

THE CONFUSING FUSION OF A CIVIL CLAIM IN A CRIMINAL PROCEEDING

Antonio R. Bautista

TABLE OF CONTENTS

INTRODUCTION	640
I. HISTORY AND RATIONAL OF FUSION	641
II. WHAT CIVIL CLAIMS ARE FUSED IN A IN A CRIMINAL ACTION	642
III. SUSPENSION OF CIVIL ACTION	647
IV. THE SEEDS OF CONFUSION	649
V. THE FUSED ACTION IS ESSENTIALLY AND PRIMARILY CRIMINAL	650
VI. THE CIVIL FEATURES OF THE FUSED ACTION	654
VII. THE SCOPE AND EFFECT OF THE JUDGMENT IN THE FUSION	656
A. Civil Liability in Case of Acquittal	656
B. Civil Liability in Case of Conviction	661
VIII. CONCLUSION	662

THE CONFUSING FUSION OF A CIVIL CLAIM IN A CRIMINAL PROCEEDING*

Antonio R. Bautista**

The sharply contrasting characters of a civil action and a criminal proceeding are well appreciated in this jurisdiction. A civil action involves mainly private interests, whereas a criminal prosecution is the State's assertion of its sovereign authority to enforce its penal laws. The two actions are therefore governed by dissimilar rules of procedure. Constitutional proscriptions, as they assure rights to the accused party, loom large in a criminal prosecution. Rules, for instance, as to pleading, evidentiary burdens, form and effect of judgments and appeals, are differently formulated for each action as they reflect disparate policy considerations.

Nevertheless, one act or omission may provide the basis for a cause of action in a civil case as well as the core element of a criminal offense. For that matter, our basic penal statute blithely generalizes: "Every person criminally liable for a felony is also civilly liable."¹ This commonality provides the impetus to have this issue litigated in one proceeding. Economy of judicial resources is another strong propelling inducement. There is also the notion ingrained in the Spanish criminal law system and law of obligations,² that the convicted felon should also be adjudged to be

* Preparation of this article was supported by the Quintin Paredes Professorial Chair in Remedial Law. This article incorporates an experimental citation format for cases cited in the Philippine Reports, to facilitate retrieval of electronic copies of these decisions. Cite as Antonio Bautista, *The Confusing Fusion of a Civil Claim in a Criminal Proceeding*, 79 PHIL L.J. 640, (page cited) (2004).

** Professorial Lecturer, College of Law, University of the Philippines. J.D., *Cum Laude* (1967), LL.M. (1962), University of Michigan. LL.B. (1958), B.S. Jur. (1958), A.A. (with honors) (1957), University of the Philippines. Managing Partner, Antonio R. Bautista & Partners Law Offices.

¹ REV. PEN. CODE, art. 100. The generalization is of course flawed because there are crimes the commission of which does not result in any injury to any third person. Easy examples are resistance to authorities, art. 151, and interruption of religious worship, art. 132.

² CIVIL CODE, art. 1161 recognizes "civil obligations arising from criminal offenses."

civilly liable as a part of, or in addition to, the criminal penalty.³ Conforming to this notion, the Philippine law on criminal procedure mandates the fusion in the criminal prosecution of "the civil action for the recovery of civil liability arising from the offense charged."⁴

This mandated fusion of a civil claim in a criminal proceeding results in a "mongrelization of procedure which may generate subtleties and complications, not perhaps even perceived or appreciated at this time."⁵ It is now this article's burden to explore and unravel these subtleties and complications.

I. HISTORY AND RATIONALE OF FUSION

The fusion of a civil claim in a criminal proceeding is a carry-over from the Spanish law of criminal procedure. By General Order No. 58, issued by the American military governor, "the privileges secured by the Spanish law to persons claiming to be injured by the commission of an offense to take part in the prosecution of the offense and to recover damages for the injury sustained by reason of the same, are preserved and remain in force."⁶ Under articles 111 and 112 of the Law of Criminal Procedure of Spain, or *Ley de Enjuiciamiento Criminal*, the civil remedy is instituted with the penal action unless it has been waived by the party injured, or expressly reserved by him for civil proceedings for the future.⁷

There is no such fusion in the American law of criminal procedure. The weight of American authorities hold that civil remedies in favor of a party injured by a felony are neither merged in the higher offense against public justice nor suspended until after a criminal prosecution against the offender terminates.⁸ It is recognized that courts of criminal jurisdiction have no power or authority to direct reparation or restitution to a victim of crime in the absence of a statutory provision to that effect.⁹

³ *United States v. Heery*, No. 7399, 25 Phil. 600, 611, Aug. 6, 1913. "Here as there [under American law], civil damages are no part of the punishment for the crime; here, as there, they are rendered to the citizen and not to the State."

⁴ RULES OF COURT, Rule 111, § 1(a).

⁵ ANTONIO BAUTISTA, BASIC CRIMINAL PROCEDURE 66 (2003).

⁶ No. 7399, 25 Phil. 600, 604, Aug. 6, 1913 (1913).

⁷ No. 1719, 7 Phil. 359, 363-64, Jan. 23, 1907 (1907).

⁸ *Down v. City of Baltimore*, 111 Md. 674, 76 A. 861 (1910).

⁹ *Feldman vs. Reeves*, 45 App. Div. 2d 20, 361 N.Y.S.2d 641, 320 NE2d 274 (1974).

Our Spanish-derived penal law regime ties the civil liability for the offense with the criminal liability. After recognizing and postulating that every person criminally liable is also civilly liable, the penal statute goes on to lay down specific rules on continuing civil liability despite exemption from criminal liability,¹⁰ subsidiary civil liability of certain persons for crimes of others,¹¹ what civil liability for crime includes,¹² and extinction and survival of such civil liability.¹³ From such a regime, the notion of fusing the criminal action and the action for the recovery of civil liability *ex delicto* is no longer farfetched. Fusion then presents itself as a practical and simple option for adjudicating the common issue of liability, criminal as well as civil, in one full swoop.

