 75–78 (1999).

¹⁴⁶ Alkire, *supra* note 137, at 4.

¹⁴⁷ Robeyns, *supra* note 130.

¹⁴⁸ SABINA ALKIRE, *VALUING FREEDOMS: SEN'S CAPABILITY APPROACH AND POVERTY REDUCTION* 9 (2002).

traditionally excluded from market wage calculations, yet integral to one's life and family.¹⁴⁹ From a capability standpoint, a debilitating injury not only curtails earning income; it can rob an individual of the ability to maintain a home and the freedom to manage a household or nurture dependents.

For many, losing the capacity to do housework is not merely a logistical inconvenience. It is an involuntary relinquishment of personal agency and the inability to be the person one was before the injury, especially if the homemaking role was central to one's identity or family contribution.¹⁵⁰ From a capabilities perspective, then, compensating the loss of housekeeping capacity is about acknowledging a real harm to human flourishing. It supports treating such harm as actionable and compensable by recognizing domestic work as part of one's valuable functionings.¹⁵¹

Because unpaid domestic work usually falls outside conventional market metrics, its loss tends to be invisible in purely economic or utility-based analyses.¹⁵² A traditional resourcist approach, which focuses only on lost income or medical costs, would miss this harm entirely since housework loss is not accounted for in lost wages.¹⁵³ Similarly, a purely utility-based approach might undervalue it if, for instance, homemakers underreport their suffering.¹⁵⁴

The capability approach, however, demands consideration for the plural and incommensurable ways in which an injury can negatively impact a life.¹⁵⁵ Loss of housekeeping capacity is precisely the kind of non-market loss that the capability framework brings to the fore as morally significant.¹⁵⁶ It asks: what valuable functionings has the person been prevented from performing? What future opportunities have been foreclosed? If an accident renders a previously active parent paraplegic, the loss extends well-beyond any foregone income, but also the loss of the capability to perform domestic labor. The latter involves everyday "doings" that have immense personal and

¹⁴⁹ NUSSBAUM, *supra* note 139.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Jamie Cassels, *Damages for Lost Earning Capacity: Women and Children Last!*, 71 CAN. BAR REV. 445, 446–47 (1992).

¹⁵³ Regina Graycar, *Compensation for Loss of Capacity to Work in the Home*, 10 SYDNEY L. REV. 528, 529–30 (1985).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ See Robeyns, *supra* note 130, at 99–100.

social value, and their deprivation is patently felt by the parent and the family.¹⁵⁷

Under a capabilities approach, failing to compensate such losses would effectively ignore a diminution in the individual's quality of life.¹⁵⁸ It would treat as negligible that which genuinely diminishes well-being and agency. By recognizing housekeeping capacity as part of the capability space, such affirms that homemaking and caregiving labor forms part of what is integral in an individual's life.¹⁵⁹ They comprise the "freedom to achieve well-being" that the law should protect or redress when unjustly taken away. This recognition aligns with a broader movement in scholarship and policy to give economic visibility to unpaid care work, highlighting its role in sustaining families and societies.

C. Capability-Based Compensation in the Philippines

Employing the capability approach to Philippine damages law illustrates that a more inclusive view of loss of earning capacity is both necessary and justified. While our legal system commits to the principle of *restitutio in integrum*, or restoring the victim to their pre-injury condition, this aspiration is often reduced in practice to lost wages or earnings. However, true restoration signifies more than accounting for income. It includes the loss of valuable roles a person can no longer perform, or roles that reflect their functionings and capacity to contribute to self, family, and society.

First, jurisprudence already explicitly recognizes that loss of earning capacity need not rest on past income alone. In *Mercury Drug*, the Court awarded damages not based on actual earnings, but on the victim's academic record, extracurricular undertakings, and projected professional trajectory.¹⁶⁰ The Court, in effect, affirmed that the accident destroyed the victim's capability to pursue a meaningful livelihood—a real opportunity to use his talents and live the productive life "he has reason to value," in Sen's words. Although Huang had no income history, the Court acknowledged the value of what was lost: his future capability to earn, based on indicators of potential rather than past salary.

¹⁵⁷ Graycar, *supra* note 153, at 531.

¹⁵⁸ SEN, *supra* note 145, at 109.