But theory is far from reality. Fusion is not as simply implemented as it may have been originally conceived. The interrelation of the civil claim and the criminal action inevitably spawns a host of sub-rules defining what civil claims will be subsumed in the criminal action and delineating matters of precedence and preemption.¹⁴ These sub-rules address fusion's more obvious consequences. Less obvious implications, although equally fundamental and significant, remain to be identified, grappled with, and resolved. This article will address all these, comprehensively and coherently.

II. WHAT CIVIL CLAIMS ARE FUSED IN A CRIMINAL ACTION

Philippine law identifies five sources of civil liability: 1) law, 2) contracts, 3) quasi-contracts, 4) acts or omissions punished by law, and 5) quasi-delicts.¹⁵ The same act or omission may give rise to liability for contract breach, civil liability arising from criminal liability or *ex delicto*, and to civil liability due to quasi-delict. Under our rules of criminal procedure from 1985 to 2000, a criminal action assimilated all claims for civil liability arising from the same act or omission, but following the 2000 amendments, the rule reverted to the original 1940 formulation that the criminal action includes only the claim for civil liability *ex delicto*.¹⁶

¹⁰ REV. PEN. CODE, art. 101.

¹¹ Art. 102-103.

¹² Art. 104-111.

¹³ Art. 112-113.

¹⁴ See Antonio Bautista, *Precedence And Pre-emption in Adjudication: The Doctrine of Prejudicial Question*, 78 PHIL. L.J. 1 (2003).

¹⁵ CIVIL CODE, art. 1157.

¹⁶ OSCAR HERRERA, *TREATISE ON HISTORICAL DEVELOPMENTS AND HIGHLIGHTS OF AMENDMENTS OF RULES ON CRIMINAL PROCEDURE* 44-47 (2001).

The present rule is stated:

When a criminal action is instituted the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.¹⁷

As claims which are not for civil liability *ex delicto* are not fused or deemed to have been impliedly instituted with the criminal action, there is not even a need to reserve the right to prosecute them separately. In the case of actions on quasi-delict, and in the case of other civil actions for damages, this non-fusion is re-affirmed by the following Civil Code provisions:

A. Rule 111

When civil action may proceed independently. - In the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.¹⁸

B. Article 32

Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

- (1) Freedom of religion;
- (2) Freedom of speech;
- (3) Freedom to write for the press or to maintain a periodical publication;
- (4) Freedom from arbitrary or illegal detention;
- (5) Freedom of suffrage;
- (6) The right against deprivation of property without due process of law;
- (7) The right to a just compensation when private property is taken for public use;
- (8) The right to the equal protection of the laws;
- (9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;
- (10) The liberty of abode and of changing the same;

¹⁷ RULES OF COURT, Rule 111, § 3.

¹⁸ § 3.

- (11) The privacy of communication and correspondence;
- (12) The right to become a member of associations or societies for purposes not contrary to law;
- (13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;
- (14) The right to be free from involuntary servitude in any form;
- (15) The right of the accused against excessive bail;
- (16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;
- (17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;
- (18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and
- (19) Freedom of access to the courts.

In any of the cases referred to in this article [Article 32, Civil Code] whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.¹⁹

3. Article 33

In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed

¹⁹ CIVIL CODE, Art. 32.

independently of the criminal prosecution and shall require only a preponderance of evidence.²⁰

4. Article 34

When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action.²¹

5. Article 2176

Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.²²

6. Article 2177

Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant.²³

Examining these, one notes the repeated proscription against double recovery of damages for the same act or omission charged in the criminal action.²⁴ Elementary justice and plain sense would seem to suggest that the same proscription against double recovery applies equally to an independent civil action based on contract breach. The need for this explicit proscription is justified by the possibility, which is more than merely theoretical, that the civil liability *ex delicto* which may be adjudged in the criminal action is based on the same act or omission which can also be the basis for the civil liability under articles 32, 33, 34 and 2176, or for contract breach.

The accused's civil liability is not the only liability fused in the criminal action. Philippine law goes further when it says that the subsidiary civil liability of certain persons such as employers of the accused is likewise fused. Thus, the Revised Penal Code provides:

²⁰ Art. 33.

²¹ Art. 34.

²² Art. 2176.

²³ Art. 2177.

²⁴ See RULES OF COURT, Rule 111, § 3; CIVIL CODE, art. 2177.

Art. 102. *Subsidiary civil liability of innkeepers, tavern-keepers and proprietors of establishments.* - In default of the persons criminally liable, innkeepers, tavernkeepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulations shall have been committed by them or their employees.

Innkeepers are also subsidiarily liable for the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposits of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them with respect to the care and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees.

Art. 103. *Subsidiary civil liability of other persons.* - The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.

The right to reserve the claim for civil liability *ex delicto* is denied to the offended party in at least two instances and in which cases the fusion of the civil claim and the criminal action is mandatory and unavoidable. The first instance of mandatory fusion occurs where the criminal actions is filed before the Sandiganbayan because:

Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the *Sandiganbayan* or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized...²⁵

The second instance occurs in criminal actions for the violation of Batas Pambansa Blg. 22 or the Bouncing Checks Law, as expressly provided:

²⁵ Pres. Decree No. 1606, § 4 (1978), *amended by* Rep. Act No. 8249 (1997).

The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.²⁶

III. SUSPENSION OF CIVIL ACTION

The right to institute a separate civil action granted to the offended party has its counterweight. While it may be instituted separately, its institution must await the criminal action's termination. If it had already been instituted prior to the criminal action, it would nevertheless have to be suspended until the criminal action terminates.²⁷

One has to analyze the various statutory interrelationships between the criminal and civil actions to understand the rationale for the former's legal precedence over the latter. This rule of precedence contrasts with the rule for civil actions known as the prejudicial question doctrine.²⁸ The rationale may well be found in the rule that while absolution from civil liability will not bar a criminal action for the same act or omission,²⁹ the judgment in the criminal action may possibly extinguish the civil liability *ex delicto* if the verdict rules that the act or omission from which the civil liability may arise did not exist.³⁰

This rule's obvious and necessary consequence is that the two actions cannot be maintained concurrently. The unspoken premise is the need to avoid duplicative evidence on the same issue, namely whether the common act or omission was committed. The objective of trying to conserve the court's time and resources as well as that of the parties cannot be undervalued. This objective is not, however, necessarily frustrated or defeated if the two actions were allowed to proceed concurrently. Simultaneous prosecution of the two actions does not mean simultaneous presentation of evidence, and evidence in one may even possibly be reproduced in the other.

With the civil action deferred, the State need not present evidence on damages, evidence which is critical in the civil case. Nor can it always be expected that the State, as represented by the public prosecutor in the criminal action, and the offended party as plaintiff in the criminal action, will

²⁶ RULES OF COURT, Rule 111, § 1(b).

²⁷ § 2(1)-(3).

²⁸ § 6; See Bautista, *Prudence and Pre-emption*, *supra* note 14.

²⁹ § 5.

³⁰ § 2(4); Rule 120, § 2(2).

present the same evidence on the act or omission which is constitutive of both the charged offense and of the actionable wrong subject of the civil complaint. For one, certain evidence, such as, say, communications by a patient to his physician may be excluded as hearsay in a civil case.³¹ For another, and this is extremely significant, the plaintiff in the civil action may call the defendant as an adverse-party witness.³² The device of examining the adverse party as one's own witness is a form of discovery and enables the examining party to examine the adverse-party witness with leading questions as if he were on cross-examination and without even having to be bound by his testimony.³³ Further, there is a limited right of discovery in criminal cases as distinguished from a far more expansive right of discovery in civil cases.³⁴ Such disparities sufficiently demonstrate that both actions may be prosecuted simultaneously without impairing the right of the State or of the accused to present the case in the criminal action or of the offended party and the defendant to make their respective cases in the civil action.

Not to be belittled are the possibly differing strategies of the plaintiff in the civil case and of the State in the criminal prosecution. The State in a criminal case is essentially an impersonal prosecuting party committed to discharge a public function to prosecute and seek punishment for a crime. The civil plaintiff, on the other hand, is driven by purely personal motives, to seek reparation or indemnification for the damages caused him by the defendant's criminal act or omission. While the plaintiff may not have all the investigative and prosecutory resources of the State at his command, he is likely more motivated to prove his case than the public prosecutor is to attain a conviction. For tactical reasons, this civil plaintiff may well be advised to first see how the State or the accused develop their respective evidence in the criminal action, so that he may tailor or adjust his own evidence accordingly. Or, the civil plaintiff may not care less about what evidence is adduced in the criminal action, except that common witnesses may be involved in inconsistent testimonies.

The criminal action is supposed to proceed with greater dispatch than the civil action.³⁵ But the civil parties, or any of them, may want to proceed at a slower pace. The timing and sequence of evidence presentation will necessarily be dictated by different considerations. The civil plaintiff

³¹ RULES OF COURT, Rule 130, § 24 (c).

³² Rule 132, §§ 10(e), 12(3).

³³ See, generally, ANTONIO BAUTISTA, BASIC EVIDENCE 92 (2004).

³⁴ See, generally, BAUTISTA, CRIMINAL PROCEDURE, *supra* note 5, § 12.2.3 (2003).

³⁵ RULES OF COURT, Rule 119, §§ 2-6, 9-10.

may not want to present a witness who turns out to be ineffectual in the criminal proceeding or who is unable to withstand cross-examination therein. A co-accused, unless especially discharged by the court, may not testify for the State in the criminal action,³⁶ but there is no such inhibition for a co-defendant to testify as witness for the plaintiff in the civil action.

It is hard to say who is especially benefited by the rule proscribing the two actions' concurrent prosecution. To be sure, the offended party is gravely disadvantaged because, firstly, his recovery is stalled or delayed, as the civil action cannot be prosecuted for as long as the criminal action is pending. Secondly, this delay may cause the loss of valuable evidence or of access to such evidence, to the offended party. To his advantage, however, the offended party may gain the opportunity to adapt his evidence to that adduced in the criminal action and therefore gain the benefit of hindsight, so to speak, or at least a preview of the defendant's evidence.

Now, one possible benefit to the accused is that he may not have to defend two actions at the same time. This incidental benefit, if it would be one at all, is not weighty enough to justify detaining the offended party and handicapping his chances of success in his recovery effort. But a more significant advantage thrown the accused's way is that he may invoke his Constitutional rights, especially his right against self-incrimination, to embarrass proof of the civil claim.

IV. THE SEEDS OF CONFUSION

Whatever apparent attractiveness the notion of fusion of a civil claim in a criminal proceeding may initially have is easily dissipated by a realization of the many complicating and entangling implications given such disparate claims.

The confusion's root cause may precisely lie in the manifest difference in the interests at stake, again the purely private interests in a civil action and the public interest pit against the accused in a criminal prosecution. One seeks redress; the other intends to punish guilt. This basic difference underlies the difference in the procedures established. A further wedge is driven between the two actions by the fact that there are various Constitutional rights enjoyed by an accused but not by a civil defendant. This gaping procedural divide is easily seen in the rules of pleading, the

³⁶ Rule 119, § 17.

accused having only to plead guilty or not guilty without being required to state his defense.