¹⁵⁹ NUSSBAUM, *supra* note 139, at 33.

¹⁶⁰ *Mercury Drug*, 525 SCRA 427.

This judicial logic is in harmony with the capability approach. It moves beyond a narrow view of damage as limited to what is measurable in the present and spotlights a richer view of harm that includes lost capabilities. If the Court is prepared to compensate future earnings for a student based on potential alone, then it is not a leap to afford the same recognition to those who perform unpaid domestic work. The crux lies in acknowledging that economic value is not synonymous with market wages.

Second, this reasoning finds further support in *Abrogar*, where the Court held that “it should be reasonable to assume that [the deceased student] would have finished his schooling and would turn out to be a useful and productive person had he not died.”¹⁶¹ Here, the Court did not require proof of actual employment to find loss of earning capacity. It only called for the reasonable likelihood of completed schooling and future usefulness. This suggests that courts are willing to recognizing potential, provided there is some evidence of future productivity.

This raises a key point: if the Court can presume productivity based on educational trajectory, why not based on demonstrated domestic function? A housewife who manages the household, or a househusband who provides full-time care, may not receive a salary, but they unquestionably fulfill roles that are economically essential and socially valuable. These roles mirror the “functionings” and “capabilities” emphasized in the capability approach. Accordingly, their impairment due to injury or death represents a genuine loss of capacity and should be compensable under Article 2205 or 2206 of the NCC.

Third, even within Philippine law, there are signals of interpretive possibility as the same contains textual support for the preceding point. The domestic legal system arguably already recognizes the economic value of unpaid domestic work in the context of property relations. Specifically, Article 147 of the Family Code provides that “[f]or purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former’s efforts consisted in the care and maintenance of the family and of the household.” In so providing, Article 147 recognizes that unpaid domestic labor, when performed by a party not legally married but capacitated to marry one’s partner, confers a presumptive economic benefit in the form of co-ownership over conjugal property. The Supreme Court in

¹⁶¹ *Abrogar*, 820 SCRA 301, 363.

Paterno v. Paterno affirms that efforts in the form of care and maintenance of the household are commensurate with contributions of salary, work, or industry, even in economic consequence:

Efforts in the care and maintenance of the family and household are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry.

* * *

In the event that the respondent had not been able to contribute through her salary, income, work or industry, but was able to show that she cared for and maintained the family and the household, her efforts shall be deemed the equivalent of the contributions made by the petitioner.¹⁶²

Although it is the lone provision in the Family Code that illustrates such treatment of homemaking, it underlines the significance of the performance of domestic duties. A presumption of joint ownership over property acquired during cohabitation arises on the basis of performance of care and maintenance of the household. The law thus embeds an implicit valuation of such labor as a productive contribution to shared life. Undeniably, unpaid household work constitutes a meaningful contribution to economic well-being and property accumulation.¹⁶³

Extending this consideration to the tort context readily follows. Echoes of the treatment of domestic labor as an economic contribution in property relations is a recognition that can, and should, be extended to the realm of torts and damages, absent any prohibitive language to the contrary in the NCC.

In sum, by compensating the loss of earning capacity, the Court in *Mercury Drug* and similar rulings has created an opening for a capability-based framework. The step from loss of market earnings to loss of housekeeping capacity is a short one if this interpretive lens is adopted. Should earning capacity be appreciated not merely as wage loss, but as the real ability to perform economically valuable roles such as unpaid domestic work, then injuries that impair those roles merit compensation. This recasting complements the NCC's commitment to *restitutio in integrum*, grounding

¹⁶² *Paterno v. Paterno*, G.R. No. 213687, 928 SCRA 236, 255, 262, Jan. 8, 2020.

¹⁶³ See FAM. CODE, art. 147.

recovery in the substance of a person's contributions, not just their market wages. To give credence to this is to affirm that earning capacity encompasses more than employment. More so, it comprises the capacity to sustain a household, care for family, and uphold the daily functions that give life its structure and meaning.