Another aspect of the procedural difference lies in the applicable evidentiary rules. In a criminal case, the State must establish the accused's guilt by proof beyond reasonable doubt, whereas the civil plaintiff need only establish his case by a preponderance of evidence.³⁷ Further, in a criminal prosecution, the State is further hobbled by the accused's Constitutional right against self-incrimination such that the State cannot prove its case with evidence extracted involuntarily from the accused. In contrast, the civil defendant cannot refuse to take the stand as an adverse-party witness, and may only invoke his privilege against self-incrimination by refusing to answer specific questions.³⁸

These procedural differences make the fusion of a civil claim in a criminal action akin to mixing apples and oranges. An unruly mongrel results, one whose features and tendencies are ill-defined and unpredictable. The contours, size and shape of the amalgamated product can only be dimly perceived, and the resulting uncertainty can only produce confusion and, possibly, the unwitting impairment of substantive rights.

V. THE FUSED ACTION IS ESSENTIALLY AND PRIMARILY CRIMINAL

While the law does not say so, it strongly suggests that this mongrel is predominantly criminal in character. The criminal aspect's dominance may be inferred from the panoply of rules governing the fusion.

The first unmistakable indicium is that the court with jurisdiction over the criminal action assumes jurisdiction over the fused action. As the civil claim is merely an adjunct, incident, or appendage of the criminal action, jurisdiction is unaffected by the claim for civil liability. Thus, where the claim for civil liability exceeds the jurisdiction of the inferior court hearing the criminal action, the offended party who intervenes "must be deemed to have waived so much of his claim as would exceed such jurisdiction."³⁹ It is considered to be unthinkable that the court's jurisdiction

³⁷ RULES OF COURT, Rule 133, § 1 and 2.

³⁸ ANTONIO BAUTISTA, BASIC EVIDENCE, 82 (2004).

³⁹ *Paringit v. Masakayan*, G.R. No. 16578, 2 SCRA 962, 967, Jul. 31, 1961.

over the offense would be defeated by a civil claim exceeding that which the court could award.⁴⁰

An early ruling held that an inferior court had no jurisdiction over the crime of simple seduction although the penalty imposed is *arresto mayor* because conviction carried with it a possible liability to acknowledge and give support to the offspring.⁴¹ However, this ruling was superseded by a statutory provision enacted in 1981⁴² defining the jurisdiction of inferior courts as being "regardless of other impossible accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value, or amount thereof."⁴³ Thus, it is now possible for an inferior court to award damages in a fused action well beyond what it could pursuant to its civil jurisdiction.

The old ruling provoked an insightful disquisition by a dissenting justice on the relationship between the criminal penalty and civil indemnity. This disquisition, as it helps untangle the complications of fusion, deserves to be reproduced *in extenso*:

It would be going a long way to say that an indemnification or restitution or reparation is a fine or an imprisonment under any definition found in the criminal law of any country. The jurisdiction of the court is determined by the amount of the fine and imprisonment. An indemnification or reparation or restitution is merely an incident of the crime. The jurisdiction of the court is not fixed by the incident but by the *nature of the crime itself*.⁴⁴

It continued:

The civil, though tortious, incident, the loss to the individual affected by the crime, has nothing whatever to do with jurisdiction. It had its part in influencing the minds of the lawmakers when they were seeking an adequate punishment for the crime. But when the legislature had acted and fixed the punishment by its law, the civil incident, the loss to the person injured by the crime, ceased to have any influence whatever on the punishment imposed.⁴⁵

It went on to place the issue in a historical perspective:

⁴⁰ *Id.*

⁴¹ *United States v. Bernardo*, No. 6027, 19 Phil. 265, Apr. 1, 1911.

⁴² Batas Blg. 129, § 32.

⁴³ *Legados v. De Guzman*, G.R. 35825, 170 SCRA 357, 358, Feb. 20, 1989.

⁴⁴ *Bernardo*, 19 Phil. at 277 (Moreland, J., *dissenting*).

⁴⁵ *Id.* at 278.

The fact that the law relating to the civil liability resulting from the commission of crimes and misdemeanors is found in the Penal Code and goes conjoined with the law relating to criminal liability, and that both are determined in the same action at the same time and in the same judgment, is due to the legal system rather than to the nature of those liabilities or their relation to each other. Under that system the criminal action for punishment by the people and the civil action for damages by the person injured by the commission of the crime were conducted together. This was not only a matter of convenience. It appears to have been a necessary result of that principle of Spanish law which determined that an acquittal of one charged with a crime was a bar to a subsequent civil action founded on the same acts. The fact that it was so done did not signify that the judgments resulting from these two kinds of liability were both punishments for the crime. It did not mean that they bore any such relation to each other. The Penal Code continually distinguished as it now distinguishes the two kinds of liability, invariably speaking of the one as *criminal* and the other as *civil* liability. Not for a moment are they confused. They are always dealt with separately. It is provided that the injured person may, if he chooses, come into court and renounce his right to damages; and such renunciation will preclude the court from imposing the corresponding indemnification. ... It is provided also that the injured person may compromise with the accused the civil liability under which he lies and that such compromise will relieve the accused from the imposition of an indemnity. ... On the other hand, no compromise maybe made with respect to the criminal responsibility. ... Moreover, the rules which govern extinction of the civil liability are entirely different from those which control the extinction of the criminal liability. No accessories are attached to the civil liability; and it does not carry with it the same kind of punishment which follows the criminal responsibility.

...

All of this goes to show that, while the two proceedings, civil and criminal, under the Spanish system, progress side by side and are terminated at the same time and by the same judgment, they have been and are, nevertheless, considered as entirely different proceedings which, while having a common origin, present naught else in common; that, while joined in practice, they are wholly separate in nature.⁴⁶

To summarize, the distinction between the criminal penalty and the civil liability likewise defines the character of the fused action as primarily criminal and incidentally civil, and governed by the rules for the former.