VI. CONCLUSION

In one breath, Philippine tort law professes a commitment to full reparation, yet narrows its application through wage-bound formulas and qualifications that exclude vast numbers of economically valuable workers. This Article has illustrated that the present legal landscape already contains the bedrock for recognizing unpaid domestic labor as compensable. Articles 2205 and 2206 of the NCC, the principle of *restitutio in integrum*, and jurisprudence such as *Mercury Drug* collectively point to a framework in which the recovery of loss of earning capacity is not and should not be limited to those with documentary proof of actual income.

Taken together, what remains is not a legislative overhaul, but a doctrinal shift requiring the same judicial liberality exercised in the handful of cases that deviate from the common interpretation of loss of earning capacity. There is space for courts to recognize that caregiving, homemaking, and household management are roles that sustain the economy and the family alike. Comparative experience offers viable, concrete models as to how such recognition might be implemented—not as a separate head of damages, but squarely under the existing concept of earning capacity.

All told, just as the law has made bereaved heirs or victims whole by valuing the lost future of a student, it has the capacity to extend that valuation to the lost contributions of a homemaker. Earning capacity, at its core, is not a reflection of income earned but of the capacity to contribute economically, relationally, and socially. By heeding both the tenets of natural justice and equity of Philippine civil law foundations and the lessons of foreign jurisprudence, the Philippine legal system can better fully account for the totality of human productivity. In doing so, it will no longer treat the housewife or househusband as an invisible casualty, but as an injured party whose loss is no less real and no less deserving of redress than that of a formal wage earner. The promise of the law is to make the injured whole again, and that commitment is ripe for fulfillment with greater fidelity and equity.

This Article invites further judicial and academic engagement with the eligibility standards for loss of earning capacity. Modernizing these standards does not require reinventing the present interpretation of loss of earning capacity. It only requires recalibrating judicial discretion to match economic reality. Applying the capability framework allows the courts to move beyond the narrow and traditional measure of wages and toward a more progressive and human-centered metric of harm. It complements, rather than displaces, nonconventional forms of valuation already embedded in our jurisprudence and the Family Code.

To be clear, this Article fundamentally seeks to introduce a more inclusive appreciation of Philippine loss of earning capacity by valuing traditionally unseen harm. For this reason, the Author is cognizant of the frailties that characterize this Article. It does not disaggregate the claimants within unpaid domestic labor according to educational attainment, prior employment history, and whether they perform domestic labor full-time. These distinctions may prove legally or economically relevant in specific cases. Nor does this Article take on the challenge to suggest the appropriate valuation and evidentiary considerations corresponding to an individual's housekeeping capacity, leaving to future work the development of more precise computations and evidentiary frameworks that balance fairness with judicial administrability. These inquiries call for comprehensive exploration to meaningfully complement the doctrinal and normative arguments advanced herein.

This Article does not purport to fully unpack the concept of loss of housekeeping capacity. It advances only the more targeted claim that the concept may be coherently integrated within the country's existing framework of loss of earning capacity. Markedly, this concept remains underdeveloped in both local and foreign legal discourse. The loss of housekeeping capacity is a completely unexplored area in Philippine literature, and has received "relatively little scholarly attention, at least from a comparative perspective" even in foreign scholarship.¹⁶⁴ Therefore, this Article encourages further research inquiry on the matter with greater depth, precision, and insight.

Likewise, this Article does not take a definitive stance on whether loss of housekeeping capacity should eventually evolve into a standalone

¹⁶⁴ Ernst Karner & Ken Oliphant, *Preface*, in WALTER DE GRUYTER, LOSS OF HOUSEKEEPING CAPACITY IX (Ernst Karner & Ken Oliphant eds., 2012).

head of damages, as it has in other jurisdictions. Future scholars may explore whether a bifurcation of this treatment is warranted, also in consideration of what might better serve both justice and equity.

Legislative reform, while not strictly necessary, may also be studied to provide further guidance to the courts, especially on standards of proof for unwaged but economically meaningful work. In the meantime, this Article leaves open the question of how to strictly classify loss of housekeeping capacity. It chooses instead to focus on recognition, as before a harm can be classified, it must first be seen.

On the whole, the call made by this Article is not merely to compensate, but to recognize that the full measure of human value cannot, and should not, be captured by wages alone. Moreover, the functions that sustain life inside the home are just as worthy of legal redress as those performed in the formal and traditional marketplace.