⁴⁶ *Id.* at 278-80.

That the fused proceeding is primarily a criminal action is further reinforced by the fact that control and direction of the prosecution is placed in the hands of the public prosecutor,⁴⁷ and the intervention of the offended party through a private prosecutor is ever subject to the direction and control of the public prosecutor. The latter's control is cemented by the ruling that an offended party cannot appeal from an order dismissing the case on motion of the public prosecutor,⁴⁸ although he may appeal with respect to the civil liability,⁴⁹ so long as this would not place the accused in double jeopardy.⁵⁰ This subordinate role is further affirmed by the holding that he is not even legally entitled to notice of all proceedings, notice to the public prosecutor being deemed to be notice to him.⁵¹

The interplay of the roles of the public and the private prosecutor forebodes interesting potentialities for mischief. An offended party may wish to present a witness to support his civil claim, but the public prosecutor may be apprehensive he may give damaging testimony. Or, the public prosecutor may want to adduce evidence prejudicial to the civil claim. Such a clash of interests may be ignited by a disagreement as to strategy respecting the order of presentation of evidence and as to the quantum and quality of evidence to be presented. In any such clash, there can be no question that the public prosecutor will prevail, and the offended party can only rue his decision to forego his right to a separate civil action for the civil liability *ex delicto*. This subordination of the offended party's interest to that of the State is the necessary consequence of fusion, but quite unfair to the offended party.

The offended party is not the only one disadvantaged by the fusion. The accused suffers a countervailing disadvantage when he is denied the latitude he would have had as a civil defendant to plead his defense. In an ostensible effort to avoid further clutter in the fused proceeding, the law prohibits:

No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which

⁴⁷ RULES OF COURT, Rule 111, § 5.

⁴⁸ *People v. Liggayu*, G.R. No. 8224, 97 Phil. 865, Oct. 31, 1955.

⁴⁹ *People v. Guido*, G.R. No. 37320, 57 Phil. 52, Aug. 15, 1932.

⁵⁰ *Mosquera v. Panganiban*, G.R. 121180, 258 SCRA 473, Jul. 5, 1996.

⁵¹ *Sese v. Montesa*, G.R. No. 3942, 87 Phil. 245, Aug. 30, 1950.

could have been the subject thereof may be litigated in a separate civil action....⁵²

This prohibition reversed previous holdings that allowed third-party complaints as well as counterclaims in criminal actions.⁵³ The law evidently disdains the intrusion of civil remedies in the fused action. However, it undermined its objective of fusion, that of avoiding multiplicity of suits.

VI. THE CIVIL FEATURES OF THE FUSED ACTION

The fused action does, however, retain some visible features of a civil action. The fact that a private party is allowed to intervene in a criminal prosecution is the most visible allowance. Another concession to the civil aspect is the requirement that the offended party pay filing fees. The rule is stated:

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefor shall constitute a first lien on the judgment awarding such damages.

Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court.

Except as otherwise provided in these Rules, no filing fees shall be required for actual damages.⁵⁴

The fusion's civil features also emerge from the rule making a writ of preliminary attachment available to the offended party, as well as other provisional remedies in civil actions "in so far as they are applicable."⁵⁵ By way of historical flashback, it may be recalled that there was no provision for an attachment or any provisional remedy in a criminal action under General Order No. 58, which was the law on criminal procedure in this jurisdiction under the early American regime, although there was this farsighted provision in article 589 of the Spanish law on criminal procedure:

When from the record of a cause appear circumstances tending to establish the guilt of a person, the judge shall require him to give a

⁵² RULES OF COURT, Rule 111, § 1(a).

⁵³ HERRERA, *supra* note 16, at 45.

⁵⁴ § 1(a)(3)-(5).

⁵⁵ Rule 127.

bond sufficient to secure the pecuniary liabilities which may be finally adjudged, ordering in the same decree the attachment of sufficient property to cover such liabilities, should he fail to give bond.

The amount of the bond shall be fixed in the same decree and it shall not be less than one third of the probable amount of the pecuniary liabilities."⁵⁶

The offended party may also sue out a writ of execution of his civil award.⁵⁷

The most glaring civil imprint on the fused action is the prescribed form of the judgment. Justifiably accommodating the incorporation of a civil claim in the criminal proceeding, the law requires the judgment to make an express finding as to the accused's civil liability. If the judgment is of conviction it is required to state "the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived."⁵⁸

A more elaborate statement on the civil aspect is required in a judgment for acquittal:

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.⁵⁹

These provisions, as they define the contents of the judgment in a fused action, may no more than glancingly hint at the parameters and effect of such a judgment. Since the judgment, whether of conviction or of acquittal, contains a finding on the accused's civil liability, its precise contours deserve precise delineation. This article will now make this delineation.

⁵⁶ *United States v. Namit*, No. 12957, 38 Phil. 926, 931, Oct. 29, 1918.

⁵⁷ See *Quiming v. de la Rosa*, No. 46317, 67 Phil. 406, Apr. 18, 1939.

⁵⁸ RULES OF COURT, Rule 120, § 2(1).

⁵⁹ § 2(2).

VII. THE SCOPE AND EFFECT OF THE JUDGMENT IN THE FUSION

Where civil liability is adjudged by the judgment in the fused action, this civil liability may include restitution, reparation of the damage caused, and indemnification for consequential damages.⁶⁰ The law establishes a clear demarcation between the civil and criminal liability of the accused, and there is no room for confusing the two. While these may coexist, the existence of one is not dependent on the existence of the other. Thus, where the accused is adjudged to be civilly liable *ex delicto*, such civil liability will continue "notwithstanding the fact that he has served his sentence consisting of deprivation of liberty or other rights, or has not been required to serve the same by reason of amnesty, pardon, commutation of sentence or any other reasons."⁶¹

However, where the accused dies after arraignment and during the pendency of the criminal action, his civil liability *ex delicto* is extinguished.⁶² Curiously, the Rules allow the court in such cases to issue judgment for the accused's civil liability not arising from the offense, and for that purpose to have the deceased substituted by his heirs or other legal representatives. A court is empowered to outrightly dismiss the case only if the accused dies before arraignment.⁶³ This is confusing because it deviates from the concept and rule that only the claim for civil liability *ex delicto* is fused with the criminal action; this rule will have the court trying the fused action address the accused's civil liability arising from sources other than crime.

A. CIVIL LIABILITY IN CASE OF ACQUITTAL

Our law on criminal procedure emphatically disclaims an acquittal's limited effect:

The extinction of the penal action does not carry with it extinction of the civil action. However, the civil action based on delict may be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist.⁶⁴

⁶⁰ REV. PEN. CODE, art. 104.

⁶¹ Art. 113.

⁶² RULES OF COURT, Rule 111, § 4.

⁶³ § 4.

⁶⁴ § 2(4).

The disclaimer tacitly acknowledges the different quantum and quality of proof required to prove the accused's guilt, compared to that needed to establish the civil claim. It accommodates the real possibility that the accused's guilt may not be proved by the requisite proof beyond reasonable doubt while the civil liability may be established by lesser evidence, or by a mere preponderance of evidence. This thought is codified in no uncertain terms in our Civil Code, which similarly requires an explicit judgment on the matter of civil liability:

When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.

If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.⁶⁵

The different standards of proof for criminal and for civil liability constitute a fundamental tenet of our justice system. Thus, our procedural law requires a judgment of acquittal to affirmatively state "whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt." An express finding or declaration that the acquittal is based on reasonable doubt will indubitably support the continuing vitality of the civil action for damages *ex delicto* despite the judgment of acquittal. The law extends tender loving consideration to the offended party when it goes on to state that even without any express declaration in the judgment of acquittal, the fact of acquittal due to reasonable doubt "may be inferred from the text of the decision."⁶⁶

This was precisely the inference made in *Sesbreno v. Court of Appeals*,⁶⁷ where the accused were charged with incriminating an innocent person by conspiring with the employees of an electric company to tilt the offended party's electric meter so as not to register the actual electric consumption.

⁶⁵ CIVIL CODE, art. 29.

⁶⁶ Art. 29(2).

⁶⁷ G.R. No. 121433, 262 SCRA 345, Sep. 23, 1996.

The decision acquitting the accused was held to have indicated, although it did not expressly so state, that they had no civil liability:

[T]he above-quoted findings decreed in no unmistakable terms that private respondents had no part in the alleged tilting of the petitioner's electric meter. These are not only virtual declarations of the private respondents' innocence of the crime charged, but also of the non-existence of their civil liability.⁶⁸

The possible absolution of the accused from civil liability in a judgment of acquittal in a fused action invests the notion of fusion with some appeal. The judgment of acquittal may save time and render a more distant and separate action unnecessary to recover the civil liability *ex delicto*. In the same vein, and consistent with the concept that the fused action combines a criminal and a civil action, the judgment may absolve the accused of criminal liability but adjudge him civilly liable *ex delicto*.

In *Manantan v. Court of Appeals*,⁶⁹ the Court struggled to justify the continuing vitality of the accused's civil liability *ex delicto* despite his acquittal. There, the accused was acquitted of reckless imprudence resulting in homicide, but ordered to indemnify the offended party for the death of the victim because the acquittal was deemed to have been on the ground of reasonable doubt. The Court began by distinguishing the two different kinds of acquittal under our law:

First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any or omission cannot and can never be held liable for such act or omission. ... The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only. This is the situation contemplated in Article 29 of the Civil Code, where the civil action for damages is 'for the same act or omission.'⁷⁰

The Court further distinguished:

Although the two actions have different purposes, the matters discussed in the civil case are similar to those discussed in the

⁶⁸ *Id.*, at 350.

⁶⁹ G.R. 107125, January 29, 2001, 350 SCRA 387 (2001).

⁷⁰ *Id.* at 397.

criminal case. However, the judgment in the criminal proceeding cannot be read in evidence in the civil action to establish any fact there determined, even though both actions involve the same act or omission. The reason for this rule is that the parties are not the same and secondarily, different rules of evidence are applicable.⁷¹

The allusion to the different applicable rules of evidence is intriguing in light of the fact that, prior to judgment in the fused action, the two actions are not treated as if they are merely being tried jointly,⁷² and are practically tried as a single action. It is difficult to conceptualize which rules of evidence apply at which stage. It boggles the mind to think how the examination of a particular witness, who is offered to support both the prosecutor's case-in-chief as well as the civil claim, can be governed, simultaneously, or alternately, by different rules of evidence

It may bluntly be asked: Can the private prosecutor call the accused as his own witness at least in respect to the offended party's civil claim, a right which is allowed him under the rules of evidence applicable to civil cases? Or, can the offended party avail of all the discovery modes to which he would be entitled as plaintiff in a civil action? A negative answer to both questions would seem to logically follow from the dominant and primary character of the fused action as a criminal action.

Manantan rationalized the award of civil liability despite acquittal on the ground that there was enough evidence to support the civil liability, although this evidence did not rise to the level of proof beyond reasonable doubt.⁷³ This rule that a judgment of acquittal can support a civil award has led to some conceptual confusion as to what civil liability may still be adjudged in such a case. While it may at times be easy to characterize, as the Court in *Manantan* did, the unextinguished civil liability to be *ex delicto*, this civil liability has not always been neatly defined as such.

*Sapiera v. Court of Appeals*⁷⁴ is a case in point. There, the accused was acquitted of estafa but nonetheless held liable for the value of the checks she endorsed in favor of the offended party because her acquittal was based on insufficiency of evidence. Without defining or stating the basis of the

⁷¹ *Id.* at 398.

⁷² RULES OF COURT, Rule 119, § 16 governs joint trial of two or more accused who are jointly charged, and Rule 119, § 22 governs the consolidation of trial of related offenses.

⁷³ G.R. 107125, 350 SCRA 387, 399, Jan. 29, 2001.

⁷⁴ G.R. 128927, 314 SCRA 370, Sep. 14, 1999.

adjudged civil liability, whether it is *ex-contractual*, or *ex delicto*, the court adjudged the accused liable for the value of the dishonored checks.⁷⁵

Awareness of the kind of civil liability which may be imposed on the accused despite his acquittal may have been shown, although perhaps unwittingly, in *Monsanto v. Serna*.⁷⁶ In this case, the accused were acquitted of the charge of qualified theft of coconuts because their intent to gain was not proved. Nevertheless, they were ordered to pay the offended party the proceeds of the coconuts' sale. *Monsanto*, however, desisted from ordering the accused to pay the offended party what is due from them as tenants as the Court realized that this was an agrarian issue over which it had no jurisdiction.

Sapiera's failure to define the character of the civil liability which it imposed on the acquitted accused contrasts with the ruling in *People v. Partig*.⁷⁷ There, the trial court acquitted the accused of estafa but sentenced him, as *Sapiera* did, to pay the offended party the amount alleged in the information to have been obtained through false and fraudulent representations. The Supreme Court reversed:

The trial court found as a fact that the sum of P1,200, ordered to be paid in the judgment of acquittal, was received by the defendant-appellant as loan. This finding is inconsistent with the existence of the criminal act charged in the information. The liability of the defendant for the return of the amount so received arises from a civil contract, not from a criminal act, and may not be enforced in the criminal case.⁷⁸

Granted that the accused could still be civilly liable despite his acquittal, the enduring conceptual confusion pertains to such liability's nature. Since there is no crime, the civil liability cannot be *ex delicto*. On the other hand, the only civil claim impleaded in the criminal action is a claim for civil liability *ex delicto*. This point is well demonstrated in *United States v. Dionisio*,⁷⁹ where the accused was convicted of estafa after he rented a bicycle for four days at the rate of P1.50 per day, and failed and declined thereafter to return the bicycle to its owner. *Dionisio* held that the accused cannot be sentenced to pay the owner the unpaid hire of the bicycle. "The

⁷⁵ *Id.* at 378-79.

⁷⁶ G.R. 142501, 371 SCRA 664, Dec. 7, 2001.

⁷⁷ G.R. No. 8325, 97 Phil. 748, Oct. 25, 1955.

⁷⁸ *Id.* at 750.

⁷⁹ No. 11589, 35 Phil. 141, Oct. 26, 1916.

indebtedness under the rental contract was and is a thing wholly apart from and independent of the crime of estafa committed by the accused."⁸⁰

The kind of civil liability that may or may not be adjudged by the court in a fused action was, again, confusingly indicated in *Manila Railroad Co. v. Baltazar*,⁸¹ where railroad employees were acquitted of qualified theft of company property. The trial court ordered the railroad company to pay their salaries during their suspension, but the Supreme Court reversed, reasoning that while a court trying a qualified theft case may order the accused to return stolen properties stolen, repair damage caused, and to indemnify the offended party for consequential damages, it cannot adjudge the acquitted accused entitled to his salary during his suspension:

No issue was joined on whether the defendants were entitled to the payment of their salary during suspension and the issue joined by the plea of not guilty was whether the defendants committed the crime charged in the information.⁸²

B. CIVIL LIABILITY IN CASE OF CONVICTION

On the theory that criminal liability carries civil liability, the court in a fused action is bound, when it convicts the accused, to adjudge him civilly liable.⁸³ This is consistent with the concept of the fused action as combining two actions, one criminal and the other civil. To be sure, however, the judgment of conviction can no more impose a civil liability which is not *ex delicto* than a judgment of acquittal can do so although this latter result is, as earlier demonstrated, not always clear.

The judgment of conviction can encompass the civil liability of persons other than the accused. This judgment may also include a finding of an employer's subsidiary civil liability for his accused employees, which is why the employer is well advised to participate in the defense of his employees in the fused action.⁸⁴

⁸⁰ *Id.* at 143.

⁸¹ 93 Phil. 715 (1953).

⁸² *Id.*, at 718.

⁸³ RULES OF COURT, Rule 120, § 2(1).

⁸⁴ *Miranda v. Malate Garage and Taxicab, Inc.*, G.R. No. 8943, 99 Phil. 670, Jul. 31, 1956.

VIII. CONCLUSION

Our law allowing, or more accurately, effectively mandating, the fusion of a civil action in a criminal proceeding is confusing. It is a none-too-felicitous marriage of Civil Law concepts of substantive criminal law and Common Law norms of criminal procedure. The Supreme Court itself acknowledged this sad state of our law when it stated in *Cabaero v. Cantos*.⁸⁵

The real problem lies in the absence of clear-cut rules governing the prosecution of impliedly instituted civil actions and the necessary consequences and implications thereof.⁸⁶

In *Cabaero*, our Supreme Court, sitting *en banc*, perceptively and clearly identified some of the complications of our fusion regime:

4) Adjudication of compulsory counterclaims and/or related claims or pleadings logically includes the application of other rules which, by their very nature, apply only to civil actions. The following matters may be invoked in connection with the filing of an answer with a counterclaim: the genuineness and due execution of an actionable document which are deemed admitted unless specifically denied under oath; affirmative defenses like *res judicata*, prescription and statute of frauds which are deemed waived by failure to interpose them as affirmative defenses in an answer; and the failure of a defendant to file an answer seasonably may result in his default in the civil aspect but not in the criminal. As a consequence of these matters, the entry of plea during arraignment will no longer signal joinder of issues in a criminal action.

5) In an impliedly instituted civil action, an accused is not sufficiently apprised of the specific basis of the claims against him. An accused learns of the implied institution of a civil action from the contents of an information. An information, however, is filed in behalf of the People of the Philippines. Hence, it does not contain the ultimate facts relating to the civil liability of the accused. Section 6, Rule 110 of the Rules of Court, provides:

'Sec. 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place wherein the offense was committed.'

⁸⁵ G.R. 102942, 271 SCRA 391, Apr. 18, 1997.

⁸⁶ *Id.* at 408.

The foregoing section does not mandate the inclusion of the ultimate facts which can be specifically admitted or denied in an answer.

6) Because an accused is not sufficiently apprised of the specific basis of the civil action against him, he may file a motion for bill of particulars or take advantage of discovery procedures. The end result, in any case, will be delay and complication in the criminal action and even confusion among the parties.

7) The Rules of Court does not specify the reckoning date for the filing of an answer in an impliedly instituted civil action, an answer should be filed within fifteen (15) days from service of summons. The concept of summons, however, is alien to a criminal action. So, when does the 15-day period begin?

8) Moreover, an accused can file his answer with counterclaim only after the initial hearing, because the private complainant may still reserve his civil action at any time before the prosecution commences to present evidence. On the other hand, an answer in an ordinary civil action should be filed before the start of hearing, because hearing commences only after the issues have been joined, i.e., after the responsive pleadings have been filed.

9) Confusion in the application of the rules on civil procedure will certainly encourage litigants to challenge before appellate courts interlocutory incidents of the impliedly instituted civil action. While these challenges are pending, the criminal actions that demand speedy resolution, particularly where the accused is denied bail in capital offenses, will stagnate. Witnesses may disappear or lose recollection of their intended testimony, and the prosecutors may lose momentum and interest in the case. And the accused is effectively deprived of his right to speedy trial.⁸⁷

There are not enough rules as it is truly hard to tie together the many loose ends of a bad marriage. What we have is a discordant and unhappy marriage of concepts from two legal systems with different ideological approaches.⁸⁸ Our substantive penal law is Spanish-derived, but our procedural law to implement this law is American-derived.⁸⁹

⁸⁷ *Id.*, at 406-408.

⁸⁸ See EMILIANO NAVARRO, A TREATISE ON THE LAW OF CRIMINAL PROCEDURE IN THE PHILIPPINES 12-14 (1960).

⁸⁹ For a useful and extensive discussion of the hybrid nature of the Philippine law in general, see *In re Shoop*, No. 15895, 41 Phil. 213, Nov. 29, 1920.

The present system of fusion is not only confusing. It is outrightly unfair. As it delays and handicaps the offended party in his recovery on his civil claim, it deprives him of substantive rights. He has limited recourse to discovery modes in the fused action mainly because of the obtrusive privilege of the accused against self-incrimination. The trouble is that the fused action remains primarily and essentially a criminal action and is therefore effectively governed by the rules of criminal procedure as constricted by Constitutional norms as that of the accused's right against self-incrimination and to counsel, which rights are irrelevant to the prosecution of the civil claim.⁹⁰

There is no sound logic in delaying or handicapping a civil plaintiff because the State still has to make its case against the accused. This article has demonstrated that the system unduly benefits the accused: it buys him time on his civil liability where the claim is reserved or separately instituted; where the civil claim is fused with the criminal action, the accused has the undue if unintended advantage of resisting and deflecting the civil claim by an invocation of his Constitutional rights as an accused.

About the only thing that can be said in favor of our system of fusion is the possible resulting simplicity and economy of resources in that the presentation of duplicative evidence may be avoided. This economy may derive from the possibility that conviction may settle the issue of civil liability while acquittal may wipe out the accused's civil liability,⁹¹ but, as has been shown, this is not an absolute possibility. At all events, it does seem incongruous to sacrifice the offended party's substantive rights at the altar of possible simplicity and occasional economy. The system vindicates inferior values as it reflects an intuitive bias in favor of a criminal proceeding, the preferred forum for litigating the common issue as to the act or omission which is both a crime and an actionable wrong. However, this article has also demonstrated that a criminal proceeding is not an appropriate forum for resolving a civil claim.

This, then, is a part of our procedural law which is in dire need of repair. Repairing the cracks in our edifice of procedural law will no doubt redound to the better protection of substantive rights and to fairer adjudication. Our regime of fusion of a civil claim in a criminal proceeding is one such crack which cries not only for repair but for outright dismantling.

⁹⁰ William Stuntz, *Substance, Process and the Civil-Criminal Line*, 7 J. CONTEMP. LEG. ISSUES 1 (1996).

⁹¹ *Almeida v. Abaroa*, No. 2993, 8 Phil. 178, Mar. 27, 1907.

We must resist the pull of historical inertia and definitely truncate the civil claim from the criminal action.

Dismantling this regime of fusion should not be difficult. While we do not have to do away with the rule that a crime generally gives rise to civil liability, what we have to do away with is the rule allowing the impleader and litigation of the claim for civil liability *ex delicto* in a criminal proceeding. This claim for civil liability should be allowed to be prosecuted and maintained independently of any criminal action - either before, concurrently, or after the criminal action. Such a system would actually be simpler and fairer to both the offended party and the accused. Prosecution of the offended party's civil claim will thence no longer be embarrassed by irrelevant Constitutional norms, and the accused may more freely resist the civil claim as defendant in the civil action. When two actions should functionally and ideologically remain asunder, let no law put them together.

- o0o